Memorandum of Understanding
between the
U.S. Department of Housing and Urban Development
and the
U.S. Environmental Protection Agency
regarding
Improving Communication About Certain Public and HUD-Assisted Multifamily Housing Near Superfund Sites

I. Background

Ensuring housing is safe is an integral part of the U.S. Department of Housing and Urban Development (HUD) mission. HUD ensures housing safety 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."

EPA maintains the National Priorities List (NPL) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. 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. The NPL is intended primarily to guide the EPA in determining which sites warrant further investigation. As of FY 2016, there are 1337 sites on the final NPL throughout the country, plus an additional 53 proposed sites, and 392 deleted sites. Superfund sites are, generally, the most contaminated sites in the country and can present significant risks to human health or the environment. EPA has a robust and reliable process to identify and appropriately remediate such sites to address contamination and ensure protectiveness of human health and the environment at these sites, including those used for residential purposes.

Therefore, HUD and the Environmental Protection Agency (EPA) are working together to improve communication when either identifies a nexus between HUD Properties and NPL sites which EPA has identified as of potential health concern for housing residents.

In order to help ensure that residents of HUD assisted public and Project-Based Rental Assistance (PBRA) multifamily housing (collectively "HUD Properties") located in proximity to NPL sites are not exposed to contamination above acceptable exposure, HUD and EPA are entering into this MOU to facilitate communication, information exchange, and EPA access to HUD Properties when further investigation on HUD Properties is appropriate.

II. Purpose

This Memorandum of Understanding (MOU) is entered into between HUD and EPA, referred to collectively as the "parties" to this MOU.

The purpose of this MOU is to further the mutual interests of the parties described below, and to facilitate increased dialogue between EPA and HUD, sharing information between the agencies, and EPA access to HUD Properties when further investigation is appropriate. 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 National Environmental Policy Act 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 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." 24 CFR 50.3(i)(2) and 58.5(i)(2)(ii)) further states 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, at the highest appropriate management level, to help successfully carry out actions described in this MOU to the extent practicable and permitted by its authorities.

B. As part of its public notification process for a proposed listing, EPA will include HUD's Departmental Environmental Clearance Officer (DECO) of the Office of Environment and Energy (OEE) as an interested party for all NPL sites that could potentially affect HUD Properties.

C. HUD will issue guidance to its Responsible Entities to include EPA as an interested party to receive notification when the Responsible Entity's environmental review identifies HUD Properties where NPL sites could result in impacts to health and safety.

D. The parties propose to convene on a quarterly basis to discuss issues within the scope of, and related to the purposes of, this MOU. These meetings normally 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 data to HUD, on an annual basis, on NPL sites including geospatial data describing site boundaries, when available, or coordinates representing the site centers, and data from the Superfund Enterprise Management System (SEMS) database, 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:

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

b. Where construction has not been completed at the site. "Construction completion" for purposes of this MOU is a site-wide measure, documenting that physical construction of all cleanup activities has been completed, including actions needed to address all immediate threats, to human health and the environment, and to bring all long-term threats under control.

F. EPA will endeavor to assist in providing more detailed information on individual sites, when requested by HUD. This additional assistance could potentially include access to

additional site specific documents, facilitating meetings with EPA Remedial Project Managers (RPMs), or clarification of Superfund policies and procedures.

G. To help HUD better understand EPA procedures, EPA intends to provide HUD with existing EPA guidance on sampling procedures and Superfund risk assessment.

H. HUD intends to provide up-to-date nation-wide, address specific, data on HUD Properties to EPA. This data will not include personally identifiable information protected by the Privacy Act of 1974. HUD intends to provide updated data annually, identifying the location (address and geo reference) of HUD Properties.

I. When EPA needs access to HUD Properties to collect environmental samples, HUD will facilitate communications between property owners and EPA to assist EPA with obtaining voluntary access.

J. HUD's Regional Environmental Officer (REO), with jurisdiction over a subject NPL site, will be the point of contact for EPA Remedial Project Managers (RPMs) and Regional Branch Chiefs. The REO's will coordinate internally with related HUD regional programs. This will enable a more rapid response to notify affected parties when HUD Properties are on or near NPL sites, or to provide support to EPA if it is experiencing difficulty gaining access or contacting residents.

K. EPA intends to inform HUD to when community involvement activities include residents of HUD properties. In the event that communications beyond the scope of normal EPA community engagement are needed (such as briefings for elected officials, responding to press inquiries, and/or staffing a unified command center in the region during the clean-up activities), both parties intend to be available to assist each other in developing materials and ensuring the accuracy of content.

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, media response, publicly available description, or any other public communication relating to the MOU or any related deliverables. The parties 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, Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation

This Memorandum of Understanding is signed for:

U.S. Department of Housing and Urban Development

By: Danielle Schopp Date: 1/11/17
Danielle Schopp
Director, Office of Environment and Energy

U.S. Environmental Protection Agency

By: Dana Stalcup Date: 1/11/17
Dana Stalcup
Director, Assessment and Remediation Division
Office of Superfund Remediation and Technology Innovation