

CHAPTER 21

ENVIRONMENTAL MONITORING

- 21-1 PURPOSE. The purpose of this Chapter is to provide a consistent methodology for conducting in-depth environmental monitoring of “Responsible Entities” (REs) under 24 CFR Part 58 (hereinafter referred to as “Part 58”) to assure compliance with the National Environmental Policy Act (NEPA), other related laws and all applicable environmental regulations. The regulations at 24 CFR 58.77(d) establish broad guidelines for monitoring of environmental activities. Basic instructions for monitoring RE compliance with environmental regulations found in Parts 50 and 58 are also provided, as they pertain to all HUD programs and recipients of HUD grant funds.
- 21-2 ROLES AND RESPONSIBILITIES. This Chapter is to be used primarily by HUD Regional Environmental Officers (REOs) and Field Environmental Officers (FEOs) and, to a lesser degree, by Community Planning and Development (CPD) Representatives. REOs/FEOs have primary responsibility to conduct or assist in monitoring HUD grantees for environmental compliance and conduct in-depth monitoring. CPD Representatives, who are responsible for oversight of CPD competitive- and formula-allocated programs, assist the REOs/FEOs in targeting Departmental monitoring resources through their assessment of environmental performance (see Exhibit 21-1). The information obtained from these reviews will be a primary source of information for REOs/FEOs in their risk analyses and decision-making about in-depth monitoring and more intensive assessment of RE performance.
- REOs/FEOs are encouraged to consider remote monitoring only as a last resort when travel resources are inadequate. Remote monitoring cannot substitute for the need to verify environmental review procedures of REs on site. Remote monitoring, when done, should seek to gather the information described in the procedures for remote environmental monitoring provided below, and the REO/FEO should provide the RE with a formal assessment of compliance in a letter to that RE’s environmental compliance officer.
- 21-3 APPLICABILITY. This guidance on environmental monitoring applies to all CPD programs using statutory authorities that permit state, local, and tribal governments to assume HUD’s responsibilities for the administration of the National Environmental Policy Act of 1969 (NEPA) and the related statutes, Executive Orders, and regulations set forth in Section 58.5. Covered programs are listed below with regulatory citations for environmental compliance in parentheses:

- A. Title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) [42 U.S.C. 5304(g)]. (Note: The states and local governments funded under the Community Development Block Grant (CDBG) program serve as Responsible Entities that assume environmental review authority for many of HUD's programs under the provisions of Part 58.). Grants to State and local governments include:
 - 1. Community Development Block Grants—Entitlement [24 CFR 570.604],
 - 2. Community Development Block Grants for States and Small Communities [24 CFR 570.604],
 - 3. Section 108 Loan Guarantee [24CFR 570.604 and 24 CFR 570.704(d)],
 - 4. Economic Development Initiative (EDI) Grants, and,
 - 5. Brownfield Economic Development Initiative (BEDI) Grants.

 - B. Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402). Grants to States and local governments, private nonprofit organizations, and housing agencies, including:
 - 1. Emergency Shelter Grants [24 CFR 576.57(e)],
 - 2. Supportive Housing Grants [24 CFR 583.230],
 - 3. Shelter Plus Care Grants [24 CFR 582.230],
 - 4. Section 8 Moderate Rehabilitation Single Room Occupancy for Homeless Individuals [24 CFR 882.804(c)].

 - C. Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838). Grants to States and local Participating Jurisdictions and insular areas, including:
 - 1. HOME Investment Partnerships Grants (24 CFR 92.352).

 - D. Competitive grants beginning with fiscal year 2001 and all formula grants, in accordance with section 856(h) of the AIDS Housing Opportunity Act [42 U.S.C. 12905(h)]; all grants for fiscal year 1999 and prior years, in accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276) including:
 - 1. Housing Opportunities for Persons with AIDS. Grants to States and local governments, private non-profit organizations and housing agencies [24 CFR 574.510].
- 21-4 ENVIRONMENTAL MONITORING OBJECTIVES. The three broad objectives in reviewing environmental performance are described in the following paragraphs.

