



United States Department of the Interior

Office of the Secretary
Washington, D.C. 20240

9040.1c

PEP - ENVIRONMENTAL COMPLIANCE MEMORANDUM NO. 10-4

To: Heads of Bureaus and Offices

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

Subject: Central Hazardous Materials Fund (CHF) Financial Management 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 guidance on the financial management of funds in the CHF. This ECM replaces ECM 16-5.

The guidance includes information on roles for financial management of the CHF, authorized uses of funds, reporting responsibilities, budgeting, distribution of funds, reconciling, and reporting of expenditures. This guidance has been reviewed by each of the bureau representatives on the CHF's Technical Review Committee (TRC). If you have any questions, please contact Mr. Jamey Watt, CHF Program Coordinator, by email at jamey_watt@ios.doi.gov or by phone at 202-208-6129.

Attachment

cc: REOs

OFFICE of ENVIRONMENTAL POLICY and COMPLIANCE

Environmental Compliance Memorandum 10-4

Central Hazardous Materials Fund (CHF) Financial Management Guidance

I. OVERVIEW

The Department of the Interior's Central Hazardous Materials Fund (CHF) Program was formally established in 1995 through the "Interior and Related Agencies Appropriations Act" (1995 and subsequent years) (Public Law 108-7). In establishing the CHF, Congress mandated that funds appropriated to the CHF are to be used for costs incurred by the Department and any of its component offices and bureaus for response actions conducted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. Response actions conducted pursuant to CERCLA are further subject to regulatory requirements codified in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR Part 300). The CHF functions as a source of no-year funding for CERCLA cleanup projects and as a repository for funds recovered pursuant to CERCLA enforcement efforts.

The Office of Environmental Policy and Compliance (OEPC) is responsible for managing the CHF. The following guidance provides information on financial management of CHF funding and oversight requirements.

Authorized Use of CHF Funds

The expenditure of CHF funds is limited to actions undertaken that are pursuant to CERCLA. This includes the release or threatened release of hazardous substances, pollutants, or contaminants, on or from land under the jurisdiction, custody, or control of the Department or any of its offices or bureaus. This may also include responding to a release or threatened release that may migrate onto or under Department land from adjacent land. Associated activities for which CHF funds may be used include the Department's development and implementation of the CHF CERCLA program. Response actions for which CHF funds are expended shall be conducted in a manner not inconsistent with the NCP. Bureaus may only use CHF funds to conduct activities authorized in accordance with allocations approved by the Deputy Assistant Secretary – Policy and Environmental Management (DAS-PEM). Eligible activities include, but are not limited to:

- Oversight of response activities performed by responsible parties pursuant to a CERCLA settlement agreement
- Oversight of response activities performed by other federal or state agencies
- Remedial Investigations/Feasibility Studies
- Engineering Evaluations/Cost Analyses
- Design and implementation of time critical and non-time critical removal actions, and remedial actions

- Preparation of risk assessments, approval memoranda, action memoranda, administrative records, sampling and analysis plans, proposed plans, records of decision, cost documentation packages, and other documents or activities authorized or required by the NCP
- Operation and maintenance, and monitoring of removal actions, remedial actions, and institutional controls, recommended by the Technical Review Committee (TRC) and approved by the DAS-PEM
- Site-specific project management associated with oversight of remedial or removal activities
- Five-Year reviews
- Preparation and participation in project-related meetings and presentations
- Project-related enforcement activities
- Contractor and other technical support specifically related to CERCLA response activities
- Travel associated with project-specific response activities
- Training associated with project-specific response activities
- Bureau expenses for a Department-led Internal Control Reviews (ICRs)
- Bureau TRC representative travel to attend TRC meetings and ICRs
- Oversight of Formerly Used Defense Sites (FUDS) cleanup activities when conducted by outside parties, (e.g. the Army Corps of Engineers)

CHF funding cannot be used for early phases of the CERCLA process including, for example, preliminary assessments (PA) or site inspections (SI). In addition, the following activities are *not* appropriate for CHF funding:

