

Environmental Review Insights from the City of Detroit “Trenches”

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Introductions: HRD Environmental Review Team

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Introductions: Who are you?

Entitlement Community/Local Unit of Government/Responsible Entity

- Community Development Professional
- Environmental Professional
- Certifying Officer

Environmental Consultant

Historic Consultant

Developer

Sub-Recipient/Sub-Grantee

Funder/Regulator

Partners in the Environmental Review Process

- City of Detroit - HRD Team Members
 - Leadership – Mayor's Office
 - Project Managers and Program Staff
 - HRD Environmental Review Team
- Developers
 - Consultants/Attorneys
 - Environmental Consultants/Cultural Resource Managers
- Funders/Regulators
 - Other Federal Funders – HUD/MSHDA/ARPA
 - Michigan Department of Environment, Great Lakes, and Energy (EGLE)
 - State Historic Preservation Office (SHPO)

Changes to NEPA and Federal Funding

- As of April 2025, there are no changes to HUD's guidance on how to comply with NEPA. Follow 24 CFR Part 58.
- New guidance is expected from HUD within 10 months. The City of Detroit will provide new guidance (as necessary) once HUD has released updated rules or guidance.
- Don't expect major changes, as NEPA still stands as written.

NEPA/HUD Environmental Review Changes?

- Has anyone changed what they are doing/requiring for NEPA/HUD Environmental Reviews?
- What changes are you anticipating for the future?
- What do those changes mean for your organization?

HUD Environmental Compliance Requirements

24 CFR Part 58

Who is required to comply?

- All Federal Agencies (NEPA)
- All HUD Entitlement Communities (HUD)
- All Projects in the City of Detroit with a HUD allocation

City of Detroit Grants

- CDBG
- CDBG-DR
- Choice Neighborhoods
- ESG
- HOME
- HOME ARP
- HOPWA
- NSP

Detroit Grants

- DHC Capital Expenditures
- DHC Development
- DHC PBVs

Other HUD Grants

- MSHDA HOME
- MSHDA PBVs
- HUD Direct Grants
 - CoCs
 - 221(d)(4) loans
 - 202
 - Community Project Funds

What laws do we comply with?

- National Environmental Policy Act (NEPA)
 - Understand environmental consequences BEFORE federal funding commitments are made
 - Ensure environmental information is made available to public officials and citizens BEFORE decisions are made and BEFORE actions are taken
 - Consider reasonable alternatives
 - Avoid or minimize any possible adverse effects of their actions upon the quality of the human environment
 - Integrate NEPA requirements with other planning and environmental reviews
 - Take actions that protect, restore, and enhance the environment.

What laws do we comply with?

- HUD Environmental Requirements for Responsible Entities (24 CFR Part 58)
 - Responsible Entities (REs) assume HUD's NEPA responsibilities
(City of Detroit - vs – MSHDA, others)
 - Serve as the Federal Agency on behalf of HUD
 - RE assumes responsibility for:
 - Environmental **Review**
 - Environmental **Decision-Making**
 - Environmental **Action** that would apply to HUD under NEPA and related laws
 - Responsibility to ensure mitigation is incorporated into project plans and implemented after the Authority to Use Grant Funds

What laws do we comply with?

- 24 CFR Part § 58.57 Lead Agency Designation
 - If there are several agencies ready to assume the lead role, the responsible entity must make its decision based on the criteria in 40 CFR 1501.5(c). If the responsible entity and a Federal agency are unable to reach agreement, then the responsible entity must notify HUD (or the State, where applicable). HUD (or the State) will assist in obtaining a determination based on the procedure set forth in 40 CFR 1501.5(e).
 - **HUD – vs – City of Detroit – vs – MSHDA, others**
 - **This requires project coordination ASAP after federal awards to a project, especially if a Developer intends to apply for HUD loans in the future.**

What laws do we comply with?

- Clean Air Act
- Coastal Zone Management Act
- Contamination and Toxic Substances*
 - **This is where environmental due diligence (Phase I ESA through an approved Response Activity Plan) is required.**
- Endangered Species Act
- Explosive & Flammable Hazards*
- Farmlands Protection Policy Act
- Floodplain Management (E.O. 11988)
- National Historic Preservation Act
- Noise Control Act
- Safe Drinking Water Act (Sole Source Aquifers)
- Wetlands Protection (E.O. 11990)
- Wild & Scenic Rivers Act
- **Environmental Justice (E.O. 12898)****

* HUD regulation

** E.O. 12898 has been rescinded but environmental justice is still included in HEROS

When do we comply?

