

HOUSING TRUST FUND CORPORATION
Environmental Compliance Handbook

Office of Community Renewal state funded programs including:
Adirondack Community Housing Trust (AHT)
Buffalo Main Streets Initiative (BMSI)
OCR Managed Downtown Revitalization Initiative Projects (DRI)
New York Main Street Program (NYMS)
Rural Area Revitalization Projects Program (RARP)
Urban Initiatives Program (UI)

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I. INTRODUCTION

Awards made under the Office of Community Renewal's state funded grant programs are subject to requirements of the State Environmental Quality Review Act (SEQR) at 6 NYCRR Part 617. Compliance applies to all participants in the development process, including public or private nonprofit or for-profit entities, or any of participating contractors.

The primary objective of the environmental review process is to identify specific environmental factors that may be encountered at individual project sites, and to develop procedures to ensure compliance with regulations pertaining to these factors.

Identified Project Sites

In cases where individual project sites/buildings have been identified at the time of application and contract execution, the environmental review process will evaluate site-specific Environmental Compliance Checklist(s). When the review is complete, the Local Program Administrator (LPA) will receive a determination letter from the Housing Trust Fund Corporation's (HTFC) Environmental Analysis Unit (EAU) specific to the identified projects.

Unidentified Project Sites

For programs that have not identified individual project sites or streetscape project locations at the time of contract execution, a programmatic Environmental Compliance Checklist must be completed to document the programmatic environmental review procedures that will apply to projects later selected for participation. When the review of the programmatic Environmental Compliance Checklist is complete, the Local Program Administrator (LPA) will receive a determination letter from the Housing Trust Fund Corporation's (HTFC) Environmental Analysis Unit (EAU). Following receipt of the determination letter, individual site specific Environmental Compliance Checklists and associated supporting documentation must be submitted to the Office of Community Renewal (OCR) at the time of Project Set up, which is the formal commitment of program funds. HTFC will also review compliance with these procedures as part of the contract monitoring process.

Grant activities cannot begin until an environmental determination letter is received.

II. ENVIRONMENTAL COMPLIANCE PROCESS: STEP BY STEP

The following is a step-by-step process to obtain environmental clearance and to develop an appropriate set of programmatic environmental review procedures. All referenced forms can be found online:

<http://www.nyshcr.org/Forms/NYMainStreet/>

<http://www.nyshcr.org/Forms/DRI/>

<http://www.nyshcr.org/Forms/UI/>

<http://www.nyshcr.org/Forms/RARP/>

<http://www.nyshcr.org/Forms/BMSI/>

STEP 1: Complete Environmental Compliance Checklist

The Environmental Compliance Checklist must be completed for each awarded contract. The checklist documents each procedure that the LPA will implement to comply with environmental regulations at all project sites as a requirement of HTFC environmental clearance. Each section of the Environmental Compliance Handbook outlines specific required compliance procedures and recommended compliance language for use on the Checklist.

STEP 2: Complete the Program Description Form

The Program Description Form must be completed to describe the planned program activities. Sufficient detail must be provided to allow the Environmental Analyst to classify the program under SEQR. Specifically, the Program Description Form must identify if participating projects will or may involve: substantial improvement in a flood zone; projects in or adjacent to Agricultural Districts; work on a building determined by SHPO to have historic or cultural significance; ground disturbance; zoning changes, or change in actual building use.

STEP 3: Submit to the Office of Community Renewal (OCR)

Send the completed Environmental Compliance Checklist(s), Program Description Form and required supporting documentation as a single PDF document by email to:

Patricia O'Reilly
E-mail: patricia.oreilly@nyshcr.org
Phone: 315-478-7179 ext. 205

Include the associated SHARS ID in the email subject line.

Please contact the Office of Community Renewal for instructions to submit large format documents that cannot be emailed.

STEP 4: HTFC Issues Determination Letter to Program Administrator

The HTFC will review the forms and supporting documentation submitted. Revisions or additional documentation may be requested if the materials are determined to be incomplete. Following review by the OCR and the HTFC Environmental Analysis Unit, a determination letter will be issued. The determination letter must be kept on file with the Environmental Compliance Checklist(s), as well as all other documentation related to the environmental review for subsequent HTFC monitoring.

STEP 5: Conduct Program Activities in Accordance with Policies Described in the Environmental Compliance Checklist and HTFC Determination Letter

The purpose of the environmental review process leading to the HTFC Environmental Determination Letter is to:

1. Identify specific measures to comply with environmental regulations or mitigate adverse impacts at identified project sites or;
2. Provide a roadmap for subsequent environmental review of individual project sites at the time they are selected. The LPA is responsible for following the procedures established in the programmatic Environmental Compliance Checklist and Determination Letter. As project sites/buildings are identified, individual site specific checklists and associated documentation must be submitted to the OCR at the time of Project Set up or commitment of funds.

Please note: Individual site-specific checklists must be submitted to the OCR **prior** to beginning project activities. Checklists will require additional supporting documentation and review in circumstances such as:

- substantial improvement in a flood zone
- projects in, or adjacent to, Agricultural Districts
- work on a building determined by SHPO to have historic or cultural significance
- ground disturbance
- zoning changes
- a change in actual building use (whether or not this change is locally regulated)
- if the work constitutes a SEQR Unlisted action

Projects in the categories described above may require either the municipality to conduct a SEQR coordinated review or a review and determination of significance by the HTFC Board.

HTFC Board Review / SEQR Coordinated Review

Under SEQR, proposed activities are classified according to criteria at 6 NYCRR Part 617.4 and 617.5 to determine if they are Type I, Type II, or Unlisted actions. If a participating project involves an action that is deemed Type I or Unlisted, a review and determination of significance must be conducted by the HTFC Board. In lieu of HTFC Board review, the municipality can conduct a SEQR coordinated review. SEQR Coordinated review is the process by which all involved agencies (state agencies and local and county government) cooperate in one integrated environmental review to avoid segmentation and expedite review of a project. At the municipal level, SEQR review is typically conducted during review of site plan, special use permit, or variance applications.

If a SEQR coordinated review is not conducted for Type I or Unlisted actions, the HTFC Board must conduct a separate review of the project. This could take between 45-60 days, depending upon the HTFC Board meeting schedule. Therefore, it is recommended to first determine if the municipality can conduct a SEQR coordinated review, to avoid repetitive review and delays in project execution. So, if the local municipality requires a project to be reviewed (e.g. site plan, special use permit, or variance applications), AND the project falls in one of the categories described above, the participating property owner should inform the municipality that they are also receiving funding from OCR/HTFC, and request that a coordinated review take place.

If a project involves a Type I or Unlisted action, but does not require local municipal review, the project must be reviewed by the HTFC Board for a determination of significance. For example, if the project involves a change in building use from commercial to residential, but the local municipality does not require a special use permit for the project triggering a local SEQR review, the project must be reviewed by the HTFC Board for a determination of significance.

The Local Program Administrator (LPA) is responsible for following procedures established in the Environmental Compliance Handbook. This includes early correspondence with participating property owners to ensure the project complies with Environmental Review procedures.

III. COMPLETING THE ENVIRONMENTAL COMPLIANCE CHECKLIST

Identified Project Sites (Site-Specific Review)

In cases where individual project sites/buildings have been identified at the time of application and contract execution, the environmental review process will evaluate site-specific Environmental Compliance Checklist(s). The Environmental Compliance Checklist must be completed and submitted for each individual site. For each regulation, a written compliance procedure must be described in the right-hand column of the checklist. For each environmental issue, supporting documentation must be provided unless otherwise noted. Supporting documentation includes, but is not limited to, applicable maps, state agency correspondence, and professional certifications.

When the review is complete, the Local Program Administrator (LPA) will receive a determination letter from the Housing Trust Fund Corporation's (HTFC) Environmental Analysis Unit (EAU) specific to the identified projects.

Unidentified Project Sites (Programmatic Review)

For programs that have not identified individual project sites or streetscape project locations at the time of contract execution, a programmatic Environmental Compliance Checklist must be completed. For the programmatic review, the Environmental Compliance Checklist is intended to cover the program as a whole, to determine which regulations may apply to one or more individual project sites once identified, and those which will not be applicable under any circumstances. For each regulation, a written compliance procedure must be described in the right-hand column of the checklist. This will include the procedure to review individual project sites if applicable.

When the review of the programmatic Environmental Compliance Checklist is complete, the Local Program Administrator (LPA) will receive a determination letter from the Housing Trust Fund Corporation's (HTFC) Environmental Analysis Unit (EAU). Following receipt of the determination letter, individual site-specific Environmental Compliance Checklists and associated supporting documentation must be submitted to the OCR at the time of Project Set up, which is the formal commitment of program funds. HTFC will also review compliance with these procedures as part of the contract monitoring process.

Please note: Local Program Administrators may be contacted for more information. **Grant activities cannot begin until an environmental determination letter is received.**

The OCR and the EAU must stress that, before taking any physical action on a site, or incurring costs related to a specific activity, the site specific environmental checklist must be completed and submitted to the OCR for review. Costs incurred for activities completed prior to the SEQR determination and submission of site-specific checklists will not be eligible for reimbursement.

A. Historic Resources

State Historic Preservation Office (SHPO) Review Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law of 1980 requires a publicly-funded project to be reviewed for its potential effect on historic properties. LPAs must submit building information and proposed project scopes of work for each participating project to the New York State Office of Parks, Recreation and Historic Preservation (OPRHP or SHPO) for review. This review is required for all funded activities: interior and exterior building renovation, new construction, demolition, and streetscape activities.

For site-specific reviews, where the project site has already been identified, the SHPO Determination Letter must be included as source documentation.

- SHPO must be consulted for a determination before any rehabilitation, demolition or new construction is started on any program sites. Compliance language includes:

Programmatic Checklist Language:

“A Historic Resource Inventory Report, Project Review Cover Form and SHPO Transmittal Letter will be completed and submitted to SHPO for an impact determination which will ensure compliance with the New York State Parks, Recreation and Historic Preservation Law. No site activity will occur until SHPO responds with a determination.”

Site-Specific Checklist Language:

“The SHPO No Adverse Impact determination is attached.”

“SHPO identified specific conditions as described in the attached determination. The conditions will be incorporated into the project scope of work.”

The SHPO Cultural Resource Information System (CRIS) can be accessed here: <https://cris.parks.ny.gov>

The HTFC SHPO Electronic Project Submission Guide can be found here:

<http://www.nyshcr.org/Forms/NYMainStreet/>

<http://www.nyshcr.org/Forms/RARP/>

<http://www.nyshcr.org/Forms/UI/>

<http://www.nyshcr.org/Forms/BMSI/>

B. Floodplain Management

The Local Program Administrator must consider 6 NYCRR Part 502, *Floodplain Management Criteria for State Projects* if any projects are in a Special Flood Hazard Area (SFHA). Each site in the Program must be reviewed for its location with regard to floodplains.

