

OMHAR ENVIRONMENTAL GUIDANCE

The purpose of this Guidance is to summarize OMHAR's policies and procedures for evaluating the most common environmental issues with properties undergoing a Full or Lite Restructuring.

The environmental process starts with the PAE's third party PCA Inspector that completes Form 4.4 – PAE's Notice to Owner of Environmental Issues. The PAE may also hire a third party Environmental Engineer/Inspector. In either instance the PAE is allowed up to an additional \$1,000 for an Environmental Inspection and completion of Form 4.4. If a separate Inspector is hired, it is expected that a separate report will be issued, discussing the Inspector's scope of work and qualifications. The normal bidding process is also expected.

Any "Yes" answers on Form 4.4 will require additional evaluation and/or testing by the PAE or third parties. Testing is a reimbursable PAE **due diligence** item (subject to a waiver, approved by the Portfolio Director).

Testing might include pressure testing Underground Storage Tanks (although generally testing of State Certified, operating UST's is not considered necessary), a Phase II or determining the existence of PCB's in Hydraulic equipment (other than owned by a public utility company). No testing is considered necessary for possible lead paint or asbestos, as the only remedy required by OMHAR is a Risk Assessment (already required by HUD) or an O & M Plan.

Remediation / hazard abatement / hazard control / in-place management should be considered a Critical Repair item and generally resolved by the owner prior to issuance of a Restructuring Commitment. Only if the expense/liability can be accurately estimated should a Restructuring Commitment be issued. Additional expenses can be funded either in the rehabilitation escrow (again only if expenses can reasonably estimated), the ongoing Reserve deposit, and/or the ongoing maintenance budget, depending on what is required and what timing is appropriate.

The following are some additional guidelines concerning typical environmental issues:

- **Lead Based Paint**

These requirements apply for non-elderly designated, non-zero bedroom housing. Please refer to 24 CFR 35 for specific guidance.

For all buildings constructed prior to 1978, unless the owner has a lead-based paint (LBP) inspection report/certification prepared by a lead-based paint inspector (licensed by the EPA or state) that states that the property has been found not to have lead-based paint, the owner must either get a report/certification from a lead-based paint inspector (licensed by the EPA or state) which determines the buildings are lead-based paint free (not merely gut rehabilitated), or a risk assessor must evaluate the buildings for hazardous conditions arising from lead-based paint. The Assessment covers not just interior conditions, but common areas, the building exterior and grounds. If LBP exists, the assessor should furnish recommendations as to the interim controls that should be initiated and the O & M Plan to manage such hazards after the controls are completed.

OMHAR's policy is that PAE's should resolve all Lead Based Paint issues prior to submission. This includes ensuring the owner has obtained any required reports, and if Lead Based Paint exists, that Interim Controls are built into the restructuring plan.

Buildings constructed 1978 or later:

There are no requirements regarding lead-based paint inspection and/or testing.

Glazed tiles or fixtures are not subject to Lead Based Paint regulations. A LBP Inspection may point out that these items contain lead, but if this is the only "leaded" surface in the unit or property, a lead free certificate is not a contradiction. A conservative response to the discovery of these items may be an O&M plan that discusses removal during remodeling or if damaged.

- **Historic Preservation**

If the property is at least 50 years old **and** the planned rehabilitation under M2M involves exterior renovations, obtain an opinion from the State Historic Preservation Office (SHPO) as to whether any historic properties will be adversely affected by the planned rehabilitation. If the SHPO indicates that no historic properties will be adversely affected or if the SHPO fails to reply within 30 days of receipt of the request, the process is complete. If the SHPO indicates that historic properties are adversely affected, contact the Field Office Environmental Clearance Officer at <http://www.hud.gov/offices/cpd/energyenviron/environment/resources/officersaddress.cfm> for further guidance.

Additional questions concerning OMHAR requirements should be directed through the Relationship Manager, who will coordinate responses from OMHAR HQ or HUD's Environmental Clearance Officer.

- **Hydraulic Elevators and Equipment**

PCB's of less than 50 parts per million (ppm) in hydraulic systems should be subject to an O & M Plan, but concentrations of 50 ppm or greater are prohibited and require removal/dilution.

Since July 1979, PCB's of greater than 50 ppm have been banned in hydraulic equipment. Any hydraulic system that ever contained hydraulic fluids with PCB concentrations greater than 50 ppm must have been retro filled to reduce the concentration below 50 ppm by July 1, 1984.

If the elevator or equipment was installed June 30, 1984 or before, all hydraulic systems under the control of the building owner should be tested for the presence of PCB unless already labeled as PCB free, or non-PCB or certified as such by the owner. If PCB is found, it must be removed. If the equipment was installed on July 1, 1984 or after, no action is necessary.