- Any contemplated use of the HUD Federal Allocation
 - Not just when we award money
 - Also includes projects once we know of the intent to use/apply for federal money
- Anytime a federalized project has a change in scope of work or additional money added
- Any project that gets reprogrammed money



Why do we comply?

- HUD's Mission: Create strong, sustainable, inclusive communities and quality affordable homes for all
- To make sure the environment is not harmed by a development
- To make sure the residents of the development are not harmed by the environment
- To maintain good standing with HUD
 - Don't break the laws!
 - Findings
 - Violations
 - Payback of the HUD Allocation

How do we comply? The Environmental Review **Process**

- Project Begins with City of Detroit
 - Application to NOFA for Federal Funding
 - Application to the DHC for PBVs
 - Pre-Application work (HRD teams)
- HUD Federal Funding Award
- Environmental Kickoff Meeting
- Environmental Review Process begins
- HUD Environmental Approval
- Construction/NEPA Compliance Commitments

How do we comply? The Environmental Review **Process**

Define Project (Developer in the NOFA application)

Determine “Level of Review” (ER TEAM)

Conduct the Environmental Review (Developer’s Consultant)

Finalize Review (RROF → AUGF) (ER TEAM)

Commit / Expend HUD funds (HRD Project Manager)

Step 1

Develop a Meaningful Project Description

Why is the project description important?



- Basis for determining the level of environmental review required
- Basis for informing the public about the action and federal expenditure
- Basis for monitoring compliance
 - If funds are used for something not included in the project description, it could be in violation of §58.22

Defining the project

- Who, what, when, where, why of the project
- **Project Aggregation (§58.32)**
 - *Evaluate as a single project* all individual activities that are related either on a geographical or functional basis, or are logical parts of a composite or contemplated actions
 - Must include **both** HUD and non-HUD funds



Multi-year Project Aggregation §58.32(d)

- Estimate the range of aggregated activities
- Must consider all components of the multi-year project regardless of funding sources
- Evaluate cumulative environmental effects
- Estimate the cost of total project in the environmental review and the RROF
- Must re-evaluate under §58.47 with a change in scope, magnitude, or conditions

Complete Project Scope Includes:

- **Location:** describe so the public can locate (i.e. street address, cross streets)
- **Purpose and Need:** describe what is being done and why it is necessary, trends likely in the absence of the project
- **Type of environmental review:** individual (geographically-aggregated) versus tiered (functionally aggregated)
- **Tiering, if applied:** describe the environmental requirements to be addressed in the Tier 1 review and environmental requirements to be addressed in the Tier 2 review
- **Project Beneficiaries:** ex: affordable housing project, mixed use housing project, etc.
- **Description:** provide complete details about the project and what will be done
 - Type of project (i.e. new construction of single-family home, roof replacement of community center, etc.)
 - Capture the maximum anticipated scope of the proposal, even if it isn't solidified yet
 - Physical description of existing and/or proposed new buildings
 - Timeframe for implementation
 - Size of the project (area coverage, number of units, population served, etc.)
- **All funding sources**
- **All development partners**
- **Timelines**

Developer/Organization Request for Federal Funding

- Detroit Housing Commission Project Based Voucher Application
- City of Detroit Federal Funding Request (CDBG, HOPWA, ESG, etc.)
- City of Detroit NOFA Application (HOME or mixed funding)
 - Applications submitted, vetted, scored
 - Environmental documentation is reviewed
 - Review of existing conditions based on Phase I ESA
 - Identify Project Description
 - Determine next requirements for environmental review



Choice Limiting Actions

Prior to environmental approval / clearance, the RE may not:

- Commit HUD funds
- Commit non-HUD funds where the activity would
 - Have an adverse environmental impact or
 - Limit the choice of reasonable alternatives
- Extends to third parties including:
 - Recipients, and
 - Participants in the development process
 - Public or private nonprofit
 - For-profit entities
 - **Contractors**

