

Field Survey of HUD Site Contamination Policy

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Abstract

From 2000 through late 2009, the housing arm of the U.S. Department of Housing and Urban Development (HUD), Federal Housing Administration (FHA), recommended a “dig-to-clean” approach for contaminated sites rather than the risk-based corrective action (RBCA) approach favored by the U.S. Environmental Protection Agency and state Voluntary Cleanup Programs. Most offices followed FHA’s dig-to-clean guidance and did not approve projects on brownfield sites. Some, however, tried to promote redevelopment of housing on brownfield sites by following RBCA. This article, based on a 2007 survey of HUD field office practice, discusses the issues encountered when field offices tried to resolve, on a case-by-case, project-level basis, the conflict between site contamination and brownfield redevelopment.

Introduction

In 2003, after almost 3 years during which the Federal Housing Administration’s (FHA’s) “dig-to-clean” policy differed from the U.S. Environmental Protection Agency’s (EPA’s) risk-based corrective action (RBCA) approach, the U.S. Department of Housing and Urban Development’s (HUD’s) Office of Policy Development and Research (PD&R) commissioned a study of HUD’s Site Contamination Policy (HUD PD&R, 2003). Although HUD environmental regulations allowed for risk-based cleanups (24 CFR 50.3(i)(1)), chapter 9 of the *Multifamily Accelerated Processing (MAP) Guide* did not recommend FHA Multifamily Hubs¹ accept property for firm commitment where a site contamination problem had been “capped or paved over” (HUD Housing, 2002: Section 9.3E) nor to accept properties “with testing, flushing, or monitoring wells in operation” (HUD Housing, 2002: 9.3F). The EPA and state Voluntary Cleanup Programs (VCPs) favored a risk-based approach to corrective action that would allow the use of engineering barriers and institutional controls on brownfield sites. The 2003 study examined the difference between FHA and EPA policies and

¹ FHA Multifamily programs are administered by 18 Multifamily Hubs strategically located around the country.

recommended that “HUD Multifamily Housing should permit the use of risk-based methods, including institutional and engineering controls,” and should also upgrade its risk-management capabilities (HUD PD&R, 2003: ES-1).

Until HUD revised the *MAP Guide* in late 2009 to allow for the RBCA approach to site cleanup, the dig-to-clean policy set forth in Section 9.3E of the *MAP Guide* was waived only on limited occasions and then with great caution. Because it was neither statutory nor regulatory, the Guide could be waived, but the burden would then be upon the FHA underwriter to clearly set forth in the record the reasoning behind each project-level waiver. The purpose of the 2007 study was to survey field practice and ascertain how HUD staff were coping with the challenge of promoting development in older urban areas with their high incidences of site contamination, given the fact that this dig-to-clean policy made it difficult for the housing arm of HUD to support brownfield redevelopment.

HUD has always been a heavyweight in the brownfield arena. Its flagship Community Development Block Grant (CDBG) program pumps about \$4 billion dollars annually into local government projects to benefit low-income² and slum and blighted (typically brownfield)³ areas. Fiscal year (FY) 2006 data, for instance, showed more than \$331 million spent on property acquisition (including \$7.4 million spent specifically on brownfield cleanup); \$127 million on various economic development activities that included commercial/industrial rehab and construction, acquisition, and infrastructure; \$70 million on housing construction; \$127 million on Section 108 loan repayment; and \$1.5 billion on public improvements.⁴ It is reasonable to infer that much of this 2006 funding supported brownfield redevelopment. HUD funding for brownfield projects far exceeds that of other agencies, but HUD allocation decisions are made locally, when local governments divert a portion of their entitlement grants to specific brownfield projects, whereas EPA fund allocations are made at the federal level when funds are awarded to specific EPA brownfield program applications.

