

## **Alternative Enforcement Program – Year 15 Report to the City Council**

The Department of Housing Preservation and Development's (HPD) Alternative Enforcement Program (AEP), established under Local Law 29 of 2007 and amended in 2011 and 2014, continues to be an effective enforcement tool for addressing distressed residential properties throughout New York City.

During calendar year 2020 and 2021 (Rounds 13 and 14), AEP activity was limited by COVID-19 and all data reflects the impact of COVID-19 on owners, tenants and work completed by HPD during the period covered by this report.

The Alternative Enforcement program selects buildings once a year based on pre-defined thresholds for open HPD violations per dwelling unit and Emergency Repair Program charges (ERP).

- Property owners of buildings selected for the program have four months after a building is selected to meet requirements for discharge, which include:
  - correcting HPD violations,
  - paying outstanding ERP charges or entering into a payment agreement with the Department of Finance (DOF),
  - registering the property with HPD, and
  - submitting affidavits regarding the proper correction of mold and vermin violations to HPD.
  
- If the property owner does not meet these requirements within this period, AEP conducts building-wide inspections, imposes fees and issues an Order to Correct (Order). The Order may include requirements for extensive repair and system replacement work to correct violations, in addition to the repair of general conditions and a requirement to conduct integrated pest management according to Department of Health and Mental Hygiene (DOHMH) requirements.
  
- HPD has specific authority to replace building systems cited on the Order if the property owner fails to do so. Expenditures for emergency repair work or building system replacement are charged to the building through the DOF property tax bill and, if unpaid, become a tax lien.

As required by Administrative Code 27-2153(v), this report analyzes:

- I. The effectiveness of the criteria for inclusion;
- II. The effectiveness of the criteria for discharge, compliance levels for buildings, and the monitoring undertaken by the Department;
- III. The implementation and effectiveness of the requirements to address mold and vermin violations; and
- IV. The cost effectiveness of the program, including the amount of fees collected.

## **SUMMARY DATA**

As of January 31, 2022,

### **Buildings Selected:**

- 3,137 buildings with 45,365 units have each gone through at least 12 months of AEP<sup>1</sup>.

### **Buildings Discharged**

- 2,632 buildings with 38,535 units had been discharged from AEP.
  - 2,272 buildings were discharged for compliance with the requirements of the program. Of those 2,272 buildings:
    - 1,250 buildings were discharged after meeting the requirements of AEP within the initial first four months.
    - 1,022 buildings were discharged after complying with the AEP Order and paying fees.
  - 360 buildings were discharged for other reasons:
    - 236 buildings were discharged after they were vacant for at least one year.
    - 46 buildings were discharged to HPD's 7A Program, which provides interim management for distressed buildings.
    - 42 buildings were discharged because HPD completed the building system work.
    - 36 buildings were discharged for other reasons

### **Building Systems Repaired**

- 2,606 building systems in 1,041 buildings were replaced. Of those 2,606 building systems:
  - 1,784 system replacements were completed in 615 buildings by property owners.
  - 828 system replacements were completed in 432 buildings by HPD.

### **Funds Spent and Collected**

- HPD has spent over \$56.2 million on repairs, utilities, and system replacement work, which has been billed to the properties through DOF. Of that \$56.2 million:
  - \$39.8 million was spent providing utilities and conducting repairs.
  - \$16.4 million was spent completing building system repairs/services.
- Approximately \$107 million has been collected in ERP and AEP charges and fees.

## **I. THE EFFECTIVENESS OF CRITERIA FOR BUILDING SELECTION**

The selection for AEP is a multi-step process that focuses on buildings meeting a set of criteria related to open violations per dwelling unit and emergency repair activity. The selection criteria have been modified multiple times since the original statutory criteria were set; however, the selection criteria for rounds 9, 10, 11, 12, 13 and 14 have been consistent and are as follows:

### ***Criteria I:***

For buildings that have 15 units or more:

- A ratio of 3 or more open class “B” & “C” violations per dwelling unit issued in the past 5 years, AND
- A total of \$2,500 or more in paid or unpaid ERP charges incurred in the past 5 years

For buildings that have between three and 15 units:

- A ratio of 5 or more open class “B” & “C” violations per dwelling unit in the past 5 years, AND
- A total of \$5,000 or more in paid or unpaid ERP charges incurred in the past 5 years

Buildings that meet the above qualifications are then sorted by the amount of ERP charges billed within the past 5 years.

Notwithstanding the above criteria, no more than 25 buildings that have fewer than 6 units can be selected for AEP.

If fewer than 250 buildings meet Criteria I, HPD must select the remaining number using a second set of criteria.

**Criteria II:**

For buildings with 6 units or more:

- A ratio of 4 or more open class “B” & “C” violations per dwelling unit issued in the past 5 years.