- Cleanup of substances not defined as hazardous substances, or pollutants or contaminants under CERCLA, including releases that fall within the petroleum exclusion, solid waste, or other materials that are not CERCLA hazardous substances
- Clean-up of releases not on or from land under the Department's jurisdiction, custody, or control (e.g. releases on private property, property managed by other federal or state agencies, and tribal trust lands) except where such releases may migrate onto or otherwise pose a threat of release onto land under the Department's jurisdiction, custody, or control
- Investigations and cleanups on FUDS projects led by the Department
- Conducting environmental compliance assessments, (e.g. Resource Conservation and Recovery Act, Clean Water Act, etc.)
- Emergency responses
- Natural Resource Damage Assessment and Restoration activities
- Facility maintenance and operations not required to respond to the release or threatened release of a CERCLA hazardous substance, pollutant or contaminant
- Payments of fines, penalties, settlements, and judgments resolving claims against the Department or its Bureaus
- Conference fees that do not relate directly to the project
- General training that does not directly benefit the project
- Labor costs not directly related to authorized project activities

Bureau representatives and site/project managers should use sound management practices in assessing whether costs should be charged to CHF accounts. Questions concerning the use of CHF funding should be directed to the bureau's TRC representative who will be the liaison to OEPC's CHF Program Coordinator.

II. FUND MANAGEMENT ROLES AND RESPONSIBILITIES

The management and oversight of CHF funding is the responsibility of multiple groups and individuals within the Department. Roles and responsibilities will be discussed below.

Roles and Responsibilities:

1. OEPC:
 - a. Provides policy and guidance for the use of CHF funds and cost recovery
 - b. Manages the CHF appropriated funds
 - c. Manages funds recovered from responsible parties
 - d. Reviews and approves transfer requests
 - e. Ensures integrity and accountability in expenditures of CHF funds
 - f. Provides support in cost recovery settlements and litigation
 - g. Provides technical assistance to bureaus conducting and overseeing response actions
 - h. Assists in overseeing and reviewing CHF project nomination packages
 - i. Conducts ICRs of CHF sites
 - j. Assigns a CHF Program Coordinator as the point of contact for CHF issues
 - k. Chairs the Technical Review Committee

2. Office of the Solicitor (SOL), Environmental Compliance and Response Branch (or Regional SOL Offices as determined by the Solicitor). Duties are to be consistent with delegation of responsibilities detailed in Department Manual (DM) Series 03, Part 207, Chapter 7 (207DM7):
 - a. Advises bureaus and the Department to ensure that response actions are conducted in a manner not inconsistent with CERCLA, the NCP, and Department policy
 - b. Reviews CHF project nomination packages to ensure NCP compliance
 - c. Oversees potentially responsible party (PRP) investigations and the initiation of enforcement activities at CHF-funded sites
 - d. Develops and implements cost recovery/enforcement plans and all other enforcement-related activities for CHF-funded sites
 - e. Represents the bureaus and the Department in negotiating and overseeing compliance with agreements and settlements with PRPs and agreements with other federal, tribal, and state agencies
 - f. Represents the bureaus and the Department in coordinating with the Department of Justice in cost recovery settlement negotiations and litigation

3. Technical Review Committee:

- a. Provides technical review of CHF project nomination packages and on-going CHF projects; and prioritizes projects for CHF funding
- b. Provides recommendations to the DAS-PEM regarding the allocation of CHF funds among bureaus and offices for designated projects
- c. Assists in policy and guidance development for the CHF Program
- d. Coordinates implementation of CHF policy and guidance with representative's bureau

4. Bureau Headquarters TRC Representative:

- a. Coordinates information/data/budget requests between the bureau staff and OEPC
- b. Provides CHF financial management oversight within their bureau, including the monitoring of budget execution and quarterly status reports
- c. Ensures that all bureau nominations meet CHF eligibility criteria
- d. Reviews project nominations for completeness and cost estimate accuracy, and presents, or coordinates presentations of, project nominations for the TRC
- e. Ensures all bureau CHF projects use the CHF Cost Tracking Application, or equivalent, to provide legally-defensible cost data, unless a waiver has been granted utilizing the process outlined in ECM 10-5, *Central Hazardous Materials Fund Cost Recovery Guidance*.
- f. Coordinates, as requested by SOL, with project attorneys on cost recovery/enforcement strategies, development of cost documentation packages, and settlement negotiations at CHF sites
- g. Provides guidance and oversight to bureau site/project managers for bureau-specific requirements
- h. Ensures that sound technical approaches are undertaken at each CHF project consistent with bureau and DOI policies and guidance
- i. Participates in ICRs of selected projects within his/her bureau
- j. Ensures proper distribution of funds from DOI to approved CHF project accounts

5. Site/Project Manager:

- a. Implements and manages response action activities at the CHF site. Develops the response action schedule, cost-to-complete estimates, and ensures appropriate resources are utilized for an efficient, cost-effective cleanup
- b. Submits annual project nomination packages to their bureau's TRC representative for consideration on new or on-going projects
- c. Utilizes the bureau's financial management system to track project costs within the bureau's accounting structure
- d. Ensures that bureau project personnel utilize the CHF Cost Tracking Application, or equivalent, unless a waiver has been granted, to prepare project activity logs, and track travel, contract, and other project-related expenditures to facilitate the development of cost recovery claims

- e. Maintains cost documentation indefinitely to support cost recovery efforts
- f. Ensures CHF funds are spent in accordance with CHF guidance and the project nomination package requesting funds. Funds not spent in accordance with the plan may be required to be returned to the CHF

6. Interior Business Center (IBC):

- a. Manages the CHF financial account within the Department's Financial and Business Management System (FBMS), or other equivalent system
- b. Records appropriations and costs recovered into the appropriate CHF parent accounts
- c. Generates financial reports for OEPC

III. REQUESTING NEW FUNDING AND MANAGEMENT OF CARRYOVER

Process for Requesting New Funding and/or Maintaining Carryover – Nomination Process

Bureaus must submit requests for new funding in accordance with ECM 10-3 *Nomination Guidance*. The ECM outlines requirements for: 1) projects requesting new funding, and 2) projects that are not requesting new funding, but want to maintain carryover in excess of \$100,000 at the project level.

- Bureaus have defined carryover in one of two ways during the nomination process. To support the clarification of the definition for the nomination process, and apportionment process, the two definitions that are commonly used are described below:
 - Actual carryover: funding from unobligated prior year balances that can be carried over into the beginning of the new fiscal year, or
 - CHF cycle carryover: Amount of project funding in a project's account around the time when new funding is received from the Parent account. The timeframe of when projects receive new funding is typically the second or early third quarter of a fiscal year.

Management of Carryover – Apportionment Process

Estimating Carryover for Initial Apportionment

Each year, OEPC is required to provide *actual carryover* estimates to the Office of the Secretary's (OS) Budget which are submitted to the Office of Management and Budget (OMB) to approve initial carryover apportionments. Typically, this request is due in July or early August. Carryover estimate worksheets are provided by OS Budget to be completed by OEPC. OEPC requires input from the bureaus to accurately estimate overall carryover for CHF.

The TRC will be requested by OEPC to submit anticipated *actual carryover* by project no later than the middle of July to ensure adequate time to complete the templates and return to OS Budget by the office's deadline.

OEPC will also request an update from the Office of the Solicitor on projected cost recoveries prior to the end of the fiscal year to be included in the carryover estimates.

Upon approval of the Carryover Apportionment by OMB, OS Budget will provide OEPC the total amount CHF may authorize bureaus to suballot or make available to obligate in the new fiscal year.

Carryover Apportionment Process

At the end of a fiscal year, unobligated balances are automatically moved to unapportioned (UAPP) status in FBMS. Funds remain in the same line of accounting, but their status changes to UAPP. The bureau budget offices need to change the status to suballotment (SALT) at the beginning of the year in order for the projects to charge to them. Direction will be provided by OEPC and/or OS Budget at the beginning of the year on the amount of funding that can be changed to this status at the beginning of the year. As discussed below, full year apportionment may take place at the beginning of the year, or it may be need to be phased.

Each year OMB performs an initial apportionment of prior year balances, based on the numbers provided by the Department in the summer. If the estimate of carryover is more than 10% higher or lower than the actual amount of carryover OEPC will need to respond to a request for information detailing the reason(s) the estimate was off.

At the beginning of the fiscal year, OEPC will work with OS Budget, to determine the difference between the estimated and actual carryover amount. Bureaus must wait to receive notification on whether or not and how much carryover may be suballotted to the project level.