Housing is an important part of the brownfield equation; in today’s post-industrial society, housing is often the highest and best use of the obsolete industrial buildings and/or undersized parcels that are near the central city. In mid-1999, the Northeast-Midwest Institute surveyed the states to determine the level of benefits they were enjoying through the redevelopment of brownfields. That survey confirmed what case examples and project anecdotes had suggested—that residential reuse of brownfields was an increasingly viable option in many communities. Although survey responses showed that only a few states track specific types of brownfield investments (such as housing), California reported that 5,200 new housing units had been developed on brownfield sites, Colorado attributed 2,855 new units to projects that gained approval through its VCP, and Michigan documented 1,400 new units at 11 different brownfield sites across the state (Bartsch and Dorfman, 2000).

² In general, 70 percent of CDBG must be spent in low-income areas (by census tracts)—areas where brownfields are often found—and, after paying for administration, the remaining funds may be spent on brownfield (slum and blighted) areas.

³ 24 CFR 570 Subpart C—Eligible Activities was revised in 2006 (71 FR 30029) to clarify the eligibility of brownfield cleanup, development, or redevelopment within existing program eligibility categories.

⁴ <http://www.hud.gov/offices/cpd/communitydevelopment/budget/disbursementreports/>.

FHA Multifamily programs have operated since the New Deal. The theory is that if FHA provides mortgage insurance to private sector lenders, these lenders are more likely to extend credit to meet rental market demand. The FHA insured loan is often the critical linchpin that holds complex, layered affordable housing financing together. One of FHA's goals is to "expand access to affordable private market housing" (OMB, 2005a). FHA has insured between \$1.0 and \$7.5 billion in multifamily mortgages every year since 1990, with a high of \$7.5 billion in 2004, a low of \$1.0 billion in 1991, and \$3.73 billion (representing 70,914 dwelling units) in 2008, the latest full year reported (HUD Housing FHA, 2008). Although FHA underwrites only a small share of the rental market (OMB, 2005b), FHA market-rate rental units house a substantial number of low- and moderate-income people. In FY 2004, FHA approved 229 loans that also had Low-Income Housing Tax Credit (LIHTC) financing. Those loans represented approximately 29,400 units, with more than 25 percent of those units housing very low-income families. Many of the LIHTC projects also use other HUD programs, such as HOME, CDBG, and HOPE VI funds, in their financing structure. Many FHA projects have units that house tenants that are subsidized by the Section 8 rental housing assistance program (OMB, 2005d).

The restrictive dig-to-clean⁵ housing policy set forth in the *MAP Guide* did not seem consistent with FHA's mission to support affordable housing, because it made it more difficult to find sites in older urban areas and/or to support the added cost of dig-to-clean cleanup. How did FHA conceive of this dig-to-clean policy that eliminates many previously developed sites from consideration for housing use? In the late 1970s, HUD quickly responded to the Love Canal crisis⁶ by promulgating HUD Notice 79-33 before enactment of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or the Superfund law), in 1980. Notice 79-33 (1979), drafted before the subsequent CERCLA-Superfund framework had taken shape, called for HUD "to take consistent actions when responsibilities are shared by several agencies" and for HUD staff to examine "all pertinent material," reject sites that posed "serious health risks," and request that EPA review sites with "potential or possible exposure."⁷ By the early 1990s, after more than a decade of the development of Superfund practice and not much substantive review of site contamination as part of its environmental review process, HUD's Office of Housing recognized that mortgage processing had to be modified to reflect the current reality where Phase I Environmental Site Assessments (ESAs) had become standard practice. In 1994, HUD Notice 94-88 required the sponsor to submit due diligence documentation and remediation before any HUD approval,⁸ unless the project had received preapproval from the applicable government cleanup agency.⁹ In 2000, this requirement was further modified when HUD issued the *MAP Guide* and included the dig-to-clean standard

⁵ The phrase *dig to clean* is used in this report as shorthand for the MAP Section 9.3E requirement that "HUD will not accept property for firm commitment where a site contamination problem has been capped or paved over" (HUD Housing, 2002: Section 9.3).