**CHART 1: BUILDINGS SELECTED ROUNDS 8-14**

	Round 8	Round 9	Round 10	Round 11	Round 12	Round 13	Round 14
Total buildings	250	250	250	250	250	250	250
Total units	3,473	3,704	3,963	3,970	4,600	5,401	4,684
Avg number of units per building	14	15	16	16	18	22	19
Total B & C Violations	25,188	25,686	26,034	26,301	29,120	32,109	32,858
Total B & C Violations- Look-back Period	20,332	21,715	22,308	22,446	25,458	29,450	29,349
Average B & C Violations per Unit- Look-back Period	5.9	5.9	5.6	5.7	5.5	5.5	6.3
Bldgs with Open HPD Comprehensive Litigation	60	76	78	81	57	48	38
Past Due ERP Balance- Look- back Period (Millions)	\$ 1.51	\$ 0.74	\$ 0.89	\$ 1.52	\$ 0.92	\$ 1.16	\$ 2.11

Data for buildings selected in Rounds 1 through 7 can be found in Appendix A.

As indicated in Chart 1, AEP continues to be effective in selecting buildings with a high number of B and C class violations and high past-due ERP balances during the look-back period. Previous changes to the program selection criteria have significantly increased the number of apartments benefitting from the AEP program: the total number of units added to AEP in Round 14 is more than 300% the number of units in Round 1 because of both the increase in the number of buildings in the program and the changes to limit the number of smaller properties selected.

## **II. THE EFFECTIVENESS OF CRITERIA FOR BUILDING DISCHARGE, COMPLIANCE LEVELS FOR DISCHARGED BUILDINGS AND MONITORING**

### **Discharged Buildings**

The criteria for discharge of occupied buildings should ensure that, per the goal of AEP, conditions for tenants are significantly improved or that the building is placed in a more appropriate enforcement program to ensure that conditions will improve. An important secondary goal of AEP is to ensure that the property owner can be reached by HPD regarding future complaints and violations, so that the owner no longer utilizes HPD's ERP. Data supports the determination that the criteria for discharge appropriately allows for the discharge of buildings that have taken steps to improve conditions at the buildings. The overwhelming majority of buildings discharged remain in good condition; only approximately 15% of buildings are selected for multiple rounds of AEP.

There are two distinct discharge periods. In the first period, property owners have four months to address conditions and get a building discharged before penalties are imposed. During this four-month period ("initial period"), buildings can be discharged based on owner compliance with violation correction, emergency repair charge payments, and property registration. After this initial period, buildings become subject to an AEP Order to Correct ("AEP Order"), periodic inspections, and inspection fees. There are multiple reasons for discharge during the AEP Order period.

### **Discharge during the initial four-month period**

The current criteria for discharge within this period are as follows:

- Correct, using safe work practices:
  - All heat and hot water violations.
  - All class "C" mold violations and at least 80% of class "B" mold violations.
  - At least 80% of pest violations.
  - At least 80% of all other class "B" and "C" violations.
- Pay all outstanding fees and charges, including liens, complaint inspections, and work performed by HPD, or enter into an agreement with DOF to pay such charges.
- Submit a current, valid property registration statement.

HPD must monitor buildings for one-year post-discharge if the discharge occurs during the initial four-month period. HPD's Division of Neighborhood Preservation (DNP) conducts this monitoring. DNP's monitoring includes data reviews of new complaints, violations, and ERP

charges, as well as physical building surveys if the data points to deteriorating conditions. If DNP identifies concerns, they conduct owner outreach and/or owner-tenant mediation and can make referrals to HPD's Division of Code Enforcement (DCE) for the issuance of appropriate violations. If a building owner is non-responsive to these methods and the building continues to show signs of decline, DNP may recommend additional enforcement such as referral to HPD's Housing Litigation Division (HLD) for comprehensive litigation. As detailed in the last report, buildings remain in good condition within the one-year period, though DNP may monitor buildings beyond the one-year period. In some cases, DNP monitoring and referrals for inspections have led not only to litigation, but to buildings returning to AEP for additional enforcement because of the number of new violations issued by the DCE.

### **Discharge after an AEP Order is issued**

Once the initial period passes, buildings that remain in AEP become subject to roof-to-cellar inspections which result in the issuance of an AEP Order and inspection fees. If HPD determines that there are systemic issues causing violations in a building, the AEP Order will reflect which system needs to be replaced.

The current criteria for discharge after the initial four-month period are as follows:

- The owner has complied with the Orders to Correct ("Compliance").
- The building has been discharged to a 7A Administrator.
- The building has been vacant for one year or more, provided, however that if the building has six or more units, it cannot be discharged if it is vacant as the result of issuance of a city vacate order.
- HPD has completed the work required in the Order to Correct.
- The building became subject to an in-rem foreclosure in favor of the City and was transferred to a third party (Third Party Transfer).
- Data used to select the building was incorrect ("administrative discharge").

### **Discharