



ENVIRONMENTAL PROTECTION AGENCY

[FRL OP-OFA-095]

Notice of Adoption of a Bureau of Indian Affairs Categorical Exclusion under the National Environmental Policy Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of adoption of categorical exclusion.

SUMMARY: The Environmental Protection Agency (EPA) has adopted a Bureau of Indian Affairs' (BIA) categorical exclusion (CE) for waste management activities involving remediation of hazardous waste sites under the National Environmental Policy Act (NEPA) for use by the EPA's Contaminated Alaska Native Claims Settlement Act (ANCSA) Lands Assistance Program. This notice describes the categories of proposed actions for which EPA intends to use BIA's CE and describes the consultation between the agencies.

DATES: This action is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Melissa Winters, Manager, Pollution Prevention and Communities Branch, Land, Chemicals, and Redevelopment Division, EPA Region 10, by phone at 206-553-5180, or by email at winters.melissa@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

NEPA and CEs

The National Environmental Policy Act, as amended at, 42 U.S.C. 4321-4347 (NEPA), requires all Federal agencies to assess the environmental impact of their actions. Congress enacted NEPA in order to encourage productive and enjoyable harmony between humans and the environment, recognizing the profound impact of human activity and the critical importance of restoring and maintaining environmental quality to the overall welfare of humankind. 42 U.S.C. 4321, 4331. NEPA's twin aims are to ensure agencies consider the environmental effects of their

proposed actions in their decision-making processes and inform and involve the public in that process. 42 U.S.C. 4331. NEPA created the Council on Environmental Quality (CEQ), which promulgated NEPA implementing regulations, 40 CFR parts 1500 through 1508 (CEQ regulations).

To comply with NEPA, agencies determine the appropriate level of review—an environmental impact statement (EIS), environmental assessment (EA), or CE. 42 U.S.C. 4336. If a proposed action is likely to have significant environmental effects, the agency must prepare an EIS and document its decision in a record of decision. 42 U.S.C. 4336. If the proposed action is not likely to have significant environmental effects or the effects are unknown, the agency may instead prepare an EA, which involves a more concise analysis and process than an EIS. 42 U.S.C. 4336. Following the EA, the agency may conclude the process with a finding of no significant impact if the analysis shows that the action will have no significant effects. If the analysis in the EA finds that the action is likely to have significant effects, however, then an EIS is required.

Under NEPA and the CEQ regulations, a Federal agency also can establish CEs—categories of actions that the agency has determined normally do not significantly affect the quality of the human environment—in their agency NEPA procedures. 42 U.S.C. 4336(e)(1); 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). If an agency determines that a CE covers a proposed action, it then evaluates the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b). If no extraordinary circumstances are present or if further analysis determines that the extraordinary circumstances do not involve the potential for significant environmental impacts, the agency may apply the CE to the proposed action without preparing an EA or EIS. 42 U.S.C. 4336(a)(2), 40 CFR 1501.4. If the extraordinary circumstances have the potential to result in significant effects, the agency is required to prepare an EA or EIS.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to “adopt” or use another agency’s CEs for a category of proposed agency actions. 42 U.S.C. 4336(c). To use another agency’s CEs under section 109, an agency must identify the relevant CEs listed in another agency’s (“establishing agency”) NEPA procedures that cover its category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the CE to a category of actions is appropriate; identify to the public the CE that the agency plans to use for its proposed actions; and document adoption of the CE. *Id.* This notice describes EPA’s adoption of BIA’s CE under section 109 of NEPA to use in EPA’s program and funding opportunities administered by EPA.

EPA’s Program

The Alaska Native Claims Settlement Act (ANCSA) was enacted in 1971 to settle aboriginal claims to public lands through the conveyance of 46 million acres of land to Alaska Native regional and village corporations and the transfer of one billion dollars from the state and federal governments as compensation for remaining claims. Some of the lands promised and conveyed to corporations pursuant to the settlement in ANCSA were contaminated. The contaminants on some of these lands—which include arsenic, asbestos, lead, mercury, pesticides, polychlorinated biphenyls, and petroleum products—pose health and other concerns to Indigenous Alaskans and communities and are present in quantities above state and federal clean-up levels, negatively impacting subsistence resources and hampering cultural, social, and economic activities.

In the fiscal year 2023 omnibus bill, Congress appropriated \$20 million for EPA to establish and implement a grant program to assist Alaska tribal entities with addressing contamination on ANCSA lands that were contaminated at the time of conveyance. EPA has initiated a new Contaminated ANCSA Lands Assistance Program to assist Alaska tribal and Alaska Native Corporation entities with addressing contamination on ANCSA lands.

The Contaminated ANCSA Lands Assistance Program addresses contamination left by Federal departments and agencies on land that was subsequently conveyed to Alaska Native Corporations under the ANCSA. The activities to be funded involve remediation of hazardous materials sites in compliance with applicable Federal laws. Eligible entities include federally recognized Indian Tribal Governments (Tribes) in Alaska, Alaska Native Regional Corporations, Alaskan Native Village Corporations, Alaska Native Nonprofit Organizations, Alaska Native Nonprofit Associations, and Intertribal consortia. The objectives of the EPA program are to provide funding to eligible entities to carry out cleanup activities at ANCSA sites that were contaminated at the time of conveyance.

II. BIA Categorical Exclusion

EPA has identified the following BIA CE listed in the Department of the Interior's Departmental Manual (516 DM 10.5(K)(2)).

K. Waste Management.

(2) Activities involving remediation of hazardous waste sites if done in compliance with applicable federal laws, such as the Resource Conservation and Recovery Act (Pub. L. 94-580), Comprehensive Environmental Response, Compensation, and Liability Act (Pub. L. 96-516) or Toxic Substances Control Act (Pub. L. 94-469).

EPA intends to apply this CE for EPA's grants awarded under its Contaminated ANCSA Lands Assistance Program when applicable.

III. Consultation with BIA and Determination of Appropriateness

EPA consulted with BIA on the appropriateness of EPA's adoption of the CE in September 2023. EPA and BIA's consultation included a review of BIA's experience developing and applying the CE, as well as the types of actions for which EPA plans to utilize the CE. The EPA actions under the Contaminated ANCSA Lands Assistance Program are very similar to the type of projects that BIA funds and therefore the impacts of EPA projects will be very similar to the impacts of BIA projects, which are not significant, absent the existence of extraordinary

circumstances that could involve potentially significant impacts. Therefore, EPA has determined that its proposed use of the CE as described in this notice is appropriate.

IV. Consideration of Extraordinary Circumstances

When applying this CE, EPA will consider whether the proposed action has the potential to result in significant effects as described in EPA's extraordinary circumstances listed at 40 CFR 6.204(b). EPA defines extraordinary circumstances as circumstances that may cause a significant environmental effect such that a proposed action that otherwise meets the requirements of a CE may not be categorically excluded. 40 CFR 6.102(b)(6). In addition, in consultation with BIA, the EPA determined that it will also apply two applicable Department of the Interior extraordinary circumstances regarding Indian sacred sites and invasive species (43 CFR. 46.215(k) and (l)) when evaluating a proposed action.

V. Notice to the Public and Documentation of Adoption

This notice serves to identify to the public and document EPA's adoption of BIA's CE. The notice identifies the types of actions to which EPA will apply the CE, as well as the considerations that EPA will use in determining whether an action is within the scope of the CE.

Dated: November 14, 2023.

Timothy Hamlin,

Director, Land, Chemicals, and Redevelopment Division,

EPA Region 10.

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