⁶ In 1978, when state and federal authorities declared a federal health emergency at the site of a former chemical landfill that had been redeveloped with a school and housing in Love Canal, New York, all federal agencies were asked to examine their procedures relative to site contamination.

⁷ HUD Notice 79-33 (see appendix A in HUD PD&R, 2003).

⁸ This requirement meant this cleanup was funded by sponsor equity.

⁹ HUD Notice H 94-88 (see appendix A in HUD PD&R, 2003).

in its section on site contamination. By FY 2004, MAP lenders were underwriting 59.8 percent of basic FHA mortgage insurance applications (versus 32.2 percent in FY 2001) (OMB, 2005c). The *MAP Guide* instructed lenders to adhere to strict dig-to-clean standards by prohibiting the use of engineering barriers (no capping or paving over contamination) and monitoring wells. In addition, in 2003, HUD modified the processing instructions for the Section 202 Supportive Housing for the Elderly Program and the Section 811 Supportive Housing for Persons with Disabilities Program to require dig-to-clean treatment of contaminated sites.¹⁰

Although the early 1990s saw the birth of the brownfield program at EPA, it is important to remember that, at that time, the archetypal images were contaminated projects, such as Love Canal, that posed health risks. Transactional lawyers were also raising the legal possibility of EPA's stepping in to remove the contamination and then going to court with potentially responsible parties (PRPs) to be reimbursed for the cleanup. In a few high-profile cases,¹¹ lenders not only lost the value of their security¹² but also were held accountable for reimbursing cleanup costs as PRPs). Because HUD is a large organization involved in many real estate transactions, the Department was involved in cases in which it or its program participants were held liable.

Many HUD affordable housing programs use the worst sites—sites that no one else wants. HUD, as a federal agency, has a duty to ensure that minority and low-income residents are not disproportionately affected by redevelopment of contaminated sites.¹³ In addition, when developing its site contamination policy, the Office of Housing saw its role as protecting not only potential residents but also the financial solvency of the FHA mortgage insurance fund. FHA takes pride in being a government program that pays for itself through sound analysis and mortgage insurance premiums. As long as the default rate stays low, everything is okay; HUD's endorsement of unacceptable risks would put the entire FHA mortgage insurance program in jeopardy.

With this perspective in mind, the Office of Housing crafted a policy that allowed HUD to approve brownfield sites that had been completely cleaned up (via the dig-to-clean approach) but not to approve sites where the problem had been capped or paved over. HUD's rationale was that, although FHA was designed to insure financial risks that the conventional market was unwilling to take (“...is there a market for multifamily housing at this unproven location?”), it was “not FHA's role to take environmental risks”¹⁴ (Bonkoski, 2007). Conversely, some were concerned that this policy, more restrictive and conservative than the one favored by EPA, would make it difficult to support housing on brownfield sites, particularly at a time when brownfield redevelopment of mixed-use, walkable communities was being touted as the road to sustainability.

¹⁰ See 2002 and 2003 processing instructions in appendix A in HUD PD&R (2003).

¹¹ For example, *United States v. Fleet Factors Corp.*, 901 F.2d 1550 (11th Cir. 1990).

¹² The value of the foreclosed property was lower after it was identified as a contaminated parcel.

¹³ Executive Order 12898 of February 11, 1994, “Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” commonly known as the Environmental Justice Executive Order.

¹⁴ Interview (Bonkoski, 2007).

Issues

This survey of field office practice raised a number of significant issues relating to HUD field office participation in brownfield redevelopment.

Low Level of Awareness

In an e-mail survey, to which 89 percent of the FHA Multifamily Hubs responded, when asked to report about their experience with brownfield projects, including rejections, most (75 percent) had “nothing to report,” even when brownfields were defined very broadly, as in the CERCLA (Superfund) definition:¹⁵

The 2002 Brownfield Statute (PL 107-118) defines brownfield to mean real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

Several possible explanations for this response exist.