***Do not take action before
environmental clearance!!***

§58.22: Limitation of Action

- Choice-Limiting Action
 - Examples: real property acquisition, leasing, bidding, disposition, demolition, rehabilitation, repair, renovation, construction, conversion, and site improvements
- Affirmative Responsibility
 - If RE is considering an application and is aware a party is about to take action prohibited by §58.22(a), RE must take “appropriate action” to ensure NEPA is followed
 - Difference of Application for funds –vs- Intent for funds
 - RE must make determination
 - Must be defensible and documented

The City of Detroit has determined that the NOFA application date is the intent for use of HUD funding. No Choice Limiting Action can be taken after your application is submitted.

Choice Limiting Actions

Is a Choice Limiting Action

- Real property acquisition
- Leasing
- Bidding
- Disposition
- Demolition
- Rehabilitation
- Repair
- Renovation
- Construction
- Conversion
- Site Improvements

Is NOT a Choice Limiting Action

- Bidding with NEPA rewind language
- Development Agreement with NEPA rewind language
- Option Contract with NEPA rewind language

Step 2

Determine the Level of Environmental Review

Determining the Level of Review

HUD Environmental Requirements for Responsible Entities (24 CFR Part 58)

- Responsible Entities (REs) assume HUD's NEPA responsibilities
- RE assumes responsibility for:
 - Environmental **Review**
 - Environmental **Decision-making**, including determining the level of **review**
 - Environmental **Action** that would apply to HUD under NEPA and related laws

Levels of Review

Exempt

Categorically Excluded NOT Subject to §58.5 (CENST)

Categorically Excluded Subject to §58.5 (CEST)

Environmental Assessment (EA)

Environmental Impact Statement (EIS)

Exempt Activities (§58.34)

1. Environmental and other studies / engineering or design costs
2. Development of plans and strategies
3. Information and financial services
4. Administrative and management activities
5. Public services (employment, crime prevention, childcare, health, drug abuse, education, counseling, energy conservation, welfare, recreational needs – **no physical action**)
6. Inspections and testing for hazards or defects
7. Purchase of insurance and tools
8. Technical assistance and training
9. Payments of principal and interest on loans or obligations guaranteed by HUD
10. Temporary assistance for disaster or imminent threats***

Categorically Excluded NOT Subject to §58.5 (§58.35[b])

1. Tenant-based rental assistance
2. Supportive services (health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent, mortgage or utilities, assistance in gaining access to government benefits)
3. Operating costs including maintenance*, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs
4. Economic development activities not associated with construction or expansion of existing operations

Categorically Excluded NOT Subject to §58.5 (§58.35[b])

5. Activities to assist homeownership of existing dwelling units or units under construction (closing costs and down payment assistance to homebuyers, interest buy downs, or other actions resulting in transfer of title)
6. Affordable housing pre-development costs (legal consulting, developer and other site-option costs, project financing, admin costs for loan commitments, zoning approvals, and other activities which don't have a physical impact)
7. Supplemental assistance to previously approved project provided approval is by the same RE and re-evaluation is not required per §58.47

Categorically Excluded SUBJECT to §58.5 (§58.35[a])

1. Acquisition, repair, improvement, reconstruction or rehabilitation of public facilities, and improvements (other than buildings) when the facilities and improvements are:
 - Already in place
 - Retained for the same use
 - Without change in size or capacity by more than 20%

For example: Replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets (NOT maintenance)
2. Removal of architectural barriers that restrict mobility of, and accessibility to, the elderly and handicapped

Categorically Excluded SUBJECT to §58.5 (§58.35[a])

3. Rehabilitation

- i. Single family housing rehabilitation
 - Unit density not increased beyond 4 units
 - Project doesn't involve changes in land use from residential to non-residential
 - The footprint of the building is not increased in a floodplain or wetland
- ii. Multifamily rehabilitation
 - Unit density change is not more than 20%
 - Project doesn't involve change in land use from residential to non-residential
 - Cost of rehabilitation is less than 75% of the estimated cost of replacement after rehab
- iii. Non-residential structures
 - Facilities and improvements were in place and will not be changed in size or capacity by more than 20%
 - Project doesn't involve changes in land use from non-residential to residential, commercial to industrial, or one industrial use to another