- **Transformers**

The first step is to determine who owns the transformer. If a utility company owns the transformer, attempts should be made to determine if the transformer is PCB free or non-PCB. If a utility owner certifies under the assumption rule that a transformer or capacitor is newer than July 2, 1979, and therefore is not expected to be a "PCB transformer" or "PCB capacitor" we can and must accept that, although the PAE should attempt to review the Utility Companies O & M Plan.

If the transformer or capacitor is owned by the building or non-utility, unless the PAE determines that a transformer is PCB free or non-PCB, regardless of the date of manufacture, OMHAR assumes that it is PCB contaminated and requires an O & M Plan. The only exception is if an owner certifies that a transformer or capacitor contains less than 3 pounds of fluid and is therefore not a PCB transformer or capacitor; we can and must accept that.

If a PCB contaminated transformer is near food (a kitchen area), it must be replaced.

O & M Plans should require that assumed PCB transformers must be inspected by the owner every three months for leaks, and if leaks are found, require repair. An O & M Plan may also require special electrical protection, depending on the location of the transformer. Failure to inspect, keep written records of the inspection, and if necessary repair leaks are a violation of federal law.

- **In-Ground Tanks**

States are the primary regulator of Underground Storage Tanks (UST). Operating State Certified UST's need no special attention; recommendations made by engineers for pressure testing or a Phase II may be waived, unless required by State Law or due to other observed or otherwise identified conditions. Operating non-State certified UST's should get certified, which may require testing. Due to potential unknown liability, this must be completed prior to issuing a Restructuring Commitment. Non-operating UST's should be properly replaced or closed out using EPA/State procedures and should be considered a critical repair item. If State procedures require certification of tank closeout, this must be done before closing.

- **Asbestos**

If Form 4.4 Environmental Checklist discloses potential asbestos containing materials (ACM), the owner MUST develop an Operations and Maintenance (O&M) Plan that assumes that the suspect materials are ACM's. Depending on the circumstances (i.e. based on the recommendation of the Environmental Engineer/Inspector), the PAE may propose to OMHAR that the PAE contract for, and OMHAR reimburse for an ACM survey.

Many "popcorn" ceiling treatments that were sprayed on between 1945 and the late 1970s contain asbestos. Treatments applied prior to 1978 may contain hazardous levels of asbestos. For these properties, the assumption should be made that the ceiling contains asbestos and depending on the conditions, testing, remediation or simply an O&M plan may be appropriate.

For properties constructed in 1978 and later, it is unlikely that any “popcorn” ceiling treatments have significant levels of asbestos, if any at all. An O&M plan may be requested for properties constructed or gut rehabilitated in 1978 or later if recommended by an Environmental Inspector, but are not required.

FORM 4.8 - PAE's Notice to Owner of Environmental Issues

Form 4.8 was originally developed to communicate common environmental conditions and issues from the PAE to the owner. The Form would then be a basis for the owner to develop O & M Plans, prior to issuance of a Restructuring Commitment. The PAE may modify Form 4.8 as appropriate to communicate any open environmental issues, including Critical Repair items.

A Restructuring Commitment may be executed by OMHAR if outstanding environmental issues can be accurately quantified from a cost perspective. However the Restructuring Commitment must incorporate items that have not been cleared as a Special Condition.

FORM 4128 – Environmental Assessments and Compliance Findings for the Related Laws

INSTRUCTIONS

(Must be approved prior to the OMHAR Portfolio Director signing a Restructuring Commitment, unless already approved by Multifamily as part of a Firm Commitment for a 221(d)(4) / 223(f) loan.)

I. General

1. Form HUD-4128 will be used in the M2M program only for full restructure transactions, or those Lites for which Flood Insurance is required.
2. The Mark to Market program has a ‘categorical exclusion’ under 24 CFR §50.19(b)(21). This exclusion means that M2M is exempt from NEPA review but not necessarily exempt from other environmental review requirements. Accordingly, only page 1 and Part A (on page 2) of the HUD-4128 are to be completed. The Sample Field Notes Checklist is not required for M2M.
3. The HUD-4128 form is to be prepared by an OMHAR Regional Office staff person (who will sign as Preparer) and approved by the Portfolio Director (who will sign as HUD Approving Official). There is no need for Supervisor or Environmental Clearance Officer signatures.

II. Instructions for Completing Boxes

Box 1 Project Number is the existing (pre-M2M) FHA project number
 HUD Program is Mark to Market

Box 2 Date Received is the date the form is prepared.

