COMMERCE

BEST PRACTICES FOR ADDRESSING PART 58 SITE CONTAMINATION

Overview of HUD'S Part 58 Site Contamination Guidance

It is HUD policy, as described in 24 CFR 58.5(i)(2), that:

1. All property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.
2. Environmental review of multifamily and non-residential properties shall include evaluation of previous uses of the site and other evidence of contamination on or near the site, to assure that occupants of proposed sites are not adversely affected by the hazards.
3. Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained hazardous wastes.
4. The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.

It is therefore essential that responsible entities, potential grant applicants, and other HUD program participants become familiar with the potential environmental issues involving property before leasing, optioning, and/or acquiring the property. Unknowing individuals or parties that acquire contaminated property with good intentions could face liability for clean-up costs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERC third-party lawsuits, and costly delays in implementing the project).

Federal funds may not be committed to a project for acquisition of property, before the Environmental Review is complete. Issues and remediation measures, including Site Contamination, can be identified and remediation addressed before agreements for funding are executed or site remediation may be made a part of the scope of work for a project and included in the agreement to commit funds.

Best Practices for Site Contamination

Identify any on-site of nearby toxic, hazardous, or radioactive substances found that could affect the health and safety of project occupants or conflict with the intended use of the property.

Sites known or suspected to be contaminated by toxic chemicals or radioactive materials include but are not limited to sites: (i) listed on an EPA Superfund National Priorities or CERCLA List, or equivalent State list; (ii) located within 3,000 feet of a toxic or solid waste landfill site; or (iii) with an underground storage tank. For any of these conditions, the grantee must provide an ASTM Phase I report.

- Make sure the Environmental Review Record contains clear documentation showing how the site was evaluated for toxic and contaminated substances
- If toxic and contaminated substances were found on or near proximity to the project site, make sure the ERR contains clear documentation on how the findings were mitigated
- The ERR should include proof that each recommendation was followed through along with all evidence of remediation and follow-up testing as required.
- Any communication and results of conversations and requirements from the Voluntary Remediation Program should also be fully documented and included in the ERR.

FHA-insured projects should refer to program guidelines and to Chapter 9 of the MAP (Multifamily Accelerated Processing) Guide to comply with toxics and site contamination.

Non-FHA projects should identify the potential for hazardous substances or materials that may affect the health and safety of the users of the property as follows:

- If not using a Phase I ESA, the Responsible Entity must conduct an equivalent analysis to evaluate the previous uses of the site and identify the potential for hazardous substances or materials that may affect the health and safety of the users of the property.
    - *Note: It may not always be feasible to have a Phase I conducted for smaller projects that only consist of minor renovation or interior improvements to an*

existing building that will be retained for the same use (Ex. Energy efficiency upgrades such as boiler system and hot water heater replacements).

- Review databases maintained by U.S. EPA and state, local, and tribal environmental quality departments or agencies to screen for potential on-site and off-site facilities that could pose health and safety problems and toxic clean-up sites that are presently under analysis or remediation. Databases may include, but are not limited to:
    - EPA NEPAssist
    - EPA EnviroMapper
    - EPA Cleanups in My Community Map
    - DEQ LUST Site List
- Investigate previous uses of the site. Site inspections and building and use permit records as well as Sanborn Co. maps and other historical maps show the previous land uses which could have left toxic residues. Other methods of evaluation include performing a site walk, interviewing property owners or managers and local officials, and analyzing land-use records, permits, and violations.
- When site conditions indicate that the subject property is contaminated or likely contaminated by toxic substances, hazardous materials, or petroleum products, one shall provide an ASTM certified Phase I ESA report, or other studies where applicable. Any hazards that are identified should be evaluated for the potential to affect the health and safety of the occupants and end-users. Contact your local HUD field environmental officer for further technical assistance in this regard.
    - Refer to Using a Phase I Environmental Site Assessment to Document Compliance with HUD Environmental Standards at 24 CFR 58.5(i)(2) or 50.3(i).

For New Construction or Major Rehabilitation Activities

- Request a Phase I Environmental Site Assessment (ESA)
    - *Note: A Phase I ESA is not triggered by new construction. Part 58 does not have a Phase I trigger for new construction, change in land use, or increased density. However, a Phase I is the simplest way to evaluate the previous uses of the site or other evidence of contamination on or near the site.*

- If recognized environmental conditions (REC) were found in the Phase I, request a Phase II ESA to be conducted
- If the Phase II ESA found contaminants of concern (COC) and provided recommendations for further action:
    - Consider alternatives, such as choosing another project site if remediation is not feasible; OR
    - Work closely with your Voluntary Remediation Program (VRP) to ensure that all recommendations are satisfied

Determine whether any adverse environmental impacts be mitigated.

Use mitigation to prevent the hazard from affecting the health and safety of project occupants or remediate the contaminated property and work with the appropriate state agency. If environmental contamination is identified, remediation may be made part of the scope of work of the funded project. The grantee must maintain documentation to demonstrate that the identified contamination was addressed as required in consultation with the appropriate state agency. Such documentation may include: tests, reports, final analysis and clearance from state agency.

Compliance and Documentation

For non-FHA-insured programs, the ERR should contain **one** of the following:

- Evidence the site is not contaminated (for multi-family housing project this includes on-site and off-site contamination and previous uses of the site); a Phase 1 Environmental Site Assessment is strongly encouraged for multifamily and non-residential projects.
- Evidence supporting a determination the hazard will not affect the health and safety of the occupants or conflict with the intended use of the site, including any mitigation measures used.
- Documentation the site has been cleaned up according to EPA or state standards for residential properties, which requires a letter of “No Further Actions” from the appropriate state department/agency or an RAO fetter from the LSRP.

Ensure grantees are using the following worksheets:

- Site Contamination (Single Family) – Worksheet

- Site Contamination (Multi-Family and non-Residential Building) – Worksheet

Related Resources

Guidance and Training Materials

- Applicability of ASTM E1527-13 Phase I ESA Standard for HUD Environmental Reviews
- Choosing an Environmentally Safe Site
- Multifamily Accelerated Processing Guide, Chapter 9
- Using a Phase I Environmental Site Assessment to Document Compliance with HUD Environmental Standards at 24 CFR 58.5(i)(2) or 50.3

Tools and Templates

- EPA Toxic Releases Inventory Website
- EPA Envirofacts Data Warehouse

Information on Specific Hazards from HUD Programs or other Agencies

- soilSHOP Toolkit - The Agency for Toxic Substances and Disease Registry (ATSDR) has developed a soilSHOP Toolkit for holding a community event that includes screening soil for lead and providing information to the community about lead hazards and other related health topics.
- OEE's Radon Fact Sheet
- HUD's Office of Healthy Homes and Lead Hazard Control Home Page
- HUD's Office of Healthy Homes and Lead Hazard Control - Radon
- HUD Office of Multifamily Development Radon Policy
- EPA Training on Radon
- Information on Lead-Based Paint (EPA)v
- Information on Asbestos (EPA)
- Information on Mold (EPA)
- EPA's Office of Compliance and Enforcement
- EPA's Where You Live
- EPA's Office of Pollution Prevention and Toxics Home Page

Appendix A

Contamination and Toxic Substances (Multifamily and Non-Residential Properties)

General Requirements	Legislation	Regulations
It is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of the occupancy or conflict with the intended utilization of the property.		24 CFR 58.5(i)(2) 24 CFR 550.3(i)
Reference		
https://www.hudexchange.info/programs/environmental-review/site-contamination/		

1. **How was site contamination evaluated[i]? Select all that apply.**
   - ☐ ASTM Phase I ESA
   - ☐ ASTM Phase II ESA
   - ☐ Remediation or clean-up plan
   - ☐ ASTM Vapor Encroachment Screening
   - ☐ None of the above

Provide documentation and reports and include an explanation of how site contamination was evaluated in the Worksheet Summary. Continue to Question 2.

2. **Were any on-site or nearby toxic, hazardous, or radioactive substances found that could affect the health and safety of project occupants or conflict with the intended use of the property? (Were any recognized environmental conditions or RECs identified in a Phase I ESA and confirmed in a Phase II ESA?)**
   - ☐ No

   Explain:

Based on the response, the review is in compliance with this section. Continue to the Worksheet Summary below.

☐ Yes
Describe the findings, including any RECs, in Worksheet Summary below. Continue to Question 3.

3. **Mitigation**
Document the mitigation needed according to the requirements of the appropriate federal, state, tribal, or local oversight agency. If the adverse environmental effects cannot be mitigated, then HUD assistance may not be used for the project at this site.

Can adverse environmental impacts be mitigated?

☐ Adverse environmental impacts cannot feasibly be mitigated.
Project cannot proceed at this location.

☐ Yes, adverse environmental impacts can be eliminated through mitigation.
Provide all mitigation requirements[ii] and documents. Continue to Question 4.

4. Describe how compliance was achieved. Include any of the following that apply. State Voluntary Clean-up Program, a No Further Action letter, use of engineering controls[iii], or use of institutional controls[iv].

5. If a remediation plan or clean-up program was necessary, which standards does it follow?

☐ Complete removal
Continue to the Worksheet Summary

☐ Risk-based corrective action.
Continue to the Worksheet Summary

Worksheet Summary

Compliance Determination

Provide a clear description of your determination an da synopsis of the information that it was based on, such as:

- Map panel numbers and dates
- Names of all consulted parties and relevant consultation dates
- Names of plans or reports and relevant page numbers
- Any additional requirements specific to your region

1. **Are formal compliance steps or mitigation required?**
   - ☐ Yes
   - ☐ No

[i] HUD regulations at 24 CFR § 58.5(i)(2)(ii) require that the environmental review for multifamily housing with five or more dwelling units or non-residential property include the evaluation of previous uses of the site or other evidence of contamination on or near the site. For acquisition and new construction of multifamily and nonresidential properties HUD strongly advises the review include an ASTM Phase I Environmental Site Assessment (ESA) to meet real estate transaction standards of due diligence and to help ensure compliance with HUD's toxic policy at 24 CFR §58.5(i) and 24 CFR §50.3(i). Also note that some HUD programs require an ASTM Phase I ESA.

[ii] Mitigation requirements include all clean-up actions required by applicable federal, state, tribal, or local law. Additionally, provide, as applicable, the long-term operations and maintenance plan, Remedial Action Work Plan, and other equivalent documents.

[iii] Engineering controls are any physical mechanism used to contain or stabilize contamination or ensure the effectiveness of a remedial action. Engineering controls may include, without limitation, caps, covers, dikes, trenches, leachate collection systems, signs, fences, physical access controls, ground water monitoring systems and ground water containment systems including, without limitation, slurry walls and ground water pumping systems.

[iv] Institutional controls are mechanisms used to limit human activities at or near a contaminated site, or to ensure the effectiveness of the remedial action over time, when contaminants remain at a site at levels above the applicable remediation standard which would allow for unrestricted use of the property. Institutional controls may include structure, land, and natural resource use restrictions, well restriction areas, classification exception areas, deed notices, and declarations of environmental restrictions.