



CQ370

Radon Professionals
Saving Lives

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August 20, 2002

Rule Docket Clerk
Office of General Counsel
Room 10276
Department of Housing and Urban Development
451 Seventh Street SW.
Washington, DC 20410-0500

RE: Docket No. FR-4523-P-01 Environmental Review Procedures for Entities Assuring HUD's Environmental Responsibilities
Comments for Proposed Rule Revisions to 24 CFR 50

Dear Sir or Madam:

The American Association of Radon Scientists and Technologists, Inc., is writing to request that the Department of Housing and Urban Development amend the proposed regulations set forth by 24CFR50 by including radon in the environmental review and abatement procedures and protocols of your agency.

To be more specific, Sec.50.3(i)1 (Code of Federal Regulations) "*Environmental Policy*" states, "*It is HUD policy that 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.*" Sec.50.1d states, "*These regulations apply to all HUD policy actions and to all project actions*".

The USEPA recommends ALL homebuyers test for indoor radon gas because radon is a Class "A" carcinogen estimated to cause over 15,000 lung cancer deaths in the U.S. annually. The Harvard Center for Risk Analysis ranks the radioactive gas as the Number One potential home hazard. Even at EPA's radon Action Level of 4 pCi/l, a recent Iowa Radon Lung Cancer Study found a 50% increased risk of lung cancer.

The American Association of Radon Scientists and Technologists, Inc., has for over a decade sponsored an annual International Radon Symposium and for over 13 years has amassed scientific and technical data from leading scientists from throughout the world that clearly demonstrates that radon is a serious radioactive health threat to our nation's population. Unfortunately, this form of radioactivity has shown no regard to economic or social status. Fortunately, indoor

AARST Comments for Proposed Rule Revisions to 24 CFR 50

radon has proven to be easily and inexpensively remediated. The preferred solution can also reduce and prevent the intrusion of other harmful contaminants like mold, mildew, pesticides, methane and volatile organic compounds in addition to radon.

The 1988 Act by Congress set the requirement meant to be adopted by all government agencies and the USEPA has followed through on implementing this act. We request that the rules and regulations of HUD reflect the fact that radon is a known health risk, is a known carcinogen, is radioactive and, as such, requires testing and remediation for all potential homeowners under the environmental review requirements of HUD.

Since the Secretary of HUD is the mission regulator for the GSEs that were chartered by Congress to create a secondary market for residential mortgage loans, your enforcement of the rules above should require a radon test (and remediation if deemed necessary) in order to qualify for a VA, FHA, or Fannie Mae or Freddie Mac mortgage. The GSEs are the largest source of housing finance in the country, and industry experts agree that once HUD complies with the regulations, the majority of primary market mortgage originators will follow suit. Considering the home sale turnover rate, in less than 20 years, almost every home will have been tested for radon and fixed if needed. The very minor cost of testing or possible remediation could easily be rolled into the loan amount with negligible impact on the mortgage payments.

In addition to the 1988 Radon Abatement Act, HUD and the HUD Secretary need to modify this proposed rule to come into compliance with the following:

The National Environmental Policy Act (NEPA)

Title I Sec. 101b2 states, *"In order to carry out the policy set forth in this ACT, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings."*

Furthermore, **NEPA** Section 104 states, *"Nothing in Section 102 shall in any way affect the specific statutory obligations of any Federal agency ..."*

- (1) To comply with criteria or standards of environmental quality,*
- (2) To coordinate or consult with any other Federal or State Agency, or*
- (3) To act, or refrain from acting contingent upon the recommendations or certifications of any other Federal or State agency."*

AARST Comments for Proposed Rule Revisions to 24 CFR 50

Section 204 42USC 4344 of the NEPA also states,

“It shall be the duty and function of the Council on Environmental Quality (4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation.”

Comment: As proposed, (24CFR50.3(i)1 seems to be a regulation that through its promulgation and implementation by HUD and Entities Assuming HUD Responsibilities fails to comply with the above stated requirement. Is HUD (and therefore the Council) failing to carry out their assigned duties and functions by allowing HUD to ignore 24CFR50.3(i)1 with respect to a legislated goal of the Nation?

Title 15, Chapter53, Subchapter III, Section 2661 states, “ *The **national long-term goal** of the United States with respect to radon levels in buildings is that the air within buildings in the United States should be as free of radon as the ambient air outside of buildings.*” Section 2661 goes on to say, “*The Secretary [of HUD] shall utilize any guideline, information, or standards established by the Environmental Protection Agency for testing residential and nonresidential radon, identifying elevated radon levels, identifying when remedial actions should be taken.*”

Executive Order 11514 Protection and Enhancement of Environmental Quality Section 1 states, “*Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals*”. (Again, the 1988 Indoor Radon Abatement Act states the national goal with respect to radon levels is that the air within buildings should be as free of radon as the ambient air outside buildings.) Section 2a & d state, “*Heads of agencies shall (a) consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment and (d) review their agencies’ statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the provisions of the Act (NEPA)*”

The HUD Secretary seems to be in violation of Executive Order 11514 by failing to direct HUD policies, plans and programs so as to meet the national environmental goal mandated in the 1988 Indoor Radon Abatement Act.

