



**To:** CDBG Recipients and Grant Administrators

**From:** CDBG Division

**Issuance date:** June 26<sup>th</sup>, 2024

**RE:** Environmental Review Process Addressing Requirements from Toxic Substances Control Act and Comprehensive Environmental Response, Compensation, and Liability Act.

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### **Overview**

The U.S Housing and Urban Development (HUD) issued [CPD Notice: 23-103 Departmental Policy for Addressing Radon in the Environmental Review Process](#), to clarify that under 24 CFR 58.5(i)(2)(i) and (ii), all properties proposed for use in HUD programs, including the Community Development Block Grant program, must be free of hazardous materials such as radon gas, contamination, toxic chemicals and gases, and radioactive substances that could pose a hazard to the health and safety of occupants or interfere with the intended use of the property. The environmental review process, whether falling under Categorically Excluded Subject to 58.5 ("CEST"), Environmental Assessment ("EA"), or Environmental Impact Statements ("EIS"), may not be considered complete until radon evaluation is performed as part of the site contamination analysis. The environmental review process is concluded only when a determination of whether the project site is impacted by radon, and where applicable, mitigation of radon or application of an exemption is documented in the Environmental Review Report (ERR).

### **Proposed Policy**

This Policy Notice establishes radon testing and mitigation requirements for the Community Development Block Grant (CDBG) program.

#### **A) Radon Testing and Mitigation Requirements**

The Office of Community and Rural Affairs is establishing radon testing and mitigation requirements for proposed CDBG projects meeting the following criteria:

- a) those with a confirmed environmental review level of Categorically Excluded Subject to 58.5 ("CEST"), Environmental Assessment ("EA"), or Environmental Impact Statements ("EIS"), and
- b) for CDBG projects involving a structure that is occupied or intended to be occupied for at least four (4) continuous hours a day.

#### **B) Radon Cost**

Radon testing and mitigation costs are eligible expenses that can be financed using Community Development Block Grant (CDBG) funds. The expenses for radon testing fall under the allowable administrative costs of the grant as part of the environmental review fee. Mitigation costs can be included as part of the overall construction expenses for the projects funded by Community Development Block Grants.

#### **C) Exemptions from Radon Testing and Mitigation**

Radon testing and mitigation does not apply to projects with an environmental review level of Categorically Excluded Not Subject to 58.5 ("CENST") or projects that meet one of the following;

- a) The building has no enclosed area beneath it having ground contact (i.e., building on piers) and buildings that do not include crawl spaces, tunnels, underground garages.
- b) The building is not residential and will not be occupied for more than 4 continuous hours per day.
- c) The building has an existing radon mitigation system and radon levels are below 4 pCi/L.
- d) The building has been tested for radon within the last five years and radon levels are below 4 pCi/L.
- e) Science-based data from the CDC, Indiana State Department of Health or Local health department is not available for the project site, and the radon testing is infeasible or impracticable based on the testing cost for a very low dollar project, and the cost of testing would be too significant that would cause the project to be untenable.

#### **D) New Construction Projects Requirements**

CDBG projects that fall under the Environmental Assessment (“EA”) category and involve new construction, are exempt from performing initial radon testing for new construction. However, new construction projects are required to develop a mitigation plan as outlined in Section F of this Policy Notice and incorporate radon mitigation devices into the project design, budget, and construction. Post-construction radon testing is required to verify the installed radon mitigation equipment is functional, and radon levels are below 4Pci/L.

#### **E) Conducting Radon Testing and Mitigation**

Radon testing for non-residential buildings must be conducted by a licensed radon professional in compliance with IC 16-41-38-2 and with active tester licenses per Indiana State Department of Health regulation 410 IAC 5.1.

Radon testing for residential buildings is exempt from radon licensing requirements under IC 16-41-38-5 and 410 IAC 5.1-1-22 if performed by the owner and occupant of the dwelling. OCRA will allow the use of passive radon testing, also referred to as do-it-yourself (DIY) at-home radon testing, by an occupying homeowner for assessing radon hazard levels as part of the site contamination analysis process, provided that the grantee offers it as a no-cost option to the residing homeowner. Participation in an OCRA program must not be contingent upon homeowners’ willingness or ability to self-perform a passive at home radon test.