- Box 3 Self-explanatory
- Box 4 The ownership entity (or the proposed purchaser, for properties to be sold)
- Box 5 Check Multifamily
- Box 6 Self-explanatory
- Box 7 Check “yes” only if tenants will be displaced temporarily or permanently as a result of rehabilitation and/or demolition. If yes, describe how relocation will be handled in the comment section below the approval recommendation box.
- Box 8 Check “Other”, unless the number of units will be increased or decreased by 20% or more (in which case, check Rehabilitation).
- Box 9 Check “yes,” and indicate OMHAR Form 4.4, which is an ‘environmental report’.
- Box 10 Always check “Not Applicable” for each of the first three boxes, unless there is information from the local zoning officials to the effect that the property (as it exists) is not in compliance with the zoning requirements that would apply if the property were to be rebuilt today. Regarding ‘unresolved conflicts’, always check ‘No.’
- Box 11 Always check the first box (categorical exclusion).
- Approval Check the “project is recommended for approval” box. Under “conditions and requirements”, list any follow-up requirements such as completion of O&M Plans or remediation included in the Rehab escrow.
- Rejection Only check if environmental or other issues are such that the Restructuring Plan should be rejected.
- Box 12 OMHAR preparer
- Box 13 Leave blank.
- Box 14 Insert “N/A”. Environmental Clearance Officer review is not required for M2M.
- Box 14 HUD Approving Official (OMHAR Portfolio Director)

III. Instructions for Completing Part A

- Box 16 Coastal Barrier. Always indicate “not applicable” in the Source Documentation block. Only applies to new construction.

- Box 17 Floodplain Management. Except in the rare situation discussed below, indicate “not applicable, not in floodplain” in the source Documentation block, and note the FEMA flood plain map reference (including date) in the Source Documentation block. The rare exception is if any building is in the FEMA-designated 100-year flood plain. If so, mark “yes” and contact the Field Office Environmental Clearance Officer at <http://www.hud.gov/offices/cpd/energyenviron/environment/resources/officersaddress.cfm> to assist you with the further floodplain management requirements. In most cases, a simple four-step process will be required unless the number of units will increase by 20% or more. Furthermore, if the lowest floor, including basements and garages, in any building is 12 inches or more below the 100-year flood level, flood-protection measures will be required as a condition of approval.
- Box 18 Historic Preservation. Indicate “not applicable” in the Source Documentation block unless (a) the structures are at least 50 years old and (b) the project involves exterior renovations. In such cases, check “yes” and obtain the opinion from the State Historic Preservation Office (SHPO) as to whether any historic properties will be affected. If the SHPO indicates that no historic properties will be affected or if the SHPO fails to reply within 30 days of receipt of the request, indicate in Box 18. If the SHPO indicates that historic properties will be affected, indicate in Box 18 the results of the contact with the Field Office Environmental Clearance Officer.
- Box 19 Noise Abatement. Always indicate “not applicable” in the Source Documentation block. Only applies to new construction.
- Box 20 Hazardous Operations. Check “yes”, if Form 4.4 indicates the presence of an unshielded view or unobstructed explosive / flammable operations or storage, the PCA inspector and PAE should review the HUD guide Siting of HUD-Assisted Projects Near Hazardous Facilities and make a determination whether any risk reduction measures should be required. Generally, the guide indicates appropriate measures, in relation to the volume and type of explosive / flammable materials present. (For a copy of the guide, call 1-800-767-7468.) UST’s could be reflected under this Box or Box 23. If there are no hazardous operations indicated, show “not applicable” in the Source Documentation block.
- Box 21 Airport Hazards. Indicate “not applicable” in the Source Documentation block, except in the very rare instances of properties located in an airport ‘clear zone’ (a 2000’ to 3000’ trapezoid-shaped area at the end of airport runways). Almost all US airports own all of the land in their “clear zones”.
- Box 22 Protection of Wetlands. Indicate “not applicable” in the Source Documentation box. The Executive Order on wetlands applies only to new construction.
- Box 23 Toxic Chemicals and Radioactive Materials. Check “yes” if there are transformers, capacitors, hydraulic equipment, above ground or underground

storage tanks (UST's), Oil /Gas Wellheads or possible asbestos containing material. If these or similar conditions do not exist, state "not applicable" in the Source Documentation Box. No further action should be required, as all testing should have been completed as part of PAE Due Diligence. Lead Based Paint (LBP) is not considered in the HUD-4128. Any LBP-related requirements will be addressed in the Restructuring Plan, but not in the HUD-4128 other than to reference any required O&M Plan under "conditions and requirements" on Page 1. Only items that have not been completed prior to PAE submission should be listed under "conditions and requirements" on Page 1. These might include O & M Plans, capping oil and gas wellheads, asbestos removal or any other item in the rehab escrow. All of these items should also be noted in the Restructuring Commitment.

HUD has no regulations or requirements regarding Electromagnetic Fields / Electromagnetic Radiation or Radon.

Box 24 Flood Insurance. If (a) the project is in a FEMA-designated special flood hazard area and (b) the project does not now carry the required flood insurance (in an amount equal to the mortgage balance, or the maximum insurance amount, whichever is lower), indicate a requirement that the owner shall obtain flood insurance.

IV. Part B is not applicable to M2M