United States Department of the Interior
OFFICE OF THE ASSISTANT SECRETARY
POLICY, MANAGEMENT AND BUDGET
Washington, DC 20240

TAKE PRIDE IN AMERICA

JAN 30 2013

PEP-ENVIRONMENTAL COMPLIANCE MEMORANDUM NO. ECM13-3

To: Heads of Bureaus and Offices

From: Willie R. Taylor, Director
Office of Environmental Policy and Compliance

Subject: Central Hazardous Materials Fund Cost Recovery Guidance

The Office of Environmental Policy and Compliance (OEPC) is issuing this Environmental Compliance Memorandum under the authority provided by 381 Departmental Manual Chapter 4.SB to convey instructions and guidance through the Environmental Memoranda Series. This ECM establishes guidance for documenting Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC 9601, *et seq*., as amended (CERCLA) response costs for Central Hazardous Material Fund (CHF) funded projects.

The Department's policy, as stated in the Departmental Manual (518 DM 2.4), is to "aggressively pursue potentially responsible parties" to require them to clean up contamination on Department-managed land (i.e. cost avoidance) or to recover from them response costs incurred by the Department (i.e. cost recovery). This ECM establishes roles and responsibilities, documentation requirements, and use of the cost tracking tool to support cost avoidance and recovery efforts for projects funded by the CHF.

The guidance will be effective as of February 1, 2013, and supersedes ECM 12-3 and 09-2. If you have any questions, please contact Ms. Hoover either by email at: courtney_hoover@ios.doi.gov, or phone 202-208-7556.

Attachments

cc: REOs

CENTRAL HAZARDOUS MATERIALS FUND (CHF)

ENVIRONMENTAL COMPLIANCE MEMORANDUM
COST RECOVERY

I. OVERVIEW

The Office of Environmental Policy and Compliance (OEPC) is issuing this Environmental Compliance Memorandum (ECM), pursuant to the authority provided in 112 Department Manual Chapter 4. This ECM applies to projects receiving funding from the Department of the Interior's (Department's) Central Hazardous Materials Fund (CHF) to undertake response action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC 9601, *et seq*., as amended (CERCLA). The purpose of this guidance is to assist CHF site project managers in complying with the Department's policy on cost recovery.

Project managers should follow any bureau-specific guidance, and consult with the Branch of Environmental Compliance and Response in the Department's Office of the Solicitor (Solicitor's Office) for specific questions on cost recovery and cost documentation.

II. COST RECOVERY/AVOIDANCE

The Department's policy, as stated in the Departmental Manual (518 DM 2.4), is to "aggressively pursue potentially responsible parties" (PRPs) to require them to clean up contamination on Department-managed land (i.e. cost avoidance) or to recover from them response costs incurred by the Department (i.e. cost recovery). CHF project managers are responsible for ensuring that their project is in compliance with 518 DM 2.4, and the requirements outlined in this ECM.

Response costs recovered from or paid in advance by a PRP to the Department are credited to the CHF collections account, and are available until expended. Funds recovered as reimbursement of past costs may be applied to other CHF sites. Funds paid by a PRP for future response action are managed in site-specific accounts established for the applicable site until all response action at the site has been completed. Cost recovery and cost avoidance enhance the Department's ability to clean up Department-managed lands. Settlement agreements with PRPs that provide for the recovery of response costs from or the performance of response action by, PRPs enable the Department to use its limited resources at CHF sites that do not have viable PRPs.

As required in the *Nomination Guidance ECM 10-4*, a PRP search investigation, or equivalent, must have been initiated or completed before a project is eligible for CHF funding. The PRP search investigation should identify whether or not there are viable parties that could be liable for response costs incurred by the Department at the site. The PRP research must be performed or reviewed by the Office of the Solicitor. The Branch of Environmental Compliance and Response (ECR Branch) in the Department's Solicitor's Office should be consulted early in the PRP search investigation to ensure the investigation is effective in addressing data gaps and focused on identifying the evidence necessary to develop a successful enforcement case. Based

on the results of the PRP search investigation, the ECR Branch will develop an enforcement plan if warranted by the facts at the site. *For more information on how to perform a PRP search, see the U.S. Environmental Protection Agency's PRP Search Manual,* at: http://www.epa.gov/compliance/resources/publications/cleanup/superfund/prpmanual/prp-search-man-cmp-09b.pdf, *and bureau-specific guidance, if applicable.*

When viable PRPs are identified at sites for which CHF funding has been or will be sought, the ECR Branch, in consultation with the site project manager and bureau management, is responsible for the initiation and development of enforcement activities, including issuance of notice and demand letters pursuant to section 107 of CERCLA, information requests pursuant to section 104(e) of CERCLA, and other communications with site PRPs. The ECR Branch may delegate these responsibilities at its discretion to Regional Solicitors or Bureau offices. The Solicitor's Office will also determine when coordination with the Department of Justice is appropriate and will be responsible for maintaining such coordination.