Categorically Excluded SUBJECT to §58.5 (§58.35[a])

4. Individual action (disposition, new construction, demolition, acquisition) on a 1 to 4 unit dwelling; or individual action on 5 or more units scattered on sites more than 2000 ft. apart and no more than 4 units per site
5. Acquisition (including leasing) or disposition of, or equity loans on, an existing structure or acquisition (including leasing) of vacant land provided that the structure or land acquired or disposed of will be retained for the same use
6. Combinations of the above activities

Environmental Assessment (§58.36)

- Any project not Exempt, Categorically Excluded, and does not meet EIS thresholds
 - New construction or substantial rehabilitation of clustered (5+) homes
 - Conversion from one type of land use to another
- The purpose is to evaluate the project as a whole
 - Determine existing conditions and trends
 - Identify all impacts (direct, indirect, cumulative)
 - Examine and recommend feasible ways to eliminate or minimize adverse environmental impacts
 - Examine alternatives to project itself

Environmental Assessment (§58.36)

Two Major Reviews of the Site

- How does the project affect the environment?
 - Work in the floodplain
 - Work in wetlands
 - Endangered species
- How does the environment affect the project (and future residents)?
 - Contamination
 - Noise Assessments
 - Environmental Justice

Environmental Assessment (§58.36)

- Required when the project is determined to have a potentially significant impact on the human environment (can't declare a Finding of No Significant Impact - FONSI)
For example:
 - Resulting in the construction of hospitals or nursing homes with 2500+ beds
 - Remove, demolish, convert / sub-rehab 2500+ existing housing units
 - Construction of 2500+ new housing units – or provide the site for said units
 - Provide enough additional water and sewer capacity to support 2500+ additional housing units

Process – Environmental Kickoff Meeting

- Meeting to set the expectations of the environmental and historic reviews
- Includes HRD, Developer, and Developer hired environmental and historic consultants, and any other funders with environmental requirements
- Confirms the Project Description and the Level of Review required
 - Scope of work from the environmental and historic consultants will be confirmed
 - Outline potential issues at the Site
 - Contamination coordination with EGLE (DDCC –vs– NFA)
 - Floodplain
 - Section 106 and Archaeology coordination with SHPO
 - Project timing and budget issues

Federal Review Coordination

- The aggregated project description needs to include all funding including all federal allocations to the project
- The federal review coordination needs to be completed early in the environmental review process, especially to coordinate the Section 106 and Tribal Consultation
- If this coordination does not happen early enough, there could be a duplication of effort for the Developer

The background is a solid teal color with a faint, light-colored map pattern overlaid. The map shows a grid of streets and some irregular shapes representing parks or water bodies.

Step 3

Conduct the Environmental Review



An Early Start is Important!

- Ensures planning and decisions reflect environmental values
- Avoids project delays
- Heads off potential conflicts
- Procedural reasons:
 - Recipient may not commit HUD funds on an activity prior to RROF approval
 - Recipient may not commit non-HUD funds prior to RROF approval if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives
 - For projects not requiring an RROF, environmental review must be completed prior to start of activity or project



Choice Limiting Actions

Prior to environmental approval / clearance, the RE may not:

- Commit HUD funds
- Commit non-HUD funds where the activity would
 - Have an adverse environmental impact or
 - Limit the choice of reasonable alternatives
- Extends to third parties including:
 - Recipients, and
 - Participants in the development process
 - Public or private nonprofit
 - For-profit entities
 - **Contractors**

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Overview of NEPA-Related Laws and Authorities

- REs must certify that it has complied with - and will continue to comply with - the laws and authorities of §58.5 and §58.6
- Must consider the criteria, standards, policies, and regulations of these laws and authorities
- Must provide written documentation of compliance or no circumstance requiring compliance with each law or authority

§58.5 Requirements

- Clean Air Act
- Coastal Zone Management Act
- Contamination and Toxic Substances*
 - **This is where environmental due diligence (Phase I ESA through an approved Response Activity Plan) is required.**
- Endangered Species Act
- Explosive & Flammable Hazards*
- Farmlands Protection Policy Act
- Floodplain Management (E.O. 11988)
- National Historic Preservation Act
- Noise Control Act
- Safe Drinking Water Act (Sole Source Aquifers)
- Wetlands Protection (E.O. 11990)
- Wild & Scenic Rivers Act
- **Environmental Justice (E.O. 12898)****

