

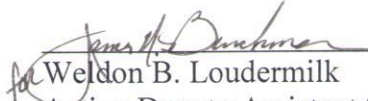
INDIAN AFFAIRS DIRECTIVES TRANSMITTAL SHEET

(modified DI-416)

DOCUMENT IDENTIFICATION NUMBER 59 IAM 4	SUBJECT Hazardous Substances Investigation, Remediation and Reporting	RELEASE NUMBER # 12-27
FOR FURTHER INFORMATION Division of Environmental and Cultural Resources Management		DATE AUG 30 2012

EXPLANATION OF MATERIAL TRANSMITTED:

This chapter establishes the policy, requirements and responsibility of Indian Affairs (IA) to manage hazardous substance investigations, identifications, reporting and remediation or cleanup.


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FILING INSTRUCTIONS:

Remove: None

Insert: 59 IAM 4 (New)

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- 1.1 Purpose.** This chapter establishes the policy, requirements and responsibility of Indian Affairs (IA) to manage hazardous substance investigations, identifications, reporting and remediation or cleanup.
- 1.2 Scope.** These policies and standards apply to all IA offices responsible for overseeing or implementing actions associated with the actual or potential release of hazardous substances. IA shall investigate and identify contaminated property wherein IA has ownership or a legal requirement. IA does not have delegated CERCLA authority on tribal trust or restricted lands.
- 1.3 Policy.** It is the policy of Indian Affairs to:
- A.** Identify contamination on IA owned property or where IA has a legal requirement;
 - B.** Utilize the Due Care, Location of Concern (LOC) reporting and Environmental Assessment processes to assess the contamination on IA property or where legally required to make an assessment;
 - C.** Account for the release of contamination, and the IA financial liability associated with the remedial/removal activities using the Department of Interior (DOI) Environmental and Disposal Liabilities (EDL) database;
 - D.** Consult, coordinate, cooperate with, and provide technical assistance to, other Federal agencies, State agencies and Tribal governments concerning incidents of current or potential releases of contamination on IA owned property or where it has been legally determined IA has a responsibility;
 - E.** Provide for regular training of field staff concerning LOC, EDL, Due Care and hazardous substances.
- 1.4 Authority.** The following statutes, regulations, and executive orders impose requirements on Indian Affairs for hazardous substances investigation, reporting, remediation and concurrent environmental responsibilities:
- A. Laws.**
 - 1. *Chief Financial Officers Act of 1990*, Public Law 101-577, 101st Congress- Second Session.
 - 2. *Government Management Reform Act of 1994*, Public Law 103-356, 103rd Congress-Second Session.
 - B. Statutes.**
 - 1. 33 U.S.C. §§ 2701-2761, Oil Pollution Act of 1990 (OPA).

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2. 42 U.S.C. §§ 9601-9675 *et seq.*, Comprehensive Environmental Response, Compensation and Liability Act, as amended in 42 U.S.C §§ 9601 35 seq. Superfund Amendments and Reauthorization Act (SARA) amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of October 17, 1986.
3. 15 U.S.C. §§ 2602 – 2692, Toxic Substances Control Act (TSCA).

C. Regulations.

1. 40 CFR Part 300, National Oil and Hazardous Substances Pollution Contingency Plan (NCP).
2. 40 CFR Part 372 Hazardous Chemical Reporting Community Right-to-Know Reporting; where there is a toxic chemical release and IA is the owner or operator.

D. Executive Orders.

1. Executive Order 12580, Superfund (CERCLA) Implementation, January 23, 1987, **as amended by 13016, August 30, 1996.**
2. Executive Order 12777, Implementation of Section 311 of the Clean Water Act, as amended, and the Oil Pollution Act of 1990 (OPA).

E. Guidance.

1. 207 DM 7 - Limited Delegations, CERCLA Implementation
2. 296 DM 2 - Emergency Delegations, Oil Spills and Hazardous Substances Releases
3. 602 DM 2 – Land Acquisition, Exchange and Disposal
4. 910 DM 4 - National Oil and Hazardous Substances Contingency Plan (NCP)
5. DOI Environmental Compliance Memoranda 99-02 “*Central Hazmat Fund (CHF) Financial Management and Cost Recovery Guidance*”
6. *Pre-Acquisition Environmental Assessment Guidance for Federal Land Transactions (Final)*, Director, Office of Environmental Policy and Compliance Memorandum (ECM) 10-2, dated June 16, 2010.
7. *Determining Probable and Reasonably Estimable for Environmental Liabilities in the Federal Government, Federal Financial Accounting and Auditing, Technical Release Number 2* (Technical Release No. 2) Issued by the Federal Accounting Standards Advisory Board (FASAB) 2006-1
8. Federal Facilities Remedial Site Inspection Summary Guide. U.S. EPA 2005
9. Internal Indian Affairs *Guidance for Implementing Due Care on Environmental and Disposal Liabilities Reporting* Memorandum, July 18, 2008.

