



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

National Policy Memorandum

Office of Trust Services
Division of Environmental and Cultural Resource Management

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Title: Adoption of Indian Health Service's (IHS) Categorical Exclusion Determination for Sanitation Lines over Indian Lands

1. Purpose

The purpose of this memorandum is to document the Bureau of Indian Affairs' (BIA) policy and procedure for adopting the Indian Health Service's (IHS) categorical exclusion determination under the National Environmental Policy Act (NEPA) for sanitation lines over Indian lands. Sanitation lines refer to water and sewage pipe and tunnel lines for sanitation purposes. This memorandum also provides a procedure for the compilation and tracking of Decision Files for BIA approvals and other decisions.¹

2. Scope

This policy applies to all BIA program offices, regions, and agencies involved in the NEPA process.

3. Policy and Procedure

It is the BIA's policy to comply with all federal laws and regulations as well as Departmental policies regarding NEPA and records management. BIA will implement the following steps in order to streamline such compliance.

A. Adoption of an IHS Determination that a Proposed Sanitation Line is Categorically Excluded

As part of delivering healthcare services to Indian country, IHS administers a program for the construction of domestic sanitation facilities (water, wastewater, and solid waste) for Indian

¹ The section concerning Decision Files is a revision of similar guidance from NPM-TRUS-37, the last amendment of which expired on October 2, 2021.

homes and communities (Federal Register Vol. 58 No. 3, Pages 569-570, Jan. 6, 1993). As part of its NEPA procedures, IHS has found that certain categories of proposed actions do not, absent extraordinary circumstances, require preparation of an environmental assessment (EA) or an environmental impact statement (EIS) under NEPA. One of those categories is:

“Actions associated with construction of sanitation facilities to serve Indian homes and communities, except that the following actions are not excluded: (1) Construction of a sanitary landfill at a new solid waste disposal site, and (2) Construction of a new wastewater treatment facility with direct discharge of treated sewage to surface waters.”

When applying this categorical exclusion to a particular proposed action, IHS must determine that the proposed action falls within its established exclusion category and that “there are no extraordinary circumstances related to the proposal that may affect the significance of the environmental effects of the proposal” (see also Department of Health and Human Services (HHS) General Administration Manual (GAM) Part 30 (Environmental Protection), section 30-20-50.A.1).

Under the Council on Environmental Quality (CEQ) regulations implementing NEPA, “[a]n agency may adopt another agency's determination that a categorical exclusion applies to a proposed action if the action covered by the original categorical exclusion determination and the adopting agency’s proposed action are substantially the same. The agency shall document the adoption” (40 CFR § 1506.3(d)²).

Therefore, when a BIA agency or regional office receives an application for a right-of-way (ROW) for an IHS sanitation line, it should request a copy of the determination prepared by IHS under the HHS GAM provisions above, with background information. The Regional Environmental Scientist/NEPA Coordinator/Regional Environmental Program Manager should then review that information to verify that it meets BIA’s requirements for a categorical exclusion determination, including determining that none of the Department of the Interior’s (DOI) extraordinary circumstances at 43 CFR 46.215 apply, and then prepare a recommendation that it be adopted by BIA.

Any such recommendation would be in place of a Categorical Exclusion Exception Review (CEER) and would constitute the NEPA review for the ROW underlying that particular sanitation line. The BIA agency or regional office would still need to comply with the section 106 review under 54 U.S.C. § 306108 to assess the effects of the proposed ROW on historic resources. The DOI Secretary would also still need to grant the ROW under 25 U.S.C. §§ 323-328 and 25 CFR Part 169.

² This provision of the CEQ regulations does not allow for use of another agency’s categorical exclusion, but rather only adoption of the determination that a particular proposed action falls within a categorical exclusion on a proposed-action-by-proposed-action basis. The use of another agency’s categorical exclusion as part of an agency’s NEPA procedures is provided for in 40 CFR § 1507.3(f)(5), which requires that the recipient agency’s NEPA procedures contain a public process for such use. The DOI’s NEPA regulations at 43 CFR Part 46 do not contain such a process.

B. Decision File Compilation

A Decision File is a collection of documents maintained by a designated employee who is generally the project's Program Manager, the Project Manager, or staff who has access to the relevant documents that detail the development of the BIA decision. If a decision is appealed, the Decision File is used as the primary basis for the compilation of the administrative record that is prepared for the appeal. The Decision File may also serve as the primary compilation of documents in response to a Freedom of Information Act (FOIA) request or other records request.

Effective immediately, the guidance herein should be followed regarding Decision File compilation and tracking. The Decision File itself should contain the complete story of the BIA decision-making process, including options considered and rejected by the BIA as well as substantive information (including both paper and electronic documents (e.g., letters, emails, reports)) that was presented to, relied on, or reasonably available to the decision-maker.