If the carryover estimate is within the 10% margin of the actual carryover, bureaus may suballot the total carryover to the appropriate projects. Notification to the bureau program offices will be provided by OEPC. If the carryover estimate is outside of the 10% margin of the actual carryover, OS Budget will notify OEPC of the variance and OEPC will coordinate with bureaus on where balances will be withheld until actual carryover is apportioned by OMB.

IV. FUNDING DISTRIBUTIONS AND TRANSFERS

Pursuant to approval from the DAS-PEM, funding may be transferred from the Department to the bureaus (Parent Account to Children Accounts). Funding may be transferred from the bureaus to the Department (Children to Parent), or within bureaus upon approval from the OEPC.

Transfers between the Department and bureaus may not be performed during the last week of the month due to the lead-time required for these transfers to be approved by the U.S. Treasury before they may be posted in FBMS and month-end close reporting deadlines. Each month, the

financial management offices have to ensure all transactions which took place during the month are posted before being able to close the month and open the next month.

Transferring Funding From the Department to the Bureaus

Each year funding is transferred from the Department's Parent Account to the bureaus' Children Accounts upon approval by the DAS-PEM. The process for projects to request funding, as well as review and approval of annual funding amounts can be found in ECM 10-3 *Nomination Guidance*.

The memos directing the distribution must identify the type of funding (appropriations (CH) or cost recoveries (CP)) to be provided to each project. In addition, a summary table must be included at the end of a bureau's project breakout table that documents how much funding (both CH and CP) is provided from prior year balances versus current year funds. See Section V. *CHF Financial Accounting Structure* for further details on CH and CP funding.

Once funding memos are provided to OS Budget for distribution, OEPC shall distribute copies to the bureaus' TRC Representative for them to share with their budget offices.

Transferring Funding From Bureaus to the Department

Periodically, a transfer will occur that returns funding from a bureau's Child Account to the Department's Parent Account. Prior to initiating a transfer from a bureau account to the Department, the bureau's TRC Representative shall notify the OEPC. Typically, notification will be from the bureau's TRC Representative.

The bureau return notification will need to provide OEPC the following information: 1) Why the transfer is occurring; 2) The account funding will be transferred from, including the fiscal year, and whether it is appropriated or offsetting collections funding; and 3) Approximately when the transfer will occur. OEPC will provide notification to OS Budget and IBC points of contact once this information is received.

Transfer of Funds within Bureaus

A bureau will occasionally request authorization to transfer funds between previously approved CHF funded projects. Bureaus may not transfer funding between projects without first submitting a transfer request to OEPC detailing the need for the transfer and use of the 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.

Emergency Funding Protocol

On occasion, emergency funding is needed for specific projects. In this context, an emergency is defined as either 1.) an immediate or imminent risk to public safety and health exists or 2.) time sensitive deadlines are at risk (e.g. contracting deadlines, etc.). Lack of preparation is not time sensitive. The bureau TRC representative is responsible for submitting emergency funding

requests to OEPC which outline the emergency being addressed, the amount of funding needed, the timeframe the funding is needed, and the anticipated outcome of receiving the funding. OEPC with review the request and approval authority rests with the OEPC Director. Notification of all approved emergency funding requests will be made to the TRC.

When is a site considered a “CHF site”?

In general, sites become CHF sites after first being proposed in the CHF Nomination Module and then being vetted through the TRC review process for the next fiscal year allocation. In cases where a site receives its first CHF funding through a cost recovery, transfer or emergency funding request, the site is then considered a CHF site and is eligible to receive CHF funds in following fiscal years.

V. CHF FINANCIAL ACCOUNT STRUCTURE

Accounting Structure

The CHF is a Department-wide, no-year account. Funding is used to support response activities pursuant to CERCLA. The Department maintains the Parent Account, while the bureaus have Child Accounts with project-specific accounts. All project funding must be associated with a distinct project specific account (funded program and/or work breakdown structure WBS) when suballotted.

The CHF receives both appropriated funding and funding from Potentially Responsible Parties (PRPs) in the form of offsetting collections funding. Funding from appropriations is recorded within CHF’s CH account (ex. 18XD1121CH FBMS Fund Type xxxxxx), and funding from the offsetting collections account is recorded within the CP account (ex. 18XD1121CP FBMS Fund Type xxxxxx). Funding cannot be transferred between accounts. Each bureau must maintain a CH and CP account, though the abbreviation for the account varies.