III. DOCUMENTING COSTS USING THE COST TRACKING TOOL

The NCP requires that "[d]uring all phases of response, the lead agency shall complete and maintain documentation to support all actions taken under the NCP and to form the basis for cost recovery" (40 CFR § 300.160(a)(1)). CHF projects must be managed at a level of detail, and documentation must be compiled and maintained, that readily demonstrates that activities for which CHF funds are spent are consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). To meet this objective, project managers for projects funded by the CHF must track project costs utilizing the CHF Cost Tracking Tool (CTT), or an equivalent approved system, unless they have been granted a waiver from tracking costs by the Solicitor's Office. *Equivalent systems are discussed in Section IV (Equivalent Systems), and waivers from tracking costs are discussed in Section V, (Exemptions for Tracking Costs).*

The CTT is a web-based application, accessible through the Department's intranet. A stand-alone MS Access application is also available for sites without intranet access. Projects managed at locations without internet or MS Access can request an OEPC-formatted MS Excel spreadsheet to track costs. Each bureau has a designated administrator for the CTT who approves user access to the database. It is up to the discretion of the bureau and project manager to determine those personnel who will be granted access to directly input project information into the CTT.

The following categories of costs must be tracked: labor, travel, contracts (including interagency agreements) and expendables (including equipment and material purchases). If non-CHF funding is used to support a project, e.g. labor hours associated with a base-funded employee, these funds are also recoverable and should be tracked in the CTT for inclusion in cost recovery packages. Supporting documents for CTT entries must be maintained until such time as the documents can be uploaded directly to the CTT.

To facilitate recovery, costs should be tracked in a way that identifies the phase of response action within which the activity falls and the CERCLA-specific task performed. The following are appropriate phases, and are available as selections in the CTT:

- Management
- Studies
- Implementation

Applicable CERCLA tasks for the associated phase, available as selections in the CTT, include:

- Management – Contracts, Enforcement Activities, Community/Public Relations, Administrative Record, or Training
- Studies – Remedial Investigation, Feasibility Study, Human Health Risk Assessment, Ecological Risk Assessment, Engineering Evaluation/Cost Analysis, Proposed Plan/Record of Decision, Remedial Design, or Training
- Implementation – Time Critical Removal Action, and Non-Time Critical Removal Action, Remedial Action, Long-term Monitoring, Operation and Maintenance, or Training

The CTT allows for tracking of labor, travel, contracts, and expendables. Though the Federal Business Management System (FBMS) and other financial systems track charges, they do not provide sufficient detail regarding the specific activities for which costs are incurred to demonstrate clearly that such costs are recoverable under CERCLA. These systems also do not easily identify non-CHF funded costs that are recoverable, such as work completed by base-funded employees, or activities conducted under base-funded contracts.

Each record used to track a cost outlined below must detail the applicable phase and task with which the charge is associated. Text fields are available for each record to allow the user to provide additional details to describe the activities or purpose for which the cost was incurred.

Project managers or a designee should reconcile the CTT against FBMS or another financial system at least quarterly. Some records must be maintained outside of the CTT because they contain personally identifiable information (PII). The CTT is not authorized to store PII. An example of a record that would need to be maintained separately would be vouchers and/or other travel records that may contain a person's social security number. Records that are maintained outside of the CTT must be kept until the Solicitor's Office approves the disposal of these records.

Labor:

Labor hours directly associated with the project should be tracked, as well as hours associated with training if the training is necessary for the person to conduct response action activities. The payment for trainings (if applicable) should be tracked in the contract or expendable section of the cost tracking tool, and records documenting such costs (such as invoices) should be uploaded as attachments to support the charges in the system.

Site/project managers should reconcile charges recorded in the CTT against FBMS (or other bureau financial systems if applicable) on at least a quarterly basis. Because of Personally Identifiable Information (PII) associated with labor reports in FBMS, such reports used to

reconcile charges are to be maintained outside of the CTT in a confidential project file until the Solicitor's Office approves the disposal of these records.

Travel:

All travel costs associated with a project should be tracked in the CTT. Because of PII, associated travel authorizations and vouchers are to be maintained outside of the CTT in a confidential project file until the Solicitor's Office approves the disposal of these records. Travel charges entered into the CTT should be reconciled against FBMS (or other bureau financial systems if applicable), and travel authorizations and vouchers on a quarterly basis at a minimum.

Contracts:

CHF projects that use contract support to implement or oversee response activities must document these costs in the CTT. The following types of information should be tracked and records should be uploaded in the CTT: contract number and amount; contract modifications; statements of work, task orders, or other documents that describe the work to be performed; invoices and documents demonstrating that invoices were paid; and status reports (e.g. monthly reports) or other documents prepared by the contractor describing what that has been conducted. Documents should be redacted when necessary to protect confidential or privileged information prior to being uploaded in the CTT. Some CHF projects use cooperative agreements such as inter or intra-agency agreements, and reimbursable support agreements to acquire specialized services. These types of agreements should be tracked using the same process as specified above for contracts.