- A. Procedural Compliance. One purpose of environmental monitoring is to determine whether the RE has complied with the procedures and requirements of Part 58, “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.” The RE’s Environmental Review Record (ERR) and supporting documents shall be verified and reviewed to see that Part 58 requirements have been met.
- B. Environmental Quality. To comply fully with NEPA and related environmental laws, Executive Orders and regulations, the RE is required to consider the environmental impact of the various projects subject to review and their surroundings in its decision-making. The RE's environmental assessments required under Part 58 (documented in the ERR) shall be examined to determine whether the RE is adequately assessing these projects’ impact on the environment and the environment's impact on the projects being reviewed.
- C. Technical Assistance. The review of procedural compliance and environmental quality not only can identify strengths, but also may indicate deficiencies in the RE's program. Although deficiencies require correction, the broader objective is to provide technical assistance to the RE in order to remedy the problems and to reduce or eliminate incidences of non-compliance in the future.

21-5 STATE ENVIRONMENTAL MONITORING OBJECTIVES. This Chapter contains one Exhibit (21-13) for assessing environmental compliance where the State assumes HUD environmental responsibilities. There are four specific objectives for monitoring the environmental performance of States:

- A. To verify that the State is meeting its environmental obligations and is fully discharging its responsibilities under NEPA and other provisions of law in conformance with the environmental regulations in 24 CFR Part 58;
- B. To assess the effectiveness of the State's program for monitoring recipients;
- C. To determine State compliance in meeting the requirements concerning the certification process and Release of Funds; and
- D. To provide technical assistance to the State in achieving compliance with environmental requirements.

21-6 USE OF RISK ANALYSIS AND SELECTING GRANTEEES FOR ON-SITE MONITORING. REOs/FEOs must be guided by all current Departmental guidance on risk analysis as a method to establish priorities for monitoring. Risk analysis should determine which RE to visit on-site, what CPD program areas pose the greatest concern for potential fraud, waste, or mismanagement, and which of the RE’s projects should be the focus of the monitoring visit. Risk

analysis should be the primary mechanism for the environmental staff to focus available resources, for both remote and on-site monitoring.

REO/FEO staff shall use the current HUD Notice on “Implementing Risk Analysis for Monitoring Responsible Entities for Compliance With 24 CFR Part 58.” (See http://www.hudclips.org/sub_nonhud/cgi/nph-brs.cgi?d=CPDN&s1=@docn&l=100&SECT1=TXTHLB&SECT5=HEHB&u=../hudclips.cgi&p=1&r=28&f=G.) This Notice provides factors for use in determining risk, provides the various components that should be incorporated into risk considerations, and weights each factor so that a final determination can be made about each Responsible Entity. The HUD Notice requires CPD Field Offices to be involved in the risk assessments. Exhibit 21-1 of this Chapter provides guidance for CPD Field Office input into the Environmental Risk Analysis process.

21-7 DEVELOPING AN ENVIRONMENTAL MONITORING STRATEGY. At the beginning of CPD’s fiscal year, each FEO shall consult with the REO and CPD Field Office Directors in all Field Offices for which the FEO provides environmental assistance. The purpose is to develop a monitoring strategy for the upcoming year based on risk analysis. The strategy will establish a framework for assuring adequate monitoring of RE compliance consistent with available resources. The monitoring strategy is the responsibility of the FEO and should be conveyed to the REO who is responsible for a regional monitoring strategy to be submitted to the Headquarters Office of Environment and Energy for review and comment.

- A. Management Plan. The Monitoring Strategy must be consistent with the Department’s Management Plan objectives and follow any applicable guidance contained in that Plan. Goals for in-depth, on-site monitoring contained in the Management Plan shall be the responsibility of the FEO.
- B. Monitoring Schedule. The FEO shall develop an annual schedule of all in-depth, on-site environmental monitoring visits planned for the fiscal year. It should establish realistic on-site monitoring goals for each quarter of the fiscal year to enable the REO/FEO to accomplish the overall strategy and goals. The schedule should be distributed to the Program Office Directors and the Field Office Director.

