

## **Memorandum of Understanding**

**between the**

**U.S. Department of Housing and Urban Development**

**and the**

**U.S. Environmental Protection Agency regarding**

### **Improving Communication About HUD Public and Multifamily-Assisted Housing and Superfund Sites**

#### **I. Background**

Ensuring housing is safe for residents and for the environment is an integral part of the U.S. Department of Housing and Urban Development (HUD) mission. HUD ensures housing safety and environmental protection primarily through implementation of its National Environmental Policy Act (NEPA) procedures. These procedures include HUD's site contamination policy, which states that: "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 gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property."

The Environmental Protection Agency (EPA) maintains the National Priorities List (NPL) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (commonly known as Superfund). The NPL is the list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States and its territories. Sites added to the NPL tend to be big, complicated or do not have responsible parties to fund the cleanup. EPA has a robust and reliable process to identify and appropriately remediate such sites to address contamination and protect human health and the environment at these sites, including those used for residential purposes. Once added to the NPL, EPA's commitment is to ensure the site will be safe when work is completed, which often involves extensive cleanup efforts. As of January 4, 2022, there are over 1,800 listed, proposed, and deleted sites on the NPL.

HUD and EPA are working together to improve communication when either identifies a nexus between HUD Properties and Superfund sites where EPA has identified potential health concern for housing residents. For the purposes of this MOU, HUD Properties include Public Housing and Multifamily Assisted-Housing. The parties may agree to expand the definition of HUD Properties to include additional HUD-assisted programs in the future.

HUD and EPA committed to this agreement to help ensure that residents of HUD Properties located on Superfund sites are not exposed to contamination above acceptable levels. This MOU is intended to facilitate communication, information exchange, and EPA access to HUD Properties when further investigation on HUD Properties is appropriate.

Superfund sites are found disproportionately in low-income and communities of color. EPA and HUD are committed to strengthening our approach to environmental justice issues so that overburdened and marginalized communities, in particular, are provided protections from environmental health

hazards. EPA and HUD are committed to ensuring that all Americans have the right to live in healthy communities.

## II. Purpose

The purpose of this MOU is to further the mutual interests of the parties described below and to facilitate: 1) increased dialogue between EPA and HUD; 2) shared information between the agencies; 3) coordination to help ensure EPA has access to HUD Properties; and 4) outreach to residents. This MOU identifies some of the key mechanisms that the parties intend to utilize for that continued collaboration.

## III. Mutual Interests of the Parties

The parties to this MOU have a shared interest in ensuring that current and future residents of HUD Properties are not exposed to unacceptable human health risks (as described in Section IV. Authorities) from Superfund sites. The scope of this MOU is limited to certain programs and properties (as listed in Section V. Contributions of the Parties).

## IV. Authorities

### A. U.S. Department of Housing and Urban Development

HUD's NEPA implementing regulations are found at 24 CFR Part 50 (Part 50) and 24 CFR Part 58 (Part 58). HUD applies the Part 50 regulations when it prepares NEPA reviews. States and local governments, as Responsible Entities, prepare NEPA reviews under Part 58 when they assume HUD's NEPA responsibilities.

HUD's site contamination policy is included in these regulations at 24 CFR 50.3(i) and 58.5(i)(2), which state that "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 gases, radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property." 24 CFR 50.3(i)(2) and 58.5(i)(2)(ii) further state that HUD or the Responsible Entity, respectively, must evaluate previous uses of sites for multifamily housing with five or more dwelling units to assess the potential for contamination on or near the site.

The Secretary is authorized to engage with other agencies pursuant to Section 502(f) of the Housing and Urban Development Act of 1970 (12 U.S.C. § 1701z-2(f)), and Section 502 of the Housing Act of 1948 (12 U.S.C. 1701c).

### B. U.S. Environmental Protection Agency

CERCLA has broad authority for responding to releases of hazardous substances, pollutants, and contaminants into the environment which includes cleaning up some of the nation's most contaminated sites. Consistent with CERCLA, cleanups ensure protectiveness of human health and the environment; protectiveness is addressed in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and in EPA Superfund Policies, including the *Role of the Baseline Risk Assessment under CERCLA Guidance* (OSWER Directive 9355.0- 30, April 22, 1991).

There may be some qualified limitations on the use of CERCLA response authority to take cleanup actions inside structures.

V. Contributions of the Parties

A. Each party intends to help successfully carry out actions described in this MOU to the extent practicable and permitted by its authorities.

B. EPA will include HUD's Departmental Environmental Clearance Officer (DECO) of the Office of Environment and Energy (OEE) as part of its public notification process for a proposed listing.

C. HUD field staff intends to instruct Responsible Entities (i.e., units of local, state, and tribal government) to include EPA as an interested party to receive notification if a Responsible Entity's environmental review identifies Superfund sites that could result in impacts to health and safety to HUD-assisted housing residents.

D. The parties intend to convene on a quarterly basis to discuss issues within the scope of, and related to the purposes of, this MOU. These meetings will be facilitated by the EPA Office of Superfund Remediation and Technology Innovation (OSRTI) and the HUD Office of Environment and Energy (OEE). Any concerns related to this MOU should be brought to the parties for further discussion.

