



United States Department of the Interior

Office of the Secretary
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PEP-ENVIRONMENTAL COMPLIANCE MEMORANDUM NO. 10-3

To: Heads of Bureaus and Offices

From: Michaela E. Noble, Director /s/09/18/2018
Office of Environmental Policy and Compliance

Subject: Central Hazardous Materials Fund (CHF) Project Nomination Guidance

PURPOSE

The Office of Environmental Policy and Compliance (OEPC) is issuing this Environmental Compliance Memorandum (ECM) under the authority provided in Department Manual, Series 17, Part 381, Chapter 4 (381DM4) to convey instructions and guidance through the Environmental Memoranda Series. This ECM updates the Department's guidance on procedures for Bureaus and Offices to submit cleanup projects for consideration to receive CHF funding. This ECM supersedes ECM 16-2.

The guidance provides direction to those Bureaus and Offices that request and receive money from the CHF. To ensure compliance with statutory and Departmental requirements, Bureaus and Offices must provide the CHF Technical Review Committee (TRC) with certain information regarding project nominations for funding consideration. Because the CHF is limited in the type of projects to which funding may be provided, this information is necessary to determine whether the nominated project meets eligibility requirements and satisfies applicable requirements established by legislation, by Departmental policy and by Secretarial Order. Additional information is used for evaluating future budget needs and project performance.

The legislation establishing the CHF provides that CHF funds may only be spent for response action and associated activity undertaken by the Department and Bureaus pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act. For CHF funding purposes, Bureaus and Offices should have completed a preliminary assessment/site inspection (PA/SI) and begun a records search for potentially responsible parties before submitting a nomination package for consideration. Questions regarding CHF eligibility can be directed to Jamey Watt, CHF Program Coordinator, at jamey_watt@ios.doi.gov or by phone at (202) 208-6129.

Attachment

cc: REO

OFFICE of ENVIRONMENTAL POLICY and COMPLIANCE

Environmental Compliance Memorandum 10-3

Central Hazardous Materials Fund (CHF) Project Nomination Guidance

I. OVERVIEW

The Office of Environmental Policy and Compliance (OEPC) is issuing this Environmental Compliance Memorandum (ECM) pursuant to the authority provided in 381 Departmental Manual Chapter 4. This ECM applies to projects requesting funding from the Department's Central Hazardous Materials Fund (CHF) to undertake response action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.* as amended. The purpose of this ECM is to provide guidance on submitting a project nomination request for CHF funding.

Once a project receives CHF Funding, it must comply with CERCLA, the National Contingency Plan (NCP), and all CHF-related ECMs located at:

<http://www.doi.gov/pmb/oepec/environmental-memoranda-series>.

II. ELIGIBILITY REQUIREMENTS FOR CHF FUNDING

In order to receive CHF funding, projects must meet the following criteria:

- The site is on federal land managed by one of the Department of the Interior's bureaus or a site where the bureau is working with U.S. Environmental Protection Agency (EPA) and/or another regulatory agency to address contamination located on bureau-managed land and adjacent private property commonly called a "mixed-ownership site";
- The project will be undertaken using CERCLA response authority;
- A Preliminary Assessment/Site Inspection (PA/SI) has been completed by the bureau;
- A Potentially Responsible Party (PRP) search has been initiated or completed ;
- The project appears to be a medium (3 to 5 years) to long-term (greater than 5 years) effort;
- The site poses a risk to human health or to the environment;
- The project ranks high in the Environmental and Disposal Liabilities (EDL) prioritization (Rank 1 or 2);
- The project follows the process outlined in *Section V. Environmental Justice and Consultation*; and
- The project is considered a high priority for the bureau and/or the Department. (See *Section VI. Budget Prioritization*.)

III. PROCESS FOR SUBMITTING A CHF REQUEST

Projects that a bureau has deemed eligible for CHF funding may seek funding in accordance with the following process.

a. Fiscal Year Nomination Process

The OEPC will send out an annual request to the bureaus to submit project nomination packages. The request will include a due date for project nomination packages to be submitted to OEPC. Bureaus may set an earlier due date internally.

Bureaus will submit their nomination package using the Environmental Management Information System (EMIS) CHF Nomination Module (Module). Access to the Module can be found at the following link: <https://ecl.doi.gov/login.cfm>. Assistance with registration and access to the Module should be directed towards bureau Technical Review Committee (TRC) representatives.

Once a nomination has gone through the bureau's internal review process and found to be complete, eligible, and a bureau priority, the bureau's TRC representative will submit the nomination to the Department using the Module. The TRC fiscal year review process is described in *Section IV. TRC Review and Recommendation Process*.