Source documentation for these determinations must be provided and can include a copy of a FIRM map, with the Panel Number and Effective Date, or communication from the local Code Enforcement Officer responsible for a community's participation in the National Flood Insurance Program.

Programmatic Checklist Language:

- If the target area is not within an SFHA, compliance language might be:

“The target area does not include any buildings or sites within a SFHA. A copy of the FIRM map, with the Panel Number and Effective Date is included.”
- If the target area includes any buildings within an SFHA, a determination must be made for each assisted project site to evaluate if the site is within the SFHA and whether the proposed scope of work can be classified as “substantial improvement” per 6 NYCRR Part 502.2(bb)(1), *Floodplain Management Criteria for State Projects*. Compliance language should include:

“The target area is located in the 100 year floodplain. Each project site will be evaluated to determine if it is within the 100 year floodplain, and whether it will involve ‘substantial improvement’. The LPA will comply with 6 NYCRR Part 502, Floodplain Management Criteria for State Projects.”
- If FEMA has not completed a study to determine flood hazard for a program location and no flood map has been published, compliance language might be:

“Panel not printed. Each project site will be evaluated to determine if it is within the 100 year floodplain, and whether it will involve ‘substantial improvement’. The LPA will comply with 6 NYCRR Part 502, Floodplain Management Criteria for State Projects.”

Site-Specific Checklist Language:

- If the project is not in the SFHA, compliance language might be:

“The project is not within a SFHA. A copy of the FIRM map, with the Panel Number and Effective Date is included.”
- If the Programmatic Review identified that the target area includes any buildings within an SFHA, a floodplain determination must be made for each individual building. This determination should be made by a unit of local government and documented in a letter. This is a step beyond just looking at the FIRM map which was already completed during Programmatic Review. This determination typically

involves a site visit and topographical map review. If it is determined the specific project site is not within the SFHA, compliance language might be:

“The project is not within the 100 year floodplain as documented in the attached.”

- If it is determined that the project site is within an SFHA, it must be evaluated and documented whether the proposed scope of work can be classified as “substantial improvement.” Substantial Improvement is defined as, “any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the replacement value of the structure,” per 6 NYCRR Part 502.2(bb)(1), *Floodplain Management Criteria for State Projects*. If the project is not classified as substantial improvement, compliance language might be:

“The project is within the 100 year floodplain, but is not classified as ‘substantial improvement’ as per 6 NYCRR Part 502, Floodplain Management Criteria for State Projects as documented in the attached.”

Source documentation must include a determination and explanation from the LPA or municipality as to why the project does not meet the definition of substantial improvement.

- If the project site is within the SFHA and will involve substantial improvement or new construction of structures, public infrastructure or utilities, compliance language might be:

“The project is within the 100 year floodplain, and will involve ‘substantial improvement’, floodplain design measures will be implemented per 6 NYCRR Part 502, Floodplain Management Criteria for State Projects as documented in the attached.”

Source documentation in this instance must include a certification from a design professional certifying that specific floodplain design measures are being implemented as per 6 NYCRR Part 502, *Floodplain Management Criteria for State Projects*.

Instructions for creating a FIRM Map

1. Go to: <https://msc.fema.gov/>
2. Enter the project site address in the search tool and hit enter or select search
3. Click on the View Map icon
4. Click on *Make a FIRMette*
5. Move red box over the target area or project site
6. Click on the *Adobe PDF* icon under *Create FIRMette*
7. Save

6 NYCRR Part 502, *Floodplain Management Criteria for State Projects* is available online, here:

https://www.fema.gov/pdf/floodplain/nfip_sg_unit_8.pdf

FIRM maps are available from local or county environmental or planning agencies, the New York State Department of Environmental Conservation (DEC), or the Federal Emergency Management Agency (FEMA), at the FEMA Map Service Center (800-358-9616), or <https://msc.fema.gov/>

C. Zoning

Each site to be assisted by Office of Community Renewal state funded programs must be reviewed with regard to its zoning classification and proposed use. Project sites must conform to the relevant local land use plans and must receive all necessary zoning and site plan approvals and permits. The project may be classified as an Unlisted action under the State Environmental Quality Review Act (SEQR) and require further review if a zoning change is required or the renovation project will result in a change in building use.

Documentation for these determinations must be provided for site specific reviews. Documentation should include a letter from the local municipality confirming the proposed use of the project is permitted according to the existing zoning classification of the project site. If the project requires a variance or special use permit for issuance of a building permit, approval documentation should be provided.

The Checklist language must also specifically communicate if a participating project will involve a change in building use (whether or not this change is locally regulated). If a project involves a change in building use, either a SEQR Coordinated Review should be conducted or the project will be reviewed by the HTFC Board (see page 4).

Programmatic Checklist Language:

- If specific project sites have yet to be identified, compliance language might be:
 - C1: *“A zoning determination will be prepared and submitted to identify if any program activities will require local approvals, variances, special permits or any other modifications to the existing zoning classification of each project.”*
 - C2: *“Each project will be evaluated to determine if the project will result in a change in building use.”*

Site-Specific Checklist Language:

- If the project will comply with the existing zoning classification and does not involve a change in use of the building, compliance language might be:
 - C1: *“The project will not require zoning modifications, variances or a special use permit for issuance of a building permit. See attached documentation.”*
 - C2: *“The existing use of the building is commercial; the proposed use of the building is commercial.”*
- If the project will require any zoning modifications or will result in a change in building use, compliance language might be:
 - C1: *“The project requires a special use permit; approval documentation is attached.”*
 - C2: *“The existing use of the building is industrial; the proposed use of the building is residential.”*

D. Coastal Zone Management

19 NYCRR Part 600, *Coastal Zone Management* establishes requirements for review of a state-funded project in the Coastal Zone if its SEQR classification is Type 1 or Unlisted. In New York State, the Coastal Zone includes land areas adjacent to Lakes Erie and Ontario, the St. Lawrence, East, Harlem and Niagara Rivers, the Hudson River south of the Federal Dam in Troy, the Kill van Kull and Arthur Kill, Long Island Sound, the Atlantic Ocean, and the connecting water bodies, bays, harbors, shallows and marshes.