- Activity was taking place in fringe (undeveloped greenfield) areas. If most growth was taking place in fringe areas, then greenfields, with no site contamination, would not raise site contamination issues. In 2006, the FHA “Committee On Environmental Issues” (a subgroup of the Hub Directors) reported that some field offices, particularly those in the West, did not report site contamination as an issue that affected their day-to-day operations.
- Field offices did not recognize site contamination issues. Some offices reported “no brownfield projects,” yet either reality checks with third parties, such as the state or EPA, or followup interviews, indicated that the office had processed brownfield projects. Every office in the followup oral interview had at least one brownfield encounter. Some offices thought that “brownfield” was an official state designation; others did not realize that a site that is not contaminated could be a brownfield because no one is willing to invest the time, energy, and funds to characterize its problems. In EPA’s brownfield program, many sites have been freed for development after the EPA-funded site characterization identified either no or minor recognized environmental conditions (RECs).
- Brownfield projects were processed by state housing finance agencies (HFAs) through FHA’s Risk Share program. If a state HFA performs environmental processing pursuant to 24 CFR 58 under the Risk-Sharing program, they are not subject to MAP guidance. During the reality check, it became evident that more than one brownfield project was processed by the state HFA.

Another way of explaining the responses to the survey is by relating them to one of the major findings of the HUD/PD&R 2003 study—that HUD has limited capacity and expertise to deal with site contamination problems. Many offices appeared not to recognize that they were dealing with brownfield sites and many did not make full use of their environmental staff to review and analyze those sites. Some offices took the state’s approval as evidence that the site had been cleaned up to

¹⁵ 42 U.S.C. 9601 (39)(A), Section 211(a).

HUD dig-to-clean standards.¹⁶ Others were satisfied with environmental consultants reporting that any RECs had been removed and did not ask for the local (state VCP) approval.

Brownfield Policy Is Restricting Activity

Some jurisdictions have had difficulty meeting affordable housing needs in established urban areas when restrictive policies are followed (Bartsch, 2006). Currently, the FHA Multifamily programs represent a large portion of the affordable housing market. FHA plays an important part in the very complicated equation for layered affordable financing, because the principal lender often insists on FHA mortgage insurance of their funds. FHA-approved loans cannot use standard EPA RBCA procedures unless the Hub waives the MAP guidance or the state HFA processes the projects as a Risk Share. Ironically, some developers in several communities who originally intended to work with HUD on mixed-income housing developments at brownfield sites have been forced to develop all market-rate housing because of HUD's unwillingness to change its approach. Despite these barriers, initiatives across the country show that affordable housing projects can succeed at brownfield sites. In scores of cases, older contaminated sites have been converted into residential housing for senior citizens and low- and moderate-income families. Many of these projects come on the heels of market-rate developments, which also proves that the stigma can be overcome and that residents' comfort with institutional controls, such as covenants on the deed, can be achieved. Moreover, these projects have been accomplished in a way that makes economic sense and addresses environmental considerations appropriately (Bartsch, 2006).

The Brownfields Revitalization Act, which took effect in early 2002, has done much to address barriers to redeveloping contaminated property, including those sites being reused for housing purposes. From a procedural perspective, the law sets the stage for more innovative public-private redevelopment partnerships because it clarifies difficult liability issues that have deterred site acquisition and redevelopment. In addition, the law allows EPA brownfield grant recipients to use a portion of their site assessment or cleanup grants to pay insurance premiums that provide coverage (such as for cleanup cost overruns) for these sites. This flexibility helps prospective developers secure private financing by providing a better way to quantify and manage risk. In the past, this uncertainty has been a key deterrent to housing activities on brownfield sites.

Perhaps most importantly, the Brownfields Revitalization Act clarifies the state-federal relationship regarding cleanup, making it easier for developers to use innovative remediation technologies and engineering controls as part of a cleanup. Now, sites addressed by a state's VCP or response program are protected from EPA enforcement and cost-recovery actions. The only exceptions are sites where contamination has migrated across state lines or onto federal property; if releases of contaminants, or the threat of releases, present an imminent and substantial endangerment; if new information shows that a cleanup is no longer protective; or if a state requests federal intervention. States now will share \$50 million in EPA brownfield program funding annually to support these response programs. In return, states will need to maintain a "public record of sites" addressed through their voluntary response program, and update that record annually (Bartsch, 2007).