21-8 AREAS OF REVIEW AND LEVELS OF REVIEW. Part of the environmental monitoring strategy should be to determine what areas of concern exist, if any, and how comprehensive the monitoring of an RE should be. Risk analysis should provide distinct areas of focus for monitoring activities and should also be used to make the most effective and efficient use of time by concentrating available time and staff to the identified areas of risk. Exhibit 21-1 is for use by CPD field staff to use when conducting program monitoring, where indicated. Exhibits 21-2 through 21-12 are to be used for environmental monitoring of all REs, including

States when they act as REs. Exhibit 21-13 is to be used exclusively for monitoring State-administered CPD programs in cases where the State does not act as an RE. All Exhibits may not be applicable for a given project reviewed and some Exhibits will have no bearing on any projects in an RE's ERR.

21-9 PRE-MONITORING PREPARATION FOR ENVIRONMENTAL MONITORING (IN-DEPTH AND LIMITED).

- A. Review of Environmental Data. A wide array of program and environmental processing data is available to determine how REs conduct environmental review activities. This information includes Consolidated Plans, Annual Action Plans, Comprehensive Annual Evaluation and Performance Reports (CAPERs) for CPD programs, release of fund logs, draw down information, prior monitoring information, audit information, and citizen complaints. It is the responsibility of the REO/FEO, as part of their preparation, to seek out all pertinent data on program performance and environmental performance from all sources, including CPD Field Office Program Directors.
- B. Subpart H Pre-Review. The Release of Funds, as described in Subpart H of Part 58, should be a particular source of review prior to the monitoring visit. The REO/FEO should contact the CPD Field Office Director for all CPD programs subject to Part 58. The REO/FEO should review CPD program draw down records for projects for which the RE should have completed the environmental review. The record of draw downs should be compared to the Field Office's Request For Release of Funds log to ensure that projects subject to Part 58 successfully and timely completed all necessary compliance actions. If there are gaps in coverage, the REO/FEO should follow up any discrepancies during the monitoring of the RE and recipient organizations. This pre-review analysis should also include questions of the CPD Director concerning objections that may have been received concerning non-compliance, whether any objections have been forwarded for any projects during the fiscal year, and whether the objections were forwarded timely.
- C. Pre-Monitoring Preparation for In-Depth Monitoring. The results of the REO/FEO risk analysis will indicate the areas of risk to be considered and the appropriate Exhibits needed to conduct the monitoring. In reviewing the most recent program year's projects and activities, it may become necessary to monitor previous program years to assess accurately the RE's performance. The decision to monitor more than the current program year is at the discretion of the REO/FEO. However, when a project is a continuation of a previously commenced activity and no new environmental review is required under Sections 58.47 and 58.53, the prior environmental assessment or EIS upon which the decision is based shall be reviewed by the REO/FEO.
- D. Communication Between RE and the Public Housing Authority. It is important to note that, where applicable, when PHAs have received funding

under HUD programs listed at Section 21-3.B of this Chapter, monitoring may extend to a Public Housing Authority (PHA) if pre-visit analysis raises concerns about environmental procedures and/or lack of communication between the RE and the PHA.

- E. Notification of Visit. The RE should be notified in writing of the upcoming monitoring visit or anticipated remote monitoring at least two weeks prior to the scheduled visit. Notification should be addressed to the Departmental director responsible for management of applicable HUD programs and should provide an overview of the visit, including the projects, programs, and sites that may be involved in the review. If the review will include visits to the PHA and/or public housing sites, the RE should be informed of the HUD reviewer's intention to include the PHA as part of the visit. If the review is to be conducted remotely, the procedures described below are to be followed.

21-10 REMOTE AND ON-SITE MONITORING. Environmental monitoring includes remote and on-site monitoring. Procedures for these types of monitoring are described below. The decision to monitor remotely or on-site will be guided by the risk analysis and described in the annual management plans submitted by the REOs/FEOs.