Source documentation for these determinations must be provided and can include a copy of the applicable Coastal Zone boundary map or correspondence with the local municipality.

Programmatic Checklist Language:

- If the program target area or buildings are not located in the coastal zone, compliance language might be:

“The project site or target area is not located within the coastal zone as documented in the attached.”

- If the program target area is located within the designated coastal zone, compliance language might be:

“Portions of the target area are located within the coastal zone and the LPA will comply with 19 NYCRR Part 600.”

Site-Specific Checklist Language:

- If the identified project site is not located in the coastal zone, compliance language might be:

“The project site is not located within the coastal zone as documented in the attached coastal zone boundary map.”

- If the identified project site is located in the coastal zone, compliance language might be:

“The project is located within the coastal zone but is not a Type I or Unlisted action.”

“The project is located within a coastal zone, and is classified as a Type I or Unlisted action, the LPA will comply with 19 NYCRR Part 600 and the HTFC will provide notification of the action to New York State Department of State prior to clearance.”

Accessing the Coastal Zone Boundary Map

1. Go to: <http://www.dos.ny.gov/opd/atlas>
2. Click on the Map in the center of the screen
3. Enter an address of the target area or project site and hit enter
4. Make sure the Coastal Boundary layer is “checked” in the Legend
5. Zoom in as necessary to show the target area or project site in relation to the nearest Coastal Boundary
6. Click Tool icon on the top right corner of the map
7. Select *Print Map*
8. If necessary, enable Pop-Ups on the browser by selecting ‘Always allow pop-ups’ from <http://opdgig.dos.ny.gov> and click *Done*
9. Click *Export*
10. Save

A Coastal Zone boundary can be determined by calling the local planning office or online mapping is available online, here:
<http://www.dos.ny.gov/opd/atlas>.

NOTE: In some cases, a Program could be within a Local Waterfront Revitalization Program (LWRP) area. Administrators must contact the municipal or county planning departments to determine if the program is within a LWRP boundary.

E. Site Contamination (Hazardous Materials)

Projects funded under Office of Community Renewal state funded programs must be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances which could affect the health and safety of occupants or users or conflict with the intended utilization of the property. Consideration must be given to the subject property and adjacent sites in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes. Examples of areas that contain, or may have contained, hazardous wastes include, but are not limited to: dry cleaning facilities, producers of plastics, producers of medicines, waste water treatment facilities, and chemical manufacturing plants.

Each site must be evaluated by an environmental professional to determine if the site is located on or near any hazardous materials or contamination. An environmental professional must provide a certification letter that specifically states:

“The project site is free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances which could affect the health and safety of occupants or users or conflict with the intended utilization of the property. I, [Name], certify that I am an environmental professional as per ASTM 1527.”

If an environmental professional cannot provide the above certification letter, further study must be completed as recommended and the LPA must certify that it will follow all recommendations and, with the guidance of the environmental professional, ensure the site meets this OCR policy:

“An evaluation identified potential hazards, [LPA Name] certifies that all recommendations provided by the environmental professional will be followed and, with the guidance of the environmental professional, ensure the site meets OCR policy.”

For projects receiving more than \$100,000 grant investment, LPAs must provide backup documentation (desktop review, transaction screen, Phase I ESA, etc.) in addition to the certification. Any further study must be completed as recommended. Documentation must be provided to confirm recommendations have been met prior to the release of grant funds.

Programmatic Checklist Language:

- If the program involves new construction, rehabilitation and/or streetscape initiatives, compliance language might be:

“Any building construction or renovation and/or streetscape activity within the program’s target area will be assessed to determine its environmental condition. If the condition of the property is unknown, or a possible environmental hazard is suspected, the LPA will proceed with the advice and guidance of an ‘environmental professional.’ If so advised, further study will be completed as recommended.”

Site-Specific Checklist Language:

- Minor, exterior-only projects such as exterior painting, sign or awning installation may be exempt from the Site Contamination evaluation requirement. A detailed

scope of work and cost estimate must be attached as source documentation. If the project involves minor exterior activities only, without interior building rehabilitation, ground disturbance, or new construction and has a total rehab cost of \$10,000 or less, compliance language might be:

“The project involves minor exterior activities only without new construction, interior building rehabilitation, or ground disturbance with a total cost of \$10,000 or less. A Site Contamination Evaluation will not be completed.”

- If the project involves \$100,000 and less grant investment and no environmental concerns have been identified, compliance language might be:

“An environmental professional has certified that the project site is free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances. Documentation is attached.”

- If the project involves \$100,000 and less grant investment, and potential hazards have been identified, compliance language might be:

“An evaluation identified potential hazards. All recommendations will be followed and, with the guidance of the environmental professional, ensure the site meets OCR policy as certified in the attached.”

- If the project involves more than \$100,000 grant investment and no environmental concerns have been identified, compliance language might be:

“An environmental professional has certified that the project site is free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances. The certification and back up documentation are attached.”