In addition, funding received by the Department’s Parent account is classified by the fiscal year (FY) in which it is received. This requirement began in FY 2012, which used the prefix 12X for the fiscal year fund’s accounting string. Funding may also not be transferred between fiscal year accounts, for example, 12X funding cannot be converted to 13X funding. All funding prior to FY 2012 uses the prefix XXX.

Accounting Structure in MAX.gov

It is necessary to have obligations split out by program activities, as shown in MAX.gov, so that funds can be mapped in FBMS. Mapping must be done by the Office of the Secretary as well as the bureaus. All appropriated funds should map to Remedial Action on line 0001 and all offsetting collections funds should map to Central Hazardous Materials Fund (Reimbursable) on line 0801.

VI. PROJECT FINANCIAL MANAGEMENT

Bureau management is responsible for ensuring that CHF funds are allocated to the specific project account approved by the DAS-PEM. Project managers and the bureau's TRC representative are responsible for ensuring that funds are spent in accordance with the work proposed in the project nomination package and in a manner not inconsistent with CERCLA and the NCP. Bureaus and OEPC will monitor budget execution by reviewing quarterly reports (*see Reporting below*).

Reporting

The OEPC reviews project budget execution each quarter. These reviews assess whether or not funding distributions, as well as approved transfer requests, were transferred to the correct project's account, whether a project's budget authority increased or decreased without a funding distribution, or approved transfer, and that the projects are spending funding on approved major object classes.

The quarterly reviews do not allow OEPC to assess whether or not personnel, contract, or equipment charges are appropriate, because of the level of detail needed to make this assessment. These topics are evaluated during project ICRs. (*See Section VII. Internal Controls for more details.*)

Bureaus must perform quarterly reviews to evaluate project budget execution as well as whether or not expenditures are appropriate. This process will be discussed and evaluated during annual ICRs.

Bureaus must also respond to data calls and additional reporting requirements that are requested by other offices within the Department on the execution of CHF funds. Such requests will be routed through the CHF Program Coordinator.

Cost Recovery

Projects must follow the requirements for cost recovery outlined in ECM 10-5 "*Central Hazardous Materials Fund Cost Recovery Guidance*." Response costs recovered from a PRP must be deposited in the CHF collections account (CP). Funds recovered as reimbursement of past expenses can be applied to other CHF sites.

Funds received for future expenses are earmarked for the site, and considered "pass through" funding. These funds typically are distributed to the bureau to be maintained in a bureau specific project account. In some instances, these funds may be maintained in the parent account for distribution as needed to the bureaus. The requirements for "pass-through" funding are detailed in ECM 10-3 *Central Hazardous Materials Fund Project Nomination Guidance*.

VII. INTERNAL CONTROLS

The Office of Management and Budget (OMB) Circular A-11, *Preparation, Submission, and Execution of the Budget*, OMB Circular A-123, *Management and Accountability Controls*, and DOI's "Program Manager's Guide to Risk Management and Internal Controls" require the Department to ensure that administrative and management controls are in place for Department programs. As such, OEPC personnel are required to conduct periodic reviews of CHF projects. These reviews will be coordinated with bureau representatives at the beginning of the fiscal year and will comply with the CHF ICR planning. The objective of CHF ICRs is to ensure that appropriate policies, procedures, and applications are available and implemented to meet the CHF program's objectives.

Reviewers assess high risk areas that could affect employees, projects, the program, and/or the public. OEPC submits reports including, if applicable, findings and observations identified during reviews to the corresponding bureau's TRC representative. If findings have been identified, the bureau's TRC representative will submit corrective action plans to OEPC within 30 days of being notified of the findings. Corrective action plans include timelines and processes the bureaus have developed to remedy findings. Observations are best management practices that do not have to be incorporated in corrective action plans.

OEPC reviews the status of open findings on a quarterly basis. OEPC will close findings upon receipt of documentation that findings have been sufficiently addressed. When findings remain open for longer than a year, OEPC will require the bureaus to review the finding's corrective action plan and provide an update on why the finding has not been resolved as well as new approaches to address the finding. When necessary, OEPC may discuss findings that remain open after a year during funding decisions.