It is recommended that project managers consider the funding needs for the fiscal year requested, and two quarters into the following year. For example, bureaus will submit out-year funding needs during the second quarter of the fiscal year. FY 2016 requests were submitted by the bureaus in April 2015. The funding requested in April 2015, will not be received in the projects accounts until the second quarter of FY 2016, at the earliest.

b. Mid-Year Nomination Process

Under exceptional circumstances, bureaus may submit an out-of-cycle request. Such submissions will follow the same process as submissions made during the annual cycle. Bureaus should notify OEPC that a request will be uploaded into the system to ensure a timely review by the TRC. The TRC mid-year review process is described in *Section IV. TRC Review and Recommendation Process*.

c. Carryover Request Process

The CHF utilizes no-year appropriations and recoveries, which means that funds remaining at the end of a fiscal year will carry forward into the next year in each project's account. Bureaus are required to estimate the "anticipated carryover" for each CHF project. Anticipated carryover must be included in projects' nomination packages and the use of the carryover must be reviewed and recommended by the TRC. If a project does not need new funding, but anticipates

having \$100,000 or more in carryover at the end of a fiscal year, the bureau will submit a request to maintain the carryover in the Module.

As discussed under III. *a. Fiscal Year Nomination Process*, new funding is not typically received until the second quarter of a fiscal year. When determining whether or not the project has sufficient funding to operate off of carryover, it is recommended that the project anticipate that it might not receive new funding for a year and a half.

The TRC will review carryover requests at the same time as CHF funding year nominations. The TRC carryover request review process is described in *Section IV. TRC Review and Recommendation Process*.

d. Transfer Request Process

A bureau TRC representative may request authorization to transfer funds between CHF-funded projects. Bureaus may not transfer funding between projects without following the steps outlined in this section. Transfer requests are submitted for consideration using the Module. Transfer requests may occur at any time during the fiscal year; their review process is as follows:

- Bureaus may not transfer funding between projects without first submitting a transfer request to OEPC detailing the need for the transfer and use of funds. OEPC provides oversight and the authority to approve intra-bureau transfers rests with the OEPC Director. Notification of all approved transfers will be made to the TRC.

IV. TRC REVIEW AND RECOMMENDATION PROCESS

The TRC is composed of representatives from the following bureaus/offices: Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, U.S. Fish and Wildlife Service, National Park Service, U.S. Geological Survey, Office of the Solicitor and OEPC. Once OEPC has received the final nominations from the bureaus, the nomination package will be provided to the TRC for evaluation. The TRC will evaluate nominations based on human, ecological, or legal risks posed by the site, the technical merits of the proposed response action(s), consistency with CERCLA and the NCP, compliance with CHF-related ECMs, and availability of CHF funds.

The TRC recommendations will be forwarded to the Deputy Assistant Secretary for Policy and Environmental Management for approval. The OEPC will distribute funds as approved by the Deputy Assistant Secretary after they are made available by the U.S. Treasury.

V. ENVIRONMENTAL JUSTICE COMMUNITIES AND CONSULTATION

Project nominations must include information on how the bureau is working with Environmental Justice (EJ) communities and/or meeting consultation requirements as described below:

a. Environmental Justice

EJ is the fair treatment and meaningful involvement of all people, regardless of race, color, national origin or income with respect to the development, implementation and enforcement of environmental laws and policies. There are instances where a CHF project could impact an EJ community. The community(ies) may have specific needs that should be considered in community involvement efforts to ensure that they are treated fairly and able to participate in a meaningful way.

Each project manager is required to complete the Department of the Interior's *Introduction to Environmental Justice* training, which can be found on DOI Learn. The training only needs to be taken one time by the project manager and the date of completion must be documented in the project's nomination package.

All CHF projects must undergo a screening to identify any potentially affected EJ communities. The OEPC will screen all current and future projects to identify potentially affected EJ communities. The results of this screening will be provided to the bureau's TRC representative.

If potentially affected EJ communities are identified at a project, the nomination request for the project must discuss how the bureau is working with these communities.

Additional information on EJ can be found in ECM 10-1 *Central Hazardous Materials Fund CERCLA Process for CHF Projects*.

b. Consultation

Throughout the CERCLA process, the bureau may need to consult with one or more entities. Consultation may occur with tribes, State Historic Preservation Officers (SHPOs) (National Historic Preservation Act Section 106 consultation), and the U.S. Fish and Wildlife Service (Endangered Species Act Section 7 consultation).

If the project involves consultation with any of the above entities, the bureau should include a description of the consultation undertaken and who was involved in the consultation in the nomination package.

Additional information on consultation can be found in ECM 10-1 *Central Hazardous Materials Fund CERCLA Process for CHF Projects*.

VI. BUREAU PRIORITIZATION

The OEPC relies on each bureau to have in place its own prioritization process to screen projects prior to submitting them for CHF funding. The bureau's TRC representative will be responsible for submitting the projects that the bureau deems to be its highest priority projects that meet the requirements for CHF funding.

VII. PROJECTS RECEIVING UP-FRONT FUNDING FROM POTENTIALLY RESPONSIBLE PARTIES (PRP)

Some projects receive funding up-front from PRPs that pass through the CHF to the project. It is not necessary to submit a nomination package for these projects. The bureau's TRC Representative should notify OEPC of projects that fall into this category and any expected timeframes for when funding will be received.