- If the project involves more than \$100,000 grant investment, and potential hazards were identified, compliance language might be:

“An evaluation identified potential hazards. All recommendations have been followed and the site meets OCR policy as documented in the attached.”

- Streetscape projects must be evaluated for site contamination when they involve ground disturbance. If the streetscape project does not involve ground disturbance, compliance language might be:

“The project involves [e.g. street light fixtures, banner installation, mural painting, etc.] only and will not include ground disturbance.”

The American Society for Testing and Materials Standard (ASTM) defines “environmental professional” as:

- A person who holds a Baccalaureate or higher degree in a relevant science or engineering field plus the equivalent of five years relevant work experience OR
- A person who holds a current engineer’s or professional geologist license or registration from a state, tribe or U.S. territory OR
- An official of the site locality’s Building Department with expertise in assessing environmental conditions OR
- A person who has the equivalent of ten years relevant work and field experience in performing environmental site assessments.

F. Lead-Based Paint

All activities in dwelling units or child occupied facilities that were constructed prior to 1978 must be evaluated for hazards posed by lead-based paint. Additionally, exterior renovations that include residential window repair or replacement, repair of exterior sills and lintels, or other improvements that may impact window openings into residential (or child-occupied facility) floors must also be evaluated for hazards posed by lead-based paint. Contractors performing renovation, repair and painting projects that may disturb lead-based paint must be EPA certified and follow specific work practices to prevent lead contamination.

The Office of Community Renewal state funded programs Lead-Based Paint Policy (Program Policy) covers the AHCT, BMSI, NYMS, RARP, UI and OCR managed DRI programs. The Program Policy includes specific procedures for Evaluation, Disclosure, Work Practices, Clearance, Record Keeping, and Ongoing Maintenance depending upon the renovation type or amount. This is outlined in the table below.

Covered Projects

This policy applies to **any pre-1978** structure that is rehabilitated with Program funds, regardless of its current or expected use.

If appropriate documentation is available, exempt projects that are **not** subject to any of the requirements in this policy include:

- Entire buildings or structures that were originally placed in service after 1/1/78.
- Buildings or structures that were originally placed in service prior to 1/1/78 but which have been professionally inspected and certified to contain no lead-based paint according to EPA standards. This does not include buildings that have only been determined by risk assessment to contain no lead hazards.
- Buildings with residential units restricted by financing, regulatory agreement or deed restriction exclusively for occupancy by the elderly.

Appropriate exemptions, with supporting documentation, must be submitted as part of the site-specific environmental review.

Definitions:

Child-occupied facility

A child-occupied facility means a building, or portion of a building containing a day care center, preschool, kindergarten classroom, or other use visited regularly by the same child under 6 years of age on at least two days within any week in which each day's visit lasts at least 3 hours and the combined annual visits last at least 60 hours.

EPA Renovation, Repair and Painting (RRP) Rule 40 CFR Part 745

EPA's Lead Renovation, Repair and Painting Rule (RRP Rule) requires that firms performing renovation, repair, and painting projects that disturb lead-based paint in homes, child care facilities and pre-schools built before 1978 have their firm certified by EPA (or an EPA authorized state), use certified renovators who are trained by EPA

approved training providers and follow lead-safe work practices. The Rule is located at 40 CFR Part 745, Subpart E, sections 745.80 – 745.92.

Pre-1978 building or structure

A building for which any portion of the building was originally placed in service prior to January 1, 1978.

Residential Unit Rehabilitation Cost

The “hard costs” of rehabilitation within a specific unit, excluding exterior window repair/replacement, lead hazard control costs and soft costs.

Risk Assessment

One (1) an on-site investigation by a certified risk assessor to determine the existence, nature, severity, and location of lead-based paint hazards, and (2) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

Programmatic Checklist Language:

- If the program involves exempt projects only, compliance language might be:

*“The program only involves buildings that were originally placed in service after 1/1/78 or which have been professionally inspected and certified to contain no lead-based paint according to EPA standards.”**

*Source documentation must be provided.

- If the program will involve any buildings constructed prior to 1978 where disturbance of paint may occur, compliance language might be:

“Any projects that will involve the disturbance of painted surfaces will be evaluated using the Program Policy for Lead-Based Paint.”

Site-Specific Checklist Language:

- If the project involves exterior renovations that will not impact residential window openings or interior commercial renovations only, compliance language might be:

“The project involves exterior renovations or interior commercial renovations only. Window openings into residential or child-occupied facility floors will not be impacted as part of the project scope of work.”

- If the project will involve exterior renovations that will impact residential window openings or interior residential renovations, compliance language might be:

“The project involves exterior renovations that impact window openings into residential floors. Testing will be conducted and if lead-containing painted surfaces will be disturbed, all work will be conducted in accordance with the Program Policy for Lead-Based Paint.”

“The project involves interior renovations, including residential unit(s), with \$5,000 and less per Unit Rehab Cost. Testing will be conducted and if lead-containing painted surfaces will be disturbed, all work will be conducted in accordance with the Program Policy for Lead-Based Paint.”

“The project involves interior renovations, including residential unit(s), with more than \$5,000 per Unit Rehab Cost. A lead-based paint risk assessment has been conducted by an EPA certified Risk Assessor and is attached. Identified lead-based paint hazards will be addressed and all work and disclosures will be conducted in accordance with the Program Policy for Lead-Based Paint.”