When entering contract costs it is not necessary to duplicate the contract, or agreement document, to support each invoice. If the documents are also maintained in a project contract file, these records should be maintained until the Solicitor's Office approves disposal of these records. Costs related to contracts and inter/intra-agency agreements should also be reconciled on a quarterly basis with FBMS or other bureau financial systems if applicable.

Expendables (Equipment and Purchases):

Other expenses associated with a project (i.e. other than labor, travel, or contract costs) should be tracked as expendables in the CTT. Some examples of expendables include project-specific training, equipment, shipping, telephone bills, and vehicle expenses. These costs should be recorded in the CTT with sufficient detail to demonstrate they are project-specific, and a copy of the approved invoice, or other evidence of payment, should be uploaded into the CTT as an attachment supporting the record. Costs for expendables should be reconciled with FBMS or other financial systems, and associated credit card statements, if applicable, on a quarterly basis.

IV. EQUIVALENT SYSTEMS

If a bureau prefers to use a system equivalent to the CTT, such a system must be determined to be equivalent to the CTT by OEPC, in consultation with the Solicitor's Office. Project managers should complete the template in *Appendix A. Request for Use of an Equivalent System*, and

submit it to the CHF Program Coordinator for consideration. Upon receipt of the request, the CHF Program Coordinator will coordinate with the project manager, bureau, and Solicitor's Office to review the proposed system. If a system is approved as an equivalent system the bureau will receive a memo documenting this approval from OEPC.

To be considered equivalent to the CTT, a cost tracking system must readily capture information that documents that the cost was incurred for a specific CERCLA site and for an activity that qualifies as CERCLA "response" action. For direct labor costs, such information should identify the individual incurring the cost, the individual's loaded hourly labor rate, the day (or time period) on which the cost was incurred, the number of hours billed to the activity, and the specific activity undertaken on that day (or time period). The description of the activity should provide sufficient detail to demonstrate that the activity was not inconsistent with the NCP. Similarly, for contractor costs, such information should identify the contracts, (and contract modifications), task orders (or other descriptions of the work to be performed), progress reports, and related invoices, and should demonstrate that the contractor performed work not inconsistent with the NCP. Also, a system must be able to track costs that were incurred using the bureau's base fund, or other funding sources outside of the CHF, if such funding sources are used to fund project-specific activities.

V. EXEMPTIONS FROM TRACKING COSTS

Bureaus may seek a waiver from tracking costs for specific projects for which the Solicitor's Office has determined there is no likelihood of cost recovery from PRPs or claims being asserted by PRPs or other third parties against the Department. In these instances, bureaus may apply for and be granted a waiver from tracking costs for specific projects and using the CTT. The Branch of Environmental Compliance and Response in the Solicitor's Office is responsible for acting on such waiver requests. In seeking a waiver, project managers should complete the template in *Attachment B. Request for Cost Tracking Waiver* and submit it to the Branch of Environmental Compliance and Response. Upon receipt of the waiver request, the Solicitor's Office will review the supporting documents provided, and discuss the waiver request with the Project Manager. If a waiver is granted, the bureau will receive a memorandum documenting this decision from the Solicitor's Office. The Solicitor's Office will inform OEPC about project specific exemptions and provide a copy of all exemption memorandums.

Feedback

Careful documentation of costs incurred for CHF projects is necessary to effectively implement Departmental policy and stretch the Department's limited resources for cleanup. OEPC encourages continuous improvement of processes and practices. If you have recommendations to improve the CHF cost avoidance/recovery process, please provide them to your bureau's TRC representative who will then forward them to the OEPC CHF Program Coordinator.

Attachment A: *Request for Use of an Equivalent System*

Memorandum

To: CHF Program Coordinator
Office of Environmental Policy and Compliance

From: *(Project Manager)*
(Project)

Subject: Request to use an Equivalent System to the Cost Tracking Tool

The *(insert project name)* project is requesting that the Office of Environmental Policy and Compliance and the Branch of Environmental Compliance and Response in the Office of the Solicitor review and consider approving an equivalent system for tracking costs to the Cost Tracking Tool.

(*Provide a brief description of the system, including: 1) the types of charges it can track, 2) if/how it can identify that a charge is an appropriate CERCLA response cost, 3) any additional information you would like to provide.)*

Attachment B: *Request for Waiver*

Memorandum

To: Assistant Solicitor
Branch of Environmental Compliance and Response

From: *(Project Manager)*
(Project)

Subject: Request for Waiver from documenting CERCLA response costs

The *(insert project name)* project is requesting a waiver from the requirement established in ECM 13-3 that response costs incurred at (*insert project name*) be documented using the OEPC Cost Tracking Tool or a system found to be equivalent.

On *(date)* a Potentially Responsible Party (PRP) search was completed by *(person/office)*. The results of the search were *(insert details of the results)*. See attached report for more details *(attach a copy of the PRP report)*.

Based on this report, the (*insert name of bureau)* has concluded that no existing PRPs have been, or will be identified, no significant data gaps remain to be addressed regarding this conclusion, and there is no potential for cost recovery or contribution claims or litigation by or against the Department involving this site.

Attachment