Radon mitigation in non-residential and residential buildings must be performed by a licensed radon professional in accordance with IC 16-41-38-2 and 410 IAC 5.1-1-26.

#### **F) Mitigation Plan Requirements**

If the radon test shows indoor air radon levels at or above 4 pCi/L, a licensed radon professional working with the designated ERO must develop a radon mitigation plan. If the radon testing indicates that indoor air radon levels are less than 4 pCi/L, a radon mitigation plan is not required.

The mitigation plan must include a consideration of risk of radon to occupant’s health, a description of the radon reduction system to be installed, a timeline for implementation of mitigation plan, outline of the ongoing maintenance plan to ensure the system is operating as intended, a timeframe for implementation and for conducting post-installation radon testing to demonstrate that the mitigation device has effectively reduced the radon level to below 4.0 pCi/L,

ideally below 2.0 pCi/L. The grantee is required to submit the completed Form#: CDBG-ER-002 Radon Mitigation Plan to OCRA via the Indiana Grants Management System.

### **G) Radon Mitigation and Closeout**

When a project requires radon mitigation, the established radon mitigation plan must be completed as part of the project implementation. A post-installation test must be performed prior to project closeout. For non-residential project sites that require radon mitigation, post-installation testing must be conducted by a licensed radon professional in accordance with IC 16-41-38-2 and 410 IAC 5.1-1-26. For residential project sites, post-installation testing may be performed by the homeowner.

If the post-installation testing results indicate a decrease in radon levels, the grantee must submit a completed Form#: CDBG-ER-RA3 Certificate of Mitigation, along with the post-installation testing results, to OCRA through the Indiana Grants Management System. OCRA is unable to process a grant closeout without ensuring the project complies with 24 CFR 58.5(i)(2)(i) and (ii) and HUD CPD notice 23-103.

### **H) Compliance with HUD's Radon Requirement in the Environmental Review Process**

#### **Type of Environmental Review**

#### **a) Standard Review**

If a project is designated with an environmental review level of CEST, EA, or EIS and has a single project site, it must follow a standard environmental review process. The designated Environmental Review Officer (ERO) may begin the review and consultation process as part of the application development process. The designated Environmental Review Officer (ERO) must collect the general compliance maps, documentation and consider radon levels as a component of the **site contamination analysis process**.

The designated Environmental Review Officer (ERO) must determine whether a Phase I Environmental Site Assessment (EAS) or due diligence check is required for the project type. If a Phase 1 Environmental Site Assessment is required, a qualified environmental professional must conduct the evaluation according to the ASTM Standard E1527-21 to meet the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) compliance requirements and be eligible for liability protection under the CERCLA. If warranted, a Phase 2 ESA may also be necessary to conduct soil testing and contaminant analysis.

If the project qualifies for a radon exemption, the designated ERO must continue to perform consultation with relevant agencies, assemble the environmental review record and submit a completed Form # CDBG-ER-RA1 Radon Applicability Checklist with the necessary exemption certifications and relevant documentation and Form #: CDBG-ER-LH1 for residential project, along with the environmental review packet to OCRA. Submission of the required documentation concludes the assessment of radon as part of the site contamination analysis process for projects eligible for exemption undergoing standard review. The designated EOR must complete Form #: CDBG-ER-RA1 to determine eligibility for radon exemptions as outlined in Section C of this Policy Notice. Regardless of any radon exemption that exists, the project must undergo a Phase I ESA.

If the project does not qualify for a radon exemption, the designated ERO must set up for radon testing to be performed. Radon testing for non-residential or residential buildings must be

conducted as outlined in Section F of this Policy Notice. The designated ERO must submit a completed Form#CDBG-ER-RA1 Radon Applicability Checklist and provide the radon test results to OCRA.

If radon testing indicates that indoor air radon levels at the project site are less than 4 pCi/L, then Form#: CDBG-ER-RA2 Radon Mitigation Plan is not required and the ERO can concurrently perform the consultations with relevant agencies, assemble the environmental review record and submit all required documentation.

If radon testing determines that indoor air radon levels of the project site are at or above 4 pCi/L levels, the licensed radon professional, in coordination with the designated ERO, must develop and complete Form#: CDBG-ER-RA2 Radon Mitigation Plan in compliance with Section F of this Policy Notice. The mitigation plan must be submitted to OCRA as part of the Environmental Review Record (ERR) documentation and the mitigation plan implemented as a requirement for project closeout.

If radon mitigation is required for the project site, a completed Form#: CDBG-ER-RA3 certificate of completed radon mitigation and final testing results should be provided at close out.

#### **b) Tiered Level Review**

If a project is designated with an environmental review level of CEST, EA, or EIS with scattered project sites, a tiered level review process must be followed. The Environmental Review Officer (ERO) assigned to the project may conduct the broad level tier 1 review as part of the application submission and submit the tier 1 review records to OCRA by the environmental review deadline specified in the grant application instructions.

The Grant Services Environmental Review Specialist will evaluate the submitted tier 1 review records and approve or reject the submission. If approved, OCRA will issue the notice of removal of environmental conditions for tiered reviews (Tier 1 NREC) and offer guidance on the tier 2 review requirements. If the tier 1 review records are rejected, they must be revised and resubmitted for approval.

Once the designated Environmental Review Officer (ERO) has identified the specific sites, a tier 2 review must be conducted for each project site. The designated ERO is responsible for reviewing, consulting, and analyzing maps and considering radon, and lead if it is a residential project, as a component of the **site contamination analysis process**.

The designated Environmental Review Officer (ERO) must determine whether a Phase 1 Environmental Site Assessment (EAS) or due diligence check is required for the project type. If a Phase 1 Environmental Site Assessment is required, a qualified environmental professional must evaluate to meet Comprehensive Environmental Response, Compensation, and Liability Act compliance requirements. If warranted, a Phase 2 ESA may also be necessary to conduct soil testing and contaminant analysis. If the project type is an owner-occupied rehabilitation of a single-family home, these projects are not required to undergo a Phase 1 ESA but must undergo a Due Diligence Check, which the designated ERO may complete.

The designated ERO must complete the Form #: CDBG-ER-RA1 to determine eligibility for radon exemptions, if the project type is an owner-occupied rehabilitation of a single-family home Form #:CDBG-ER-LH1 must be completed to determine eligibility for lead exemption and assistance threshold level, for each project specific site.

If a project site specific qualifies for a radon exemption, as outlined in Section C of this Policy Notice, the designated ERO must submit a completed Form #:CDBG-ER-RA1 with the necessary exemption certifications and relevant documentation, along with the environmental review packet to OCRA. Submission of the required documentation concludes the assessment of radon as part of the site contamination analysis process. The designated Environmental Review Officer (ERO) must proceed with the tier 2 review in order to finalize and submit site-specific environmental review records for each project site.

If the project does not qualify for a radon exemption, the designated Environmental Review Officer (ERO) must set up radon testing to be performed. Radon testing for non-residential buildings must be conducted by a licensed radon professional, radon testing for a residential building may be conducted by the homeowner if OCRA requirements are met as outlined in Section E of this Policy Notice. The designated ERO must submit a completed Form #: CDBG-ER-RA1 and provide the radon test results to OCRA.

If radon testing indicates that indoor air radon levels at the project site are less than 4 pCi/L, then a Form#:CDBG-ER-RA2 radon mitigation plan is not required and the designated ERO must continue to perform the tier 2 review and complete and submit site specific environmental review records for each project site.

If radon testing determines that indoor air radon levels of the project site are at or above 4 pCi/L levels, the licensed radon professional, in coordination with the designated ERO, must develop and complete Form#: CDBG-ER-RA2 Radon Mitigation Plan in compliance with Section F of this Policy Notice. The mitigation plan must be submitted to OCRA as part of the Environmental Review Record (ERR) documentation and implement the mitigation plan as a requirement for project closeout.

If radon mitigation is required for the project site, a completed Form#: CDBG-ER-RA3 certificate of completed radon mitigation and final testing results should be provided at close out.

### **Effective Date**

This policy is effective as of July, 26, 2024 and will remain in effect until amended, superseded, or rescinded.