¹⁶ The HUD dig-to-clean standard would not have been achieved if the cleanup were RBCA based.

Field reaction to the effect of the MAP and Sections 202/811 Notice of Funding Availability (NOFA) dig-to-clean policy varied:

- **New York City**

The New York Hub issued a policy paper on February 24, 2005, that asked for permission to implement a policy more friendly to brownfield reuse that included permitting the use of engineering controls. They noted that, in 2004, Section 202 applications had declined by 88 percent, from 25 to 4, and that the Hub had been returning funds for subsidized housing for elderly people and people with disabilities because it did not have any suitable (that is, clean) projects to fund.

- **Philadelphia**

The Philadelphia Hub has worked with brownfield sites and even waived the MAP policy. Philadelphia has expressed concern that the limited (Section 202 and Section 811) resources are either not being used or are being channeled to suburban areas.

- **Chicago**

The Chicago Hub has found that the MAP brownfield policy makes it difficult to keep up with the demand in those areas of Chicago undergoing redevelopment and, as a result, has waived MAP criteria and followed the EPA RBCA standard when possible.

- **Beyond MAP**

The MAP guidance has created a regulatory environment that is hostile to reuse of brownfields. We found two sites with no RECs, apparently meeting MAP criteria, that had been rejected or subject to severe scrutiny because of the brownfield stigma.

Of the 18 FHA Multifamily Hubs, 5 (Philadelphia, Baltimore, Chicago, Columbus, and Minneapolis) waived this policy¹⁷ for HUD mortgage insurance programs at the time of the survey, 1 (Boston) was considering waiving, and 2 (Jacksonville and Ft. Worth) were open to waiving.

Waiver of the MAP policy was needed in many cases for proposed FHA affordable housing brownfield projects to be financially viable, because project financing could not support complete removal of the contamination and government funding was limited. FHA's reluctance to participate in brownfield sites in which the cleanup had been approved locally made it more difficult to put together viable affordable housing projects in older urban areas, and this restrictive policy had a chilling effect on infill development (Schopp, 2003). FHA's limited participation in brownfield redevelopment, in turn, had a negative effect on environmental quality, because development in outlying areas is associated with adverse effects (RERC, 1974) and urban settlement is associated with lower generation of pollutants (CNT, 2009). HUD's original vision regarding site contamination called for HUD to "establish interagency and intergovernmental policies and procedures" and "to take consistent actions when responsibilities are shared by several agencies."¹⁸ The FHA dig-to-clean policy was developed in a vacuum, and, when this study was performed in 2007,

¹⁷ Waivers are permitted for multifamily mortgage insurance processed under MAP but are not permitted for the Section 202 and Section 811 programs that support housing for elderly people and people with disabilities.

¹⁸ HUD Notice 79-33, paragraph 3, issued September 10, 1979.

little indicated that HUD Housing brownfield policy would undergo any significant change in the foreseeable future. Not only is policy revision a lengthy process, but staff also appeared reluctant (in 2007) to alter the policy.

Resistance To Altering Policy

The dig-to-clean policy was developed in the late 1990s. In the late 1970s, HUD's Office of Housing had established a practice of issuing more detailed guidance for the environmental assessment process than did the Office of Community Planning and Development (CPD) and the Office of Public and Indian Housing (PIH). The Office of Housing continued that practice when it issued HUD Housing Notice 94-88 on site contamination in 1994. Housing Notice 94-88 was the first HUD guidance that clearly called for the regular institutionalized use of the American Society for Testing and Materials (ASTM) ESAs (Phases I and II) in project analysis; it called for either cleaning up the site before project approval or gaining preapproval from "the applicable Federal, state, and/or local agency with jurisdiction."¹⁹ In 2000, The *MAP Guide* expanded this guidance, as noted previously, by stating, "HUD will not accept property for firm commitment where a site contamination problem has been capped or paved over" (HUD Housing, 2002: Section 9.3E). The 2003 PD&R study (ICF Consulting, 2003) called for updating the policy to include using risk-based methods, approval before cleanup, upgrading HUD's analytic capabilities, and other measures to encourage brownfield redevelopment. HUD did not implement these recommendations until late 2009 (and it is still too early to ascertain the actual effects of these changes).