Lead-Based Paint Policy Table

Structure	Pre-1978 structures with a child-occupied facility or residential units	Pre-1978 structures with a child-occupied facility or residential units	Pre-1978 structures with a child-occupied facility or residential units
Workscope	Workscope: Exterior renovations that include residential window repair or replacement, repair of exterior sills and lintels.	Workscope: Interior renovations, including residential unit(s). < \$5,000 Unit Rehab Cost	Workscope: Interior renovations, including residential unit(s). > \$5,000 Unit Rehab Cost
Evaluation	<ul style="list-style-type: none"> • Test painted surfaces to be disturbed using EPA recognized test kits (40 CFR 745.88) or XRF Survey • <i>Documentation: Renovator records or reports certifying that a determination has been made whether or not lead-based paint was present on the components affected by the renovation per 745.86(b)(1)</i> 	<ul style="list-style-type: none"> • Test exterior & residential unit interior painted surfaces to be disturbed using EPA recognized test kits (40 CFR 745.88) or XRF Survey • <i>Documentation: Renovator records or reports certifying that a determination has been made whether or not lead-based paint was present on the components affected by the renovation per 745.86(b)(1)</i> 	<ul style="list-style-type: none"> • Test exterior painted surfaces to be disturbed using EPA recognized test kits (40 CFR 745.88) or XRF Survey • Conduct LBP risk assessment by EPA certified Risk Assessor of any residential unit with more than \$5,000 in-unit rehab cost (or child-occupied facility) & tenant means of egress per 745.227(d) • <i>Documentation: Renovator records or reports per 745.86(b)(1) and risk assessment report explaining the results of the investigation and options for reducing lead-based paint hazards.</i>
Disclosure to owner and/or occupants	<p><u>To owner:</u></p> <ul style="list-style-type: none"> • EPA Renovate Right pamphlet to owner • <i>Documentation: owner acknowledgement of receipt per 745.84(b)</i> 	<p><u>To owner:</u></p> <ul style="list-style-type: none"> • EPA Renovate Right pamphlet to owner • <i>Documentation: owner acknowledgement of receipt per 745.84(b)</i> <p><u>Owner to residential tenants:</u></p> <ul style="list-style-type: none"> • EPA Renovate Right pamphlet • HUD/EPA Protect Your Family from Lead pamphlet • HUD/EPA Lessor's Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards • <i>Documentation: owner certification of tenant disclosure</i> 	<p><u>To owner:</u></p> <ul style="list-style-type: none"> • EPA Renovate Right pamphlet • Disclosure of risk assessment results • Disclosure of clearance results • <i>Documentation: owner acknowledgement of receipt per 745.84(b)</i> <p><u>Owner to residential tenants:</u></p> <ul style="list-style-type: none"> • EPA Renovate Right pamphlet • HUD/EPA Protect Your Family from Lead pamphlet • HUD/EPA Lessor's Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards • <i>Documentation: owner certification of tenant disclosure</i>
<ul style="list-style-type: none"> • If the certified renovator has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5% by weight, document the test results and no further action concerning lead-based paint is required. • If lead-containing (equal to or in excess of 1.0 mg/cm² or 0.5% by weight) painted surfaces will be disturbed or if lead-based paint hazards were identified during a risk assessment the procedures subsequently outlined in this document must be followed. • When conducting renovation work that disturbs any painted surface of the building exterior beyond any residential window openings, it is strongly recommended to test the painted surfaces and if lead-containing paint is detected, to utilize an EPA certified contractor and implement EPA safe work practice standards found at 40 CFR 745.85(a). 			
Eligible contractors	<ul style="list-style-type: none"> • EPA certified renovation firm (current) • <i>Documentation: firm certification per 745.89 & Renovator training certification per 745.90</i> 		
Work practices	<ul style="list-style-type: none"> • EPA work standards at 40 CFR 745.85(a) • <i>Documentation: Contract reflecting LBP hazard controls & work requirements; Renovator certification per 745.86(b)(6) and completion documentation per 745.86(c)</i> 		
Occupant protections	<ul style="list-style-type: none"> • Residential units: contain work areas and post signs per 745.85(a) • <i>Documentation: Renovator certification per 745.86</i> 	<ul style="list-style-type: none"> • Residential units: contain work areas and post signs per 745.85(a) • <i>Documentation: Renovator certification per 745.86</i> 	<ul style="list-style-type: none"> • Residential units and egresses: contain work areas and post signs per 745.85(a) • Households with pregnant women or child under the age of 6: relocate during lead hazard control activities • Child-occupied facility: not in use during hazard control activities • <i>Documentation: evidence of temporary relocation</i>
Clearance	<ul style="list-style-type: none"> • EPA post-renovation verification methods (745.85(b)) • <i>Documentation: Renovator certification per 745.86</i> 	<ul style="list-style-type: none"> • Clearance testing per 24 CFR 35.1340 • <i>Documentation: clearance report</i> 	<ul style="list-style-type: none"> • Clearance testing per 24 CFR 35.1340 • <i>Documentation: clearance report</i>
Records of compliance	<p>Contractor: Records required by 745.86 must be maintained 3 years after completion of the renovation. Program administrator: Records of compliance 5 years after completion of the 5 year performance period (see compliance checklist)</p>		
Ongoing maintenance	<p>During the 5 year performance period, owner certifies to maintain the paint in all residential spaces using safe work practices</p>		

G. Asbestos Containing Materials

If asbestos-containing materials (ACM) will be disturbed as part of program activities, they must be handled and disposed of according to NYS Department of Labor requirements at 12 NYCRR Part 56. For projects involving demolition, 12 NYCRR Part 56-11.5 must also be specifically followed.