F. Handbooks.

1. Department of Interior (DOI) *Environmental and Disposal Liabilities Identification, Documentation and Reporting Handbook v3.0, January 2011.*

1.5 Responsibilities.

- A. **Assistant Secretary, Indian Affairs** discharges the duties of the Secretary with the authority and direct responsibility to protect and preserve Indian trust assets; and provides program and budget support to carry out Departmental requirements identified in 207 DM 7. The Secretary's authority under Executive Order 12580, as amended, Sections 2(e)(1), 2(e)(2), 2(j), 2(k), and 3(a) is delegated to Assistant Secretaries. Assistant Secretary Indian Affairs has authority for response to, removal of, and remedial actions following the release or threatened release of hazardous substances on IA property and on property where IA has been determined to legally responsible.
- B. **Director, Bureau of Indian Affairs (BIA)** is delegated authority by the Assistant Secretary for remedial actions for releases or threatened releases and for removal actions other than emergencies under CERCLA and Executive Order (E.O.) 12580, as amended, on IA owned property or property under IA jurisdiction, custody, or control and may re-delegate that authority to the BIA Regional Directors. Ensures appropriate organizational arrangements, resources and personnel are available to implement hazardous substances investigation and remediation activities.
- C. **BIA Regional Directors** are re-delegated the authority for remedial actions involving releases or threatened releases and for removal actions other than emergencies under CERCLA and E.O. 12580, as amended, on IA owned property or property under IA jurisdiction, custody, or control upon consultation and in concurrence with the CERCLA Program Manager. The Regional Director shall utilize the Regional Environmental Scientist (RES) to carry out the remedial and removal actions. Regional Directors certify to the accuracy and completeness of the regional quarterly EDL statements. They also sign the Record of Decision for non-emergency remediation and or removal of hazardous contamination.
- D. **Division of Environmental and Cultural Resources Management (DECRM)** is responsible for the oversight of the Central Hazmat Fund (CHF) program and EDLs. The DECRM Chief is responsible for designation and supervision of the CERCLA Program Manager and certifies to the Central Office review of the EDL quarterly reports.
- E. **CERCLA Program Manager** develops and oversees the IA CHF program, including review of IA CERCLA documents such as Remedial Investigation and Feasibility Studies, Remedial Design and Remedial Actions, Records of Decision and Action Memoranda. The Program Manager is also responsible for the review of quarterly EDL statements and Environmental Monitoring and Assessment Program audits for LOC reports. The Program Manager notifies the RES of any LOCs found during the

audits or from other sources. The Program Manager is responsible for annual training of the RES concerning LOC, EDL, DC and release of hazardous substances. The Program Manager is the CHF Technical Review Committee representative for IA and acts as the Federal Resource Program Manager for IA, when implementing Section 106 under CERCLA.

F. BIA Regional Environmental Scientist shall be an Environmental Professional in order to provide technical or remedial expertise on contaminated and polluted site investigations. The RES identifies EDLs through EPA inspections, site audits and LOC reports; utilizes the DC process to characterize LOC sites and manages remediation and monitoring of sites within their region, BIE schools, and on property where IA has a legal responsibility. The RES identifies and records regional EDLs in the EDL database, generates and reviews clean-up cost estimates and maintains the associated EDL documentation on a site-by-site basis. The RES prepares and submits quarterly EDL database updates and revisions. The RES is responsible for annual training for LOC and EDL to regional employees.

G. IA Division of Financial Analysis and Reporting coordinates with the environmental staff, performing a reasonableness check on reported liability and ensuring the liability is correctly categorized as recognized or disclosed according to Generally Accepted Accounting Principles.

1.6 Definitions.

- A. Contaminated and Contamination** refers to releases of hazardous substances or petroleum that may pose a threat to human health or the environment.
- B. Due Care** is the process followed by a bureau or office to use reasonable effort to examine a location of concern to identify the presence or likely presence of contamination at concentrations significant enough to require further study or cleanup. The due care process must be performed by or under the oversight of an environmental professional.
- C. Environmental and Disposal Liability (EDL)** is an anticipated future outflow or other sacrifice of resources (e.g., costs) where, based on the results of due care, further study or cleanup is warranted due to past or current operations that have environmental closure requirements or contaminated Department lands.
- D. Environmental Professional** is someone who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases of hazardous substances or petroleum. An environmental professional must meet at least one of the following criteria:

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1. A current professional Engineer's or Geologist's license or registration and three years of relevant full time work experience;
 2. A state- or tribal-issued registration, certification or license and three years of relevant full-time work experience;
 3. A Baccalaureate degree or higher in science or engineering and five years of relevant full-time work experience; or
 4. Ten years of relevant full-time work experience
- E. **Hazardous Substance** is an element, compound, mixture, solution, or substance that is defined as a hazardous substance under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).
- F. **IA Property** is the land which IA legally owns and holds in its name.
- G. **Location of Concern** is an area on IA property that is suspected to be contaminated based on known past activities or observed and reported physical indicators, but where no Due Care has yet been conducted.
- H. **Tribal Trust Lands** are lands which are owned and controlled by the federally recognized tribes and for which IA is not responsible unless it is legally determined that IA owns or exercises jurisdiction custody or control.