In the course of developing this report, HUD policymakers voiced many concerns, clearly implying that they believed the dig-to-clean policy worked and that it would not be wise to modify it.

Dual Standards

For nearly 10 years, the federal government had two standards: EPA's RBCA approach and FHA's dig-to-clean approach.

- Having two standards was confusing. When a developer asked his or her engineering firm what to do to clean up a site (that is, to make it fit for residential use), the engineers would usually answer based on generally accepted business practice, which was RBCA. State programs accommodated the RBCA approach that EPA favored. Many developers and environmental consultants were not aware that two federal agencies had two different approaches for cleaning up brownfield properties. What could happen?
 - Project planning could be based on one set of costs, and project feasibility would fall apart when FHA financing was needed, because more expensive cleanup would be required. This scenario could occur even if HUD CDBG funds were being used, because only FHA Multifamily followed the strict dig-to-clean approach (see exhibit 1).
 - FHA Hubs could be faced with difficult decisions when they request a dig-to-clean cleanup but receive an RBCA cleanup.

¹⁹ Notice 94-88, 3. <http://www.hud.gov/offices/adm/hudclips/notices/hsg/94hsgnotices.cfm>.

Exhibit 1

Use of RBCA in HUD Programs Before 2010

| HUD Office | Allows RBCA | Need Waiver ^a | RBCA Not Permitted |
|------------------------------------|---|-------------------------------------|--|
| Housing (includes FHA) | Risk-Sharing mortgage insurance processed by state HFAs | Mortgage insurance processed by HUD | Section 202 (elderly people) and Section 811 (people with disabilities) subsidy programs |
| Public and Indian Housing | All programs | | |
| Community Planning and Development | All programs | | |

FHA = Federal Housing Administration. HFAs = housing finance agencies. HUD = Department of Housing and Urban Development. RBCA = risk-based cleanup approach.

^a Some people think that this waiver must be approved by HUD Headquarters and not the Hub Director.

- Each standard undermined the other.
 - The HUD standard provided a potentially unfair tool for future litigants. Some time in the future, a resident could allege that he or she is suffering ill effects from buried contamination and claim the developer was negligent. *Negligence* generally means culpable conduct that misses the legal standard (of a reasonable person) protecting individuals against foreseeable risky, harmful acts of other members of society. The key question is usually, “What is the standard of care?” If a developer processed his or her site through and received an approval from a state VCP, that approval would be evidence that the owner met the requisite standard of care. A separate more restrictive policy from the agency in charge of federal housing policy opens the door to alleging that the standard of care was not met.
 - EPA is the federal agency charged with protecting both the environment and the health and safety of this nation’s inhabitants.²⁰ EPA has invested a great deal of time, effort, scientific study, and fieldwork to determine what standard is acceptable for residential cleanups. HUD adopted its policy with little coordination with EPA, and the 2003 HUD study recommended modification and adoption of the EPA approach. Continued use of a different policy undermined HUD’s credibility in both lending and transaction support, which is why this 2007 study recommended dialog and cooperation between HUD and EPA on this issue.

Recommendations

Although the FHA dig-to-clean policy differed significantly from EPA policy, it was not an insurmountable barrier to brownfield participation by all local FHA offices for all but the subsidized Section 202 and Section 811 programs for elderly people and people with disabilities.²¹

²⁰ EPA’s mission is to protect human health and the environment. Since 1970, EPA has been working for a cleaner, healthier environment for the American people. (See <http://www.epa.gov/epahome/aboutepa.htm>.)