Exposure to asbestos fibers, a known carcinogenic agent, creates a serious risk to the public safety and health and that the public is more frequently exposed to these risks as a result of an increasing number of rehabilitation, reconstruction and demolition projects on buildings or structures containing asbestos or asbestos materials. The New York State Department of Labor's Asbestos regulations protect the public from exposure to asbestos fibers. This law requires that all work that disturbs ACM be done by trained workers following special procedures and engineering controls to prevent the spread of asbestos into the air and ensure ACM has been properly removed. The regulation protects people who live and work in buildings with asbestos and the workers who disturb the asbestos.

The NYS Department of Labor instructs that an asbestos survey must be completed by a certified Asbestos Inspector whenever all or part of a building or structure will be demolished, renovated, remodeled or repaired. The survey will determine if the planned work will disturb asbestos material.

Compliance language might be:

“Asbestos Containing Materials (ACM) that will be disturbed as part of program activities will be handled and disposed of according to NYS Department of Labor requirements at 12 NYCRR Part 56 and local regulations.”

OR

“An Asbestos survey was conducted and it was determined that ACM will not be disturbed as documented in the attached.”

OR

“Asbestos Abatement has been completed and the report is included.”

NYS Department of Labor 12 NYCRR Part 56, *Asbestos*, is available online, here: <http://www.labor.state.ny.us/formsdocs/wp/CR56.pdf>

Also see: *Asbestos in New York State Facts and Responsibilities*
<https://www.labor.ny.gov/formsdocs/wp/p224.pdf>

H. Radon

Project sites or target areas located in Zones 1 and 2 (moderate to high) of the EPA Map of Radon Zones, where new construction or rehabilitation of residential units or residential common areas will occur, must be tested for radon. If elevated levels are encountered, a radon mitigation system must be installed in accordance with EPA *Radon Mitigation Standards*.

Radon gas is regarded as a Group A carcinogen. The United States Environmental Protection Agency (EPA) has set an action level of 4.0 picocuries per liter (pCi/L). An elevated radon level occurs if the results of one long-term test or the average of two short-term tests show radon levels of 4pCi/L or higher. Any radon exposure has some risk. If the level is between 2 and 4 pCi/L, the EPA still recommends corrective measures to reduce exposure to radon gas.

Radon typically moves up through the ground to the air above and into a building through cracks and other holes in the foundation. The building traps radon inside, where it can build up. Any building may have a radon problem. This means new and old buildings, well-sealed and drafty buildings, and buildings with or without basements.

Radon testing instructions dictate that testing should be conducted in the lowest livable floor of a building that is used on a regular basis. If the basement is not used on a regular basis, or the building does not have a basement, testing should be conducted in the next lowest livable floor. A post-construction radon test is required. Testing must be conducted for all projects assisting residential units or residential common areas including projects in mixed-use buildings, solely residential buildings, and buildings with or without basements.

Radon testing must be conducted post-renovation. This is especially important if a project involves energy improvements that tighten the building envelope. For larger capital projects, it may be more cost effective to conduct radon testing prior to renovation, and if the results exceed allowable limits, a radon mitigation system may be installed as part of the renovation project.

- If the target area or project site is located in areas with a low radon level, compliance language might be:

“The target area or project site is located in a zone with low potential for radon according to the EPA Map of Radon Zones. Radon testing is not required.”

In this case, source documentation must be provided and include a copy of an EPA Map of Radon Zones that contains the project site or target area.

- If the program or project does not include construction or rehabilitation of residential units, compliance language might be:

“The project does not include construction or rehabilitation of residential units or common areas.”

- If the Program target area is located in an area of moderate to high radon level, compliance language might be:

“The target area is located in a zone with moderate or high potential for radon levels to exceed the U.S. EPA action level (4pCi/L or higher). New construction or rehabilitation of residential units and common areas will include post-renovation testing and if elevated levels are found, a radon mitigation system will be installed in accordance with EPA Radon Mitigation Standards.”

- If the project site is located in an area of moderate to high radon level, compliance language might be:

“The project includes assistance to residential units located in an area with high or moderate potential for radon levels to exceed the U.S. EPA action level (4pCi/L or higher). Radon testing will be conducted post-renovation and, if elevated levels are found, a radon mitigation system will be installed in accordance with EPA Radon Mitigation Standards. Documentation of test results or installation of a mitigation system will be provided at project completion.

The EPA Map of Radon Zones can be accessed online, here:

<http://www2.epa.gov/radon/find-information-about-local-radon-zones-and-radon-programs>

I. Wetlands

Funded projects that involve new construction or ground disturbance (including streetscape and site work) may be subject to NYS Department of Environmental Conservation (DEC) and/or U.S. Army Corps of Engineering (ACOE) wetland regulations. Sites in urban, built-up areas do not require a wetlands investigation. For projects with sites outside of urban, built-up areas, with ground-disturbing work, even on previously disturbed land, both the DEC and US Fish and Wildlife Maps of jurisdictional wetlands must be consulted. In addition to consultation of wetlands maps, if the Sponsor or HTFC suspects the potential presence of wetlands in the areas to be disturbed, a formal jurisdictional review or qualified biologist delineation may be required to confirm whether wetlands will be disturbed.

Under New York State regulations, a permit must be obtained from DEC prior to conducting regulated activities in or within 100 feet of state-protected freshwater wetland areas mapped by the agency. Regulated activities are described in DEC permit regulations at 6 NYCRR Part 663. Within the boundaries of the Adirondack Park, state wetland regulations are administered by the Adirondack Park Agency (APA).

Additionally, Section 404 of the Clean Water Act provides for jurisdiction by ACOE over “waters of the United States,” including most wetland areas, even those that may not be mapped by FWS or DEC. Activities disturbing these areas may be subject to ACOE permitting requirements

If the project involves new construction or ground disturbance, source documentation must be provided. Documentation includes a map of state-protected wetlands that contains the project site or target area or correspondence with the DEC. A more comprehensive review may be needed for larger projects involving ground disturbance, the LPA will be contacted if that is the determination.

- If the program does not involve new construction, ground disturbance or is entirely within an urban, built-up area, compliance language might be:
“The program/project does not involve new construction, ground disturbance or is entirely within an urban, built-up area.”
- If the program or project involves new construction or ground disturbance and is not in a built-up area, compliance language might be:
“The program/project involves new construction or ground disturbance and is not in a built-up area and prior to the start of project work, a wetlands determination will be made and, if necessary, a permit will be obtained from the DEC or ACOE prior to construction.”

Maps of state-protected wetlands are available at DEC regional offices (www.dec.ny.gov/about/558.html), or online at: www.dec.ny.gov/gis/erm/

J. Endangered Species

Funded projects that involve new construction or ground disturbance (including streetscape and site work) may be subject to endangered and threatened species regulations. Projects at infill sites in built up urban areas, and rehabilitation projects with no associated site disturbance are assumed to have no adverse impact on threatened or endangered species, but still must be checked on the NYSDEC Environmental Resource Mapper (link below). If the site doesn't fall into an area of "rare plants and rare animals," "significant natural communities," or "natural communities vicinity," no further review is required. If the site does fall into one of these areas, the Regional DEC Wildlife Office must be contacted. The response from DEC must be referenced in the checklist.

For proposed projects that include ground disturbance in unpaved areas or tree cutting, the LPA must: (1) consult with the NY Natural Heritage Program to determine if the project area is known to contain state listed rare, threatened or endangered species, or associated critical habitat. The Natural Heritage Program response letters must be kept in the LPA's environmental review file; and (2) follow the directions provided on the US Fish and Wildlife Service's (FWS) website and provide the resulting documentation demonstrating whether any federally-listed rare, threatened or endangered species or habitat exist on the site.

- If the program is in a built up urban area or does not involve new construction or ground disturbance, provide the NYSDEC Environmental Resource Map as source documentation. Compliance language might be:
"The program/project is in a built up urban area or does not involve new construction or ground disturbance. The NYSDEC Environmental Resource Map is attached."
- If the program does involve new construction or ground disturbance in unpaved areas or tree cutting, compliance language might be:
"The program/project involves new construction, ground disturbance, or tree cutting. A request for determination will be submitted to the DEC and the documentation of compliance with FWS instructions will be obtained and submitted prior to construction."

In this case, copies of Environmental Resource maps, correspondence with the DEC and the documentation created pursuant to the FWS search should be included as source documentation. A more comprehensive review may be needed for larger projects involving ground disturbance.

The DEC Regional Office Directory can be accessed online, here:
www.dec.ny.gov/about/558.html.

The USFWS planning and mapping tool is found online, here:
<http://ecos.fws.gov/ipac/>

NOTE: The Environmental Resource Mapper (www.dec.ny.gov/gis/erm/) is an interactive mapping application that can be used to identify some of New York State's natural resources and environmental features that are state protected, or of conservation concern.

Instructions for creating an Environmental Resource Map

1. Click on the *Search* tab
2. Enter the address of the project site or an address of the target area and click the search icon
3. Click on *Layers & Legend* tab
4. Check the box for *All Layers*
5. Zoom in or out as necessary
6. Click on the Tools tab and then the Print icon
7. In *Printout Template* select PDF then click on *Print Map*
8. Save

K. Agricultural Districts

New York State Agriculture and Markets Law requires site review if the project is conversion of farmland to nonagricultural use in a state Agricultural District certified pursuant to Agriculture and Markets Law, Article 25-AA, sections 303 and 304. This review consists of an Agricultural Impact Statement and a Notice of Intent submitted to the NYS Department of Agriculture and Markets (NYSDAM) for review and consideration.

Additionally, any project requiring a special use permit, site plan, subdivision approval or use variance, which requires approval by a planning, zoning, town or village board must submit an Agricultural Data Statement (ADS) if the proposed project occurs on property within an agricultural district containing a farm operation or on property with boundaries within 500 feet of a farm operation located within an agricultural district. The clerk of the appropriate governmental entity is required to complete and submit the ADS.

- If the program/project is not located in an agricultural district and does not involve activities with potential to convert farmland to nonagricultural use or an ADS, compliance language might be:

“The program is not located in an agricultural district, does not involve any activities with potential to convert farmland to nonagricultural use and does not require an Agricultural Data Statement.”

- If the program includes new construction or site disturbance, and is located in a state Agricultural District or requires an ADS, compliance language might be:

“If the site is within a New York State Agricultural District [OCR or EAU] will be contacted to begin the consultation process with the New York State Department of Agriculture and Markets. If the site is within 500 feet of an active farm operation and the project requires a local approval an Agricultural Data Statement will be obtained as part of the local approval process.”

In this case, copies of Agricultural District maps, a complete site plan of the work to occur, a copy of the ADS and a complete project description should be included as source documentation for site specific reviews.

Local Agricultural District contact information and County Agricultural District Map Data can be accessed online, here:
www.agriculture.ny.gov/AP/agsservices/agricultural-districts.html