* HUD regulation

** E.O. 12898 has been rescinded but environmental justice is still included in HEROS

§58.6 Requirements

- §58.6 Compliance checklist is required for **all HUD-assisted projects**
- §58.6 alone does NOT trigger certification and release of funds procedure
 - Includes:
 - §58.6 (a) and (b) – Flood insurance
 - §58.6 (c) – Coastal Barrier Resources Act
 - §58.6 (d) – Buyer notification requirements for Runway Clear Zones and Clear Zones of 24 C.F.R. Part 51.303(a)(3)

Step 3. Conduct the Environmental Review

Environmental Review Hurdles

Environmental Review Hurdles: Floodplain

- No new construction in the floodway
- 100-year and 500-year floodplain issues
- Rehabilitation and other projects in the floodplain will require further consultation and assessment from a floodplain specialist (8-Step Process)
- Flood Insurance may be required
- Work with ER TEAM early in the development process if you are in or near a floodplain

Environmental Review Hurdles: Section 106 Review

- Timing
- Confusion over funding sources/lack of information (City vs. DHC vs. private funds)
- Federal funding coordination
- Incomplete information
- Lack of well-defined project description
- Archaeology
- Project segmentation
- Foreclosure

Environmental Review Hurdles: Contamination

- Most multi-family projects will encounter contamination
- Developer Team will conduct ER and work with ER TEAM to work through the approval process
 - Identify contamination levels and types
 - Response Activity Plan approval from EGLE
 - Follow up of Response Activities through construction
 - Documentation of Due Care Compliance approval or No Further Action Documentation from EGLE at closeout

Environmental Review Hurdles

- What are your hardest compliance hurdles?
- What makes them difficult?
- How do you ensure compliance?
- What do you wish you knew more about?



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PROCESS

- This step can take substantial time and require many consultations/emails/memos between the EA Team the environmental consultant and State Agencies (EGLE and SHPO). Usually, the Developer and HRD PMs are copied on emails, but not active participants until the Environmental Review is complete.
- ER Team will also ask for a budget for any Mitigation Measures outlined in the Mitigation Plan included in the final ERR.
- Once the Environmental Review is complete, the ER Team will begin to finalize the process.

ERR Submittal and HEROS Entry

- When the report is complete, the consultant will:
 - Download a copy of the ERR for their records
 - Assign the review to Kim Siegel in HEROS
 - E-mail Kim to confirm that the report has been assigned to her in HEROS and provide Kim with a copy of the HEROS ER and attachments separately (you can use Dropbox or a similar program)
- The Historic team will review the Historic Preservation section; Environmental Specialist will review the remainder of the EA
 - Most likely, revisions or additional documentation will be required. It could take several weeks to get through this process depending on the thoroughness of the initial EA

ERR Submittal and HEROS Entry

- Effective July 1, 2024: all new environmental reviews have a one-year deadline to receive the Authority to Use Grant Funds
- HEROS was updated to automatically display the date the environmental review was started in the system
- The City of Detroit considers this the start of the clock
- **Make sure you have obtained all Federal, State, and Local clearances prior to starting the ER in HEROS!**

Step 4

Finalize the Environmental Review

ER Team Finalizes the ER

- ER Team reviews Environmental Review Record
 - ER Team reviews all documentation
 - Environmental Compliance Specialist (ESC) provides documentation to Certifying Officer for review and signature
 - Exempt, CENST, CEST-exempt are complete with CO signature and can begin spending
 - CEST and EA get published, RROF – AUGF process begins



Choice Limiting Actions

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- Commit non-HUD funds where the activity would
 - Have an adverse environmental impact or
 - Limit the choice of reasonable alternatives
- Extends to third parties including:
 - Recipients, and
 - Participants in the development process
 - Public or private nonprofit
 - For-profit entities
 - **Contractors**

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ER Team Finalizes the ER



- Publication takes up to a week to prepare and put on the HRD (and other funder) website
- Publication requires up to a 15-day public comment period
- After 15-day public comment period, ER Team prepares the RROF and submits to HUD through the HEROS System
- RROF requires a 15-day HUD comment period
- Authority to Use Grant Funds comes when HUD creates it.