Additionally:

- The DOI Office of the Solicitor should be consulted throughout the process of making the decision and compiling the Decision File as necessary.
- A Decision File should be created once consideration of a proposal, application, request, or decision begins, which will vary based on the situation.
- The Decision File should serve as a single organized source of information that records the agency decision and decision-making process.
- As a routine matter, the Decision File should capture information from employees who are involved in the decision-making process, prior to those employees leaving such roles.
- The Decision File should be kept in an accessible location and should be organized in a logical manner, such as chronologically or by topic (or even chronologically within each topic) so that documents can be added to the Decision File as they are generated or received.
- To the extent that documents may be subject to a privilege, they should be so marked to the extent practicable during the decision-making process.
- All documents placed in the Decision File should be appropriately labeled and dated.
- Substantive meetings that are relevant to the decision-making process should be sufficiently documented.

- Drafts that help substantiate the BIA’s decision-making process should be included in the Decision File.
- Documentation of electronic information (such as that found on websites) should be maintained in the Decision File only if relevant, substantive, and if it documents the decision-making process.
- When information contained on websites is relied on, the Decision File should contain a contemporaneous copy of the website, including the URL and date it was downloaded, to ensure that the information relied on is preserved before the website content changes.
- Memoranda that document relevant oral communication, serve to explain otherwise confusing emails, or that document other matters that demonstrate the agency's decision-making process should be written or collected and placed in the Decision File before the final decision is reached.
- Once the decision-maker has made a final decision, the Decision File should be closed.

C. Decision File Tracking

Decision File tracking must comply with Department and BIA requirements regarding timelines for decision-making. BIA maintains the NEPA Tracker 2 system and participates in the DOI NEPA Environmental Management Information System (EMIS) to track decisions and timelines in coordination with the Office of the Solicitor, the Office of Environmental Policy and Compliance, and the Office of the Chief Information Officer.

4. Roles and Responsibilities

- A. **Director, BIA** is responsible for ensuring that appropriate organizational arrangements, resources, and personnel are available to implement and maintain the environmental and cultural program. The Director serves as the Senior Accountable Official for this program, and has primary responsibility for implementing and executing BIA programs in accordance with statute, regulation, and Departmental policy.
- B. **Deputy Bureau Director (DBD), Office of Trust Services (OTS), BIA** is responsible for ensuring that statutory and regulatory timetables for environmental documents are met; ensuring that guidance is available to BIA regional and agency staff tasked with processing environmental and cultural documents; initiating periodic program reviews of regional and agency programs; and assisting in the development and dissemination of trust resource policy to the Regional Directors (RDs).
- C. **Division Chief, Division of Environmental and Cultural Resource Management (DECRM), OTS** is responsible for overall policy and guidance development within DECRM.

- D. Branch Chief, Branch of Environmental and Cultural Resources Management (BECRM), DECRM** is responsible for the day-to-day oversight of the environmental and cultural resource program, and establishing BIA’s environmental and cultural program policies, guidance, and standards for complying with statutory and regulatory requirements, including NEPA. The Branch Chief also ensures technical assistance and training is provided to BIA regions as needed; conducts program reviews; and manages BIA’s federal reporting requirements as they relate to this program.
- E. Regional Environmental Scientist/NEPA Coordinator/Regional Environmental Program Manager** is responsible for providing technical advice to RDs and Agency Superintendents regarding proper compliance with NEPA; reviewing NEPA CEERs, EAs, and EISs for actions occurring within the region, including documents prepared by BIA as well as documents prepared by other agencies for activities occurring on or affecting Indian lands; coordinating the compilation of Decision Files; serving as the region’s representatives for cooperating agencies on environmental analysis affecting Indian lands; and ensuring that all required mitigation measures are carried out in accordance with all regulatory requirements and BIA/DOI policies.
- F. BIA RDs** serve as the Senior Accountable Official for the environmental and cultural program in their respective regions, and are responsible for reviewing and acting on any NEPA documents, including CEERs, EAs, and EISs that are not otherwise delegated to the BIA agency level.
- G. BIA Agency Superintendents** manage their respective organization’s environmental and cultural program compliance in day-to-day operations, and coordinate reviews of NEPA documents, CEERs, and EAs with the Regional Environmental Scientist/NEPA Coordinator/Regional Environmental Program Manager, as appropriate.

5. Approval

Darryl LaCounte Digitally signed by Darryl LaCounte
Date: 2022.06.28 13:47:04 -0400

Darryl LaCounte
Director, Bureau of Indian Affairs

Date