²¹ For Section 202 and Section 811, the NOFA criteria do not allow for deviation.

Decentralized case-by-case decisionmaking allowed many offices to approve brownfield projects.²² The tools existed, but Hubs needed to be taught how to use them. After the Hub recognized that RBCA cleanup was a well-established, reputable choice,²³ the Hub was free to decide what best fit the needs of their local market. Hubs can be educated regarding what choices are open to them and trained to develop sensitivity on when and how to apply each choice.

HUD is always reluctant to erode its environmental standards. In today's post-industrial society, housing is often perceived as the best choice for land reuse. Many cities have a strong demand for housing near their centers and, given the right price (for example, subsidized substandard housing with lower rents), people will accept a location that might not survive a market test. HUD has striven to develop and implement standards that guarantee everyone, even the disadvantaged, a "decent home and suitable living environment."²⁴ Environmental justice demands we remain vigilant regarding what is acceptable, especially to those needing affordable housing and faced with more limited choice.²⁵ The strict site contamination policy has made it easier for Hubs to reject sites that local HUD decisionmakers felt were not viable projects. The September 2009 MAP revisions attempt to approach this issue with sensitivity so as not to upset this balance and to allow Hubs to reject contaminated sites when they think the risk is too great.

- **Policy Coordination**

This report underlines the need for further dialogue and cooperation between HUD and EPA on site-contamination policy and practice. The original mandate of HUD Notice 79-33 called for close coordination of policy and practice with EPA. The 2003 report noted the subsequent divergence and called for HUD to bring its policy in line with EPA's. One federal standard would be less confusing to the public, state and local government, and the development communities. HUD would improve its capacity to review the technical merits of cleanup plans by using the state VCPs' expertise, insisting that projects be approved by the state VCP, and asking for technical assistance from EPA staff.

- **Processing and Training**

Even though FHA has altered its policy, HUD staff still need to be better educated on the issues presented by brownfield redevelopment. Training may be provided to the field on various brownfield topics, including state VCPs and processing alternatives that may enable the use of

²² FHA Hubs issue commitments for millions of dollars on new projects every day without HUD Headquarters' involvement. Hubs handle most of the issues that arise with the processing locally; they decide if the site locations are appropriate, and they know the market and make determinations about market, location, demand, and so on. Hubs know their geographic areas and what is being developed outside the HUD programs. They know that different kinds of brownfields exist and that a contaminated site in the middle of a neighborhood, which might have been providing housing for generations (public housing sites), are good locations for redeveloping and pose minimal risk to the government. Hubs also approve transfers of physical assets, rent increases, and partial release of security in some cases. Hubs go to court and represent HUD, enter into contracts, enter into Housing Assistance Payments contracts, take enforcement action against owners, and so on.

²³ RBCA cleanup was backed by those parts of the federal government that are responsible for protecting public health and the environment, such as EPA and the Centers for Disease Control and Prevention, Agency for Toxic Substance and Disease Registry.

²⁴ National Housing Act of 1949.

²⁵ Executive Order 12898 of February 11, 1994. "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," commonly known as the Environmental Justice Executive Order.

RBCA cleanups, as well as the environmental benefits of promoting mixed-use, walkable neighborhoods in efficient locations with access to jobs, shopping, and mass transit. This training will enable field offices to support brownfield development in those areas where they think it is appropriate. It should be clear to everyone that the regulatory standard for site contamination cannot be waived,²⁶ but that sites that come through state VCPs, even if they use engineering barriers and institutional controls, clearly meet this standard. Field offices should decide whether to participate in brownfield projects based on the factors such as marketability and long-term project viability. Judgment concerning public health is best left to those agencies with that expertise, just as judgment regarding project viability is best left to the local Hub.

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²⁶ The regulatory standard, is contained in 24 CFR 50.3(i) and provides, in part, "...all property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property."

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