E. EPA intends to provide up-to-date data to HUD, on an annual basis, on Superfund sites including geospatial data describing appropriate site boundaries, or if boundaries are not available, coordinates representing the site centers, and data from the Superfund Enterprise Management System (SEMS) database, such as information describing contaminants, remedy status, and current environmental indicators for sites.

The scope of sites with data relevant to HUD for the purposes of this MOU is: All proposed, final, and deleted NPL sites, Superfund Alternative Agreements, as well as other select non-NPL sites of concern when identified by EPA (e.g., removal actions). The scope of Superfund sites for purposes of this data set is not limited by the contaminant type.

F. HUD intends to provide up-to-date, nation-wide open data on HUD Properties to EPA. HUD intends to provide updated data annually, identifying the location (address and geo reference) of HUD Properties. Neither EPA nor HUD will publicly release data that includes personally identifiable information unless required by the Freedom of Information Act, 5 U.S.C. § 552, the Privacy Act of 1974, 5 U.S.C. § 552a, or other applicable statute.

G. When EPA needs access to HUD Properties to collect environmental samples, HUD intends to facilitate communications between property owners and EPA when necessary to assist EPA with obtaining voluntary access.

H. EPA intends to assist in providing more detailed information on individual sites, when requested by HUD. This additional assistance could potentially include site-specific consultations with EPA Remedial Project Managers (RPMs), access to site-specific documents, documentation that a property is suitable for residential use, or clarification of Superfund policies and procedures.

I. HUD's Regional Environmental Officers (REOs) will be the point of contact for EPA Remedial Project Managers (RPMs) and other appropriate regional EPA contacts. REOs and RPMs intend to coordinate to follow-up on the results of the EPA and HUD data at the regional level, especially where there are potential risks from site-related contamination to HUD-assisted housing residents. This is to help ensure that residents are protected and informed.

J. EPA intends to inform HUD when community involvement activities include residents of HUD properties. EPA will coordinate, as appropriate, to ensure accurate messaging when there are on-going community involvement activities (including briefings for elected officials, responding to press inquiries, and/or staffing a unified command center in the region during the clean-up activities).

K. The parties intend to train and provide guidance and resources to each other as needed to help each Agency understand each other's programs and procedures.

#### VI. No Binding Obligation or Financial Commitment

This MOU imposes no binding obligations or financial commitments on either of the parties. This MOU is an expression of intent only.

#### VII. Expenses of the Parties

Each party to the MOU bears its own expenses in connection with the preparation, negotiation, and execution of this MOU.

#### VIII. Limitations

A. All actions to be taken pursuant to this MOU are subject to the availability of appropriated funds and each party's budget authorities and priorities. Nothing in this MOU, in and of itself requires the parties to commit, obligate, or expend their appropriations.

B. Any endeavor involving the transfer of funds between the parties to this MOU will be executed in separate agreements between or among the participating parties.

C. This MOU does not create any right, benefit or responsibility, substantive or procedural, enforceable by law or equity against any of the parties, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of the named parties.

#### IX. Publicity

The parties intend to coordinate all public statements about the MOU or any deliverables developed under the MOU. The parties intend to collaborate from the outset on the form, timing and contents of any press release, Freedom of Information Act (FOIA) request, media response, publicly available description, or any other public communication relating to the MOU or any related deliverables. The parties, including agency public affairs representatives, intend to begin consulting on press releases and press conferences well in advance of any public announcement.

#### X. Duration and Ability to Extend

This MOU becomes effective on the date of final signature. Every five years this MOU will be reviewed by the parties and amended if appropriate. Either party, upon 90-day notice to the other party, may suggest amending this MOU. The MOU, however, can only be amended by either party with a 90-day notice.

XI. Amendments, Termination or Cancellation of MOU

Either party, upon 90-day written notice to the other parties, may terminate its participation as a party to this agreement, at any time and for any reason it deems appropriate. The parties may amend this MOU to reflect changes in rules, laws, or regulations which become effective after the effective date of this MOU.

XII. Compliance with Applicable Laws

It is understood by the parties that changes in rules, laws or regulations applicable hereto may occur during the term of this MOU and that this MOU has no legal effect on any such changes.

XIII. Agency Contacts

The following agency contacts have the lead in implementation of the efforts outlined in this MOU:

U.S. Department of Housing and Urban Development: Director, Office of Environment and Energy

U.S. Environmental Protection Agency: Director, Office of Superfund Remediation and Technology Innovation

This Memorandum of Understanding is signed for:

U.S. Department of Housing and Urban Development

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Kevin J. Bush  
Deputy Assistant Secretary for Grant Programs

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Robert Mulderig  
Deputy Assistant Secretary for Public Housing Investments

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Ethan Handelman  
Deputy Assistant Secretary for Multifamily Housing

U.S. Environmental Protection Agency

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Carlton Waterhouse  
Deputy Assistant Administrator for Land and Emergency Management