

RR-5543

PECFA – Staff Guidance on Approving Variances

Wisconsin Department of Natural Resources

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These draft documents are available for public comment. Following completion of the public input period, all comments will be carefully considered and revisions will be made as necessary. A comment response and a final document will be posted on this web page within 45 days of the end of the comment period.

Comments on this document should be sent to Jenna Soyer at jenna.soyer@wisconsin.gov.

Summary of Document

This document provides guidance to staff on how to approve variances to the Usual and Customary Cost Schedule for PECFA projects. The guidance only addresses a certain number of PECFA-eligible activities, based on their common occurrence, in order to ensure consistency in approving cost reimbursement where no standard rate exists.

This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

PECFA - Staff Guidance for Approvals of Variances

Purpose

The purpose of this guidance is to provide staff with best management practices for providing approvals of variances on specific PECFA-eligible activities costs. Wis. Admin. Code § NR747.01(4)(g) provides for the publication of cost guidelines for cost-effective remediations. These protocols/best management practices will also be included in the U&C Task Reference Guide

Protocols & Best Management Practices

All variances to the U&C Cost Schedule must be approved by the Team Supervisor for the area where the site is located. The FIT Section Chief must approve all variances exceeding \$10,000.

1. Breakdown of costs

Variance requests should have a full break down of costs (including contractor costs). Lump sum amounts will not be approved.

2. Overages

Any commodity overages experienced in the field should be reported to and approved by the PM within 48 hours. For example, commodity overages might occur when additional soil needs to be excavated above the approved amount. The final amount should be reported to and approved by the DNR project manager when the commodity invoice is received.

Overages for contractor costs should only occur, and be approved, in rare instances (e.g. where weather made it impossible to continue work and extra time was required). Requests for approval of an overage should be reimbursed at the Regulatory Correspondence rate, not as a Change Order.

3. Consultant Mobilizations

Variances for consultant mobilizations should not be given, as the mobilization rate is not dependent on distance from office/location (i.e. consultants will receive the same mobilization whether the job site is across the street or three hours away).

4. Per Diems

No per diems are given for work between two different PECFA sites (as each site will get a separate Primary Mob/Demob). Work at a site should be completed efficiently. This means that a consultant should consolidate work days. Per diems are not given for arriving at the job site the night before or staying an extra night, except in extreme circumstances.

5. Excavations

For both Task 24 and variances, the DNR project manager should include the following in the approval letter:

- The number of tons being approved.
- “Any overages in tonnage/costs should be reported to the DNR PM within 48 hours for approval.”
- “Costs approved are based on completion of the full scope of work.”

Because costs approvals are based on completion of the full scope of work (i.e. a specific tonnage), the amount reimbursed at claim time may be reduced if the final tonnage is less than what was approved. Overages should be approved before claim time (see #2).

Excavations under \$10,000 should use U&C rates under Task 24 – Limited Soil Excavation. Notes of importance for this task:

- LSE15 includes removal, replacement, transport and disposal costs.
- LSE10 (Mob/Demob) includes travel, equipment, and coordination costs. No additional costs will be approved for equipment use or rental.

For excavations over \$10,000 (approx. 150 tons) and/or for rates that are above or not on the U&C, variance approvals should follow the below best management practices:

- a. Consultant Oversight, should *not* be approved at the LSE05 rate, but should be a breakdown of rate x number of hours
 - # of hours at the site at the staff professional rate (\$91.39)
 - # of hours should be within reason assuming a 10-hour day
 - Anything above the staff professional rate of (\$91.39) should only be used in extenuating circumstances (e.g. significant off-site issues, media involvement, safety risks, etc.)
 - Detailed hours should be provided on a consultant invoice at claim time to confirm site work
- b. LSE10 (Mob/Demob) at \$831.92. No additional costs should be approved for equipment use or rental, or for coordination (except in *rare* instances).
- c. Task 31 Per diem(s) if needed.
- d. Bid prep (if needed for commodities) = # of hours at the project manager rate (should not exceed \$1,000)
- e. Excavation: Actual removal, replacement, transport and disposal costs (commodity costs). Do not use the LSE15 rate.
- f. LSE16 Actual landfill fee
- g. LSE13 Actual Lab costs
- h. Task 6 Letter Report Addendum rate for Remedial Construction Documentation

Other items to consider regarding excavations:

- Additional costs may be approved at the discretion of the project manager, depending on the circumstances of the site. For example: traffic control, fencing, private utility location (at MDT41 rate), access agreement (at AA05 rate), etc.

- Requests and approvals should clearly state the tonnage.
- Removal should be consolidated efficiently. This means that taking out one load on the first day does not qualify as a day of work and does not qualify for a per diem.
- The project manager should receive permission from their supervisor to oversee on-site work if they are unfamiliar with the site, have concerns about the work, or have other related other concerns about the on-site/off-site conditions.
- **Costs associated with tank removals (including tanks, piping, stabilization base, etc.) are not eligible.** This includes any overages in time/costs that may be incurred by the contractor upon discovering a previously unknown tank.
- The average dump truck holds 20 tons.

6. cPAHs

Costs for cPAH analysis should be approved as a variance at the Staff Professional hourly rate (for a reasonable amount of hours depending on the amount of data). Two hours of Consultant Project Manager time may also be approved to review and make conclusions based on the analysis.

7. Demolition

Building demolition will only be reimbursed if the DNR determines that it is necessary in order to complete response actions for PECFA-eligible contamination. Costs for building demolition must be approved in advance by the DNR through a variance.

Eligible activities related to building demolition include:

- costs for consultant and subcontractors to meet pre-demolition to agree upon plan of action;
- demolition contractor costs;
- asbestos and other hazardous material inspection costs;
- abatement of asbestos/hazardous materials;
- mobilization and hourly rate for waste haulers;
- actual landfill rates; and
- actual cost of landfill environmental fee.

The DNR project managers have the discretion to ask for bids to obtain reasonable costs.

Ineligible activities related to building demolition that will generally not be considered PECFA-eligible include:

- DNR fees;
- costs for consultant oversight of the demo;
- costs for consultant oversight of the asbestos or other hazardous waste abatement by certified subcontractors;

- cost to remove or haul personal property or to oversee the removal of personal property; and
- site restoration.

These activities may be approved in advanced by the department for extenuating circumstances. Other activities may be deemed ineligible at the discretion of the DNR project manager.

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