A. Remote Monitoring.

1. Rationale. When circumstances do not require or permit an on-site monitoring visit, remote monitoring may be required. The purpose of remote monitoring is to obtain sufficient information from the RE so that the FEO and CPD Representative can determine if further action is necessary.
2. Remote Monitoring Procedures. Remote monitoring requires that the REO/FEO examine documents from the RE's ERR. The REO/FEO must make a written request of materials in the notification of remote monitoring and specify a date by which materials should be received. The set of documents must be representative of the overall program of the RE, its various HUD/CPD programs, and their complexity. However, the request for documents should not represent an unreasonable burden on the RE. The request should emphasize the more complex projects undertaken by the RE where environmental concerns are greatest.
3. Use of Exhibits. The REO/FEO is expected to document the examination of the ERR in much the same manner as an on-site visit, using the relevant Exhibits 21-2 through 21-13 and including supporting documentation. The REO/FEO should include pre-monitoring examinations of the RE's RROF in the remote monitoring file and any other preparatory information undertaken as part of the review.

4. Remote Monitoring Letters, Findings, and Sanctions. A letter to the RE is to be composed by the REO/FEO that summarizes the results of the review of documents and should be sent within 30 days of the receipt of materials from the RE. If the remote examination of the RE's ERR indicates a clear violation of statutory or regulatory requirements, then the Program Office Director is to review and consult on the findings and the tone of the letter as well as be the signatory on the letter. If the remote monitoring raises questions regarding an identified deficiency, the monitoring letter should state that the REO/FEO will make an on-site visit at the earliest possible time in order to confirm the violation and, if verified, determine the corrective action(s) needed to resolve the deficiency.

B. On-Site Environmental Monitoring.

1. Rationale. The REO/FEO conducts in-depth monitoring of all REs under CPD programs to determine procedural compliance with Part 58 and related laws, a substantive review to assess whether the RE is performing its required responsibilities for relevant environmental areas, and other requirements listed in Section 58.6.
2. Sanctions. HUD has the authority as provided in Section 58.77(d)(1)(v) to initiate appropriate sanctions for non-compliance under Part 58. Sanction authority rests with the HUD program office and sanctions are subject to the authorities of the individual program. The Headquarters program office that is directly impacted by non-compliance with environmental provisions is to be consulted when Field Office attempts to correct identified deficiencies have not been successful and more progressive sanctions may be needed. The REO/FEO plays a consultative role in sanctions only.
3. Procedural Review. Use of the Exhibits should correspond to the results of the REO/FEO risk analysis which should focus the review on specific areas of environmental concern. Special attention should be given to ensuring that there has been no commitment of funds or commencement of physical development activities prior to Release of Funds by the RE environmental staff.
4. Substantive Review. In conjunction with information generated during the pre-monitoring analysis, the REO/FEO is to assess the environmental processing procedures to determine compliance with Part 58, Subpart H, "Release of Funds." This will include an extensive follow-up to the REO's/FEO's review of the CPD Field Office's draw down records. The REO/FEO should determine whether relevant environmental areas identified in the statutory and environmental assessment areas of the most

current Environmental Assessment formats issued have been addressed in the environmental review of a project.

5. Technical Area Assessments. After a substantive review of processing procedures and environmental review procedures, the REO/FEO should review the assessment of each environmental area for technical adequacy and completeness, using Exhibits 21-2 through 21-12, as applicable to every project reviewed.
6. Documentation. When conducting in-depth monitoring, the REO/FEO is to document the degree to which the RE's ERR complies with the regulatory requirements found at 24 CFR Part 58.
7. Review of Conditions and Mitigating Measures. The REO/FEO is to identify all major actions for which the RE's environmental review required specific conditions (such as purchase of flood insurance) or mitigating measures to fulfill requirements of the environmental review process. Since the RE is required to use all appropriate means to ensure that those conditions or safeguards are implemented, such projects should be carefully reviewed by the REO/FEO to determine that such conditions and measures were incorporated into the project. Site visits to specific projects should be undertaken by the REO/FEO if there is any evidence that conditions or measures have not been met or maintained.
8. File Review and Site Visits. When conducting on-site monitoring, the REO/FEO should examine a representative sample of the RE's ERR files. The selection of project files to be examined should include files of sufficient complexity to determine compliance with environmental requirements. Environmental concerns about which complaints have been registered and objections raised should also be included in the sample of project files.

The REO/FEO should visit project sites where the environmental assessment identified mitigating measures to determine whether the mitigating measures were implemented as required. The REO/FEO should examine sites where ERRs are unsatisfactory to determine where adverse environmental impacts exist. The REO/FEO should also consider the need for on-site inspection of PHA records and project sites funded by CPD programs using a risk-based approach.

- C. Procedural Review of States. Exhibit 21-13 is the primary guide to be used in monitoring States. This Exhibit emphasizes compliance with the requirements that the State:
 - (a) approve the Release of Funds and certification on particular project(s) of local government recipients (for State-administered CPD Programs only); and

- (b) establish and implement a program for monitoring recipient environmental compliance, particularly to ensure that funds are not committed prior to the State's Release of Funds from environmental conditions.

21-11 POST-MONITORING ACTIONS.

- A. REO/FEO Environmental Monitoring Letters to REs. Monitoring letters covering in-depth monitoring conducted by REOs/FEOs shall follow the procedures established in Chapter 2 of this Handbook. Such letters are to be drafted by the REO/FEO who has the discretion to propose all necessary items in the letter that pertain to environmental issues such as the correction or mitigation of existing or potential environmental conditions. Where the letter addresses minor environmental issues and contains no findings, it may be signed by the REO/FEO. However, monitoring letters originated by and signed by REOs/FEOs must have the concurrence of all appropriate CPD Field Office Program Directors. Monitoring letters that require corrective action(s) as a result of identified deficiencies cannot, however, be originated and signed by FEOs. Sanction authority rests with the CPD Field Office Program Directors.
- B. REO/FEO Concurrence. When the REO/FEO is part of a team monitoring or, in the case where environmental findings are made independent of the REO/FEO, the REO/FEO shall concur in any environmental findings and recommendations originating from the CPD Field Office prior to dispatch of the letter.
- C. Headquarters Concurrence. Monitoring letters addressing complex environmental issues where Headquarters management or specialists have been consulted require the concurrence of the Headquarters' Office Environment and Energy (OEE) as well prior to the submission to the Field Office Director.
- D. Copies to Headquarters. One copy of the final monitoring letter to any RE shall be sent to the Headquarters' OEE.
- E. Tracking Corrective Actions. The REO/FEO shall follow-up and track an RE's progress in correcting deficiencies, including re-visiting sites as required. All environmental findings and concerns shall be entered in the tracking system by the CPD Representative assigned to the RE in accordance with the procedures for the Grants Management Process/System. The REO/FEO is responsible for assessing the adequacy of the RE's response to environmental findings and recommendations and for ensuring the closeout of environmental findings. The REO/FEO shall maintain files on all applicable documents for environmental monitoring.

In the event that the RE fails to meet a target date for corrective actions, a telephone call is appropriate and shall be documented. If the RE has not responded within 30 calendar days after the date the RE was advised to take corrective action, a letter shall be sent requesting the status of the corrective action and warning the RE of the possible consequences of failure to comply as provided under applicable program sanction authorities.

When the RE's response has been received, the corrective action proposed or taken shall be reviewed by the REO/FEO. These reviews should be completed within 15 calendar days. If the RE has not taken the identified corrective actions, another letter shall be sent to the RE, either reaffirming the need to take the identified action(s), or specifying additional actions as well as a response due date. Such a letter requires the concurrence of the CPD Field Office Director. New due dates may be established subject to good faith efforts by the RE to resolve a finding. A follow-up visit may be necessary to verify corrective action or to provide technical assistance when the RE has been unable to resolve or correct the finding.

- F. Closing Environmental Monitoring Findings. When the REO's/FEO's review indicates the RE has provided satisfactory corrective action, the procedures outlined in Chapter 2 of this Handbook shall be followed.