Should be soon after the 15-day HUD Comment period expires. But this is NOT usually the case. Be patient!!!

Process – NEPA Compliance Commitment Memo

- ER Team will provide a NEPA Compliance Commitment memo after receipt of AUGF
 - Created prior to closing the HUD funding and should be included in closing documents
 - May include:
 - Mitigation Plan and future environmental requirements
 - Response Activity Plan with state approval and budget for activities
 - Section 106 requirements
 - Final state approvals for other outstanding compliance items

Step 5

Spend and Commit Funds

Step 6

Scope Changes After AUGF

Adding Funds or Changing Scope? Updating ERR (§58.47)

- **Re-evaluation** of a project is required when new activities are added, unexpected conditions arise, or substantial changes are made to the nature, magnitude, or extent of the project.
 - If original environmental finding is **still valid**:
 - Update the ERR with new project description / funding amount and CENST documentation (§58.35[b][7])
 - New RROF with changes to HUD, no publication or waiting period for AUGF (this is a Chicago office policy)
 - If original environmental finding is **no longer valid** or project significantly changed:
 - RE must prepare new review and proceed with approval process (RROF + publication/posting + AUGF)

Step 7

Environmental Requirements Through Construction

Implementing Actions (§58.77c)

- RE/Recipient must assure environmental review decisions are carried out during project development and implementation
- Establish binding commitments (development agreements and contracts) and enforce them
- Correspondence with applicant/sponsor
- Track and monitor implementation and update the ERR

NEPA Compliance Commitment Memo

- NEPA Compliance Commitment (NCC) Memo contains the Mitigation Plan
 - Presented by HRD Environmental at the Pre-construction meeting
 - Lays out basic environmental milestone activities for the project
 - Lays out basic timeline for environmental activities to occur
 - Before or after demolition
 - Before or after project close-out
 - Contains contact information for the Environmental Construction Specialist

NEPA Compliance Commitment Memo

- Examples of NCC Memo activities
 - Asbestos surveys/abatement activities prior to demolition/renovation
 - Soil removal prior to construction
 - Barrier placement after soil removal & prior to fill material placement
 - Fill material analytics
 - Vapor extraction unit installation
 - Hardscape/softscape installation
 - Section 106 monitoring report or photos

Construction Site Visits

- Timing is based on the NCC Memo to document milestone activities
- Introduction to Site Supervisor
- Documentation collected during construction can include:
 - Hazardous Materials Survey
 - Asbestos abatement activities
 - Lead abatement/clearance activities
 - Soil removal & non-native fill confirmation analytical reports
 - Barrier placement/extraction system installation reports

Project Closeout/Continuing Obligations

- Prior to project closeout, HRD Environmental team provides list of documents required to HRD project management.
- Developers and consultants should submit required documentation to the ER Team as soon as available.
- Continuing Obligations:
 - Often the activities required in the NCC Memo are not complete at the end of construction. Those requirements are considered continuing obligations.
 - These obligations are part of the project, and the environmental review is not complete until all documentation is received and approved.
 - Continuing Obligations can last for years after a project's construction phase is complete.

Process – Final Memos

- ER Team will issue a Final Memo for the Project
 - **Final Closeout Memo** is issued for projects if activities in the NCC Memo are complete
 - **Continuing Obligations Memo** is issued for projects if activities in the NCC Memo are NOT complete at the time of project closeout
 - Created after construction is complete and issued to the Asset Management Team for annual follow-up
 - Includes environmental documentation created throughout the construction process
 - Outlines the continuing environmental obligations
 - Documentation of Due Care Compliance/No Further Action
 - Operations and Maintenance Plans
 - Lead, Asbestos
 - Vapor Mitigation Systems
 - Exposure Barriers

In Conclusion...

**Correct application
of 24 CFR Part 58 is
essential for
avoiding sanctions,
litigation, and
unexpected
mitigation or
remediation costs**

- Follow all required steps in the environmental review and decision-making process
- Carefully document compliance with NEPA and its related authorities
- Exercise due diligence in investigations
- Use reasonable approaches that are neither arbitrary nor capricious
- Carefully maintain the Environmental Review Record

Questions?



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