Executive Order 11514 Section 3 assigns the Council on Environmental Quality the responsibility of coordinating Federal programs related to environmental quality and to enforce Federal standards affecting environmental quality.

AARST Comments for Proposed Rule Revisions to 24 CFR 50

Comment: Is the Council of Environmental Quality negligent in their failure to hold HUD accountable for compliance with 24CFR50.3(i)1, as well as their failure to require HUD's radon policy to be in coordination with EPA's recommendations? Is HUD in concert with the policies and programs within other governmental agencies, such as GSA and DOD, that require all government workplaces and military residences to be tested and mitigated if above EPA's Action Level? We note that HUD's radon policy is not even coordinated and consistent within HUD, since radon tests are required for projects and loans for multifamily housing of 5 or more residences, but not for single family or multifamily housing of less than 5 residences.

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations Section 1-101 states, "*Each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations...*" Section 1-103 states each agency's environmental justice strategy "*shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations and (2) ensure greater public participation.*"

The Center for Disease Control recently completed a study concluding that people in minority groups or with low levels of income or education were significantly less likely to have heard of residential radon and its potential health risks than were whites or people with higher levels of income or education.

Comment: HUD appears to be in violation of Executive Order 12898 by failing to uniformly enforce 24CFR50.3(i)1 for all property (not just multifamily of 5 or more residences) proposed for use in HUD programs including compliance requirements for all government subsidized mortgages

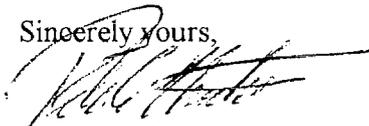
Given the above stated discrepancies that the current proposed HUD regulation has in relation to various Acts of Congress, as well as conflicts with other existing HUD regulations and conflicts with enforceable Executive Orders, the American Association of Radon Scientists and Technologists, Inc., in conjunction with the American Radon Policy Coalition, requests that the United States Department of Housing and Urban Development recognize and include radon as an environment risk for all of its environmental review programs, healthy home programs and environmental mitigation requirements under its *Revisions to 24 CFR 50*.

AARST, and the American Radon Policy Coalition, believe that HUD is required to consider and implement this recommendation as a means

AARST Comments for Proposed Rule Revisions to 24 CFR 50

of coming into compliance with the nation's environmental policies and goals.

Sincerely yours,



Peter Hendrick
Executive Director, AARST
Coordinator, American Radon Policy Coalition

cc: Christie Whitman, USEPA Administrator
S. Paige, Director, USEPA, Air and Radiation
Mary T. Smith, Director, USEPA, Indoor Air & Environment
Council on Environmental Quality
AARST Board
American Radon Policy Coalition
D. Jones, ARPC
D. Manning, NEHA - NRPP
R. Paterkiewicz, American Society of Home Inspectors
American Lung Association
American Cancer Society

CQ370



Rhey_Solomon@ceq.e

To: davidchevalier@fs.fed.us

op.gov

cc:

09/16/02 09:20 AM

Subject: Re: Radon Comments on HUD CFR

dave -- see document below -- you should add this to the comment letters -- it came to Anne Miller the Task Force Deputy director -- it was not submitted to CEQ or the task force directly, but sent to anne in her role with the task force

-- it really doesn't respond to task force issues directly, but they do make recommendations of what CEQ should do in its own right of NEPA implementation

Thanks, Rhey

----- Forwarded on 09/16/2002 11:12 AM

(Embedded image moved to file: Miller.Anne@epamail. 09/16/2002 08:41:25 pic26644.pcx)

"Do Not Scan these pages."

Record Type: Record

To: Horst Greczmiel/CEQ/EOP@EOP, Rh.

cc: Montgomery.Joseph@epamail.epa.gov

...@epamail.epa.gov

Subject: Re: Radon Comments on HUD CFR

I'm forwarding these comments since they have been submitted to me per my role on the NEPA Task Force. Rhey, can you do whatever you need to do to get them into the public record? HG, you may also want to look at them, since they discuss action that they believe CEQ should take.

Anne

----- Forwarded by Anne Miller/DC/USEPA/US on 09/16/02 08:37 AM -----

Peter Hendrick
<peterhendrick@earthlink.net>

To: Anne

Miller/DC/USEPA/US@EPA

cc: djones@radalink.com,

Dave Hill

<dhill@usradonsystems.com>,

Dick Manning

09/13/02 08:00 PM

<FemtoTch@aol.com>, "Carolyn

K. Allen"

Please respond to Peter Hendrick

<carolyn@spruce.com>

Subject: Re: Radon Comments

on HUD CFR

CQ370

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>
>
> Anne,
>
> For your information, the attached document contains comments
submitted
> to HUD by AARST and the American Radon Policy Coalition regarding
HUD's
> CFR relating to environmental reviews.
>
> I am sending it to you in relation to your liasion status with NEPA.
>
> Sincerely,
>
> Peter Hendrick
> Executive Director, AARST
>
>
>
(See attached file: HUD_Comment_24CFR_50.pdf)



HUD_Comment_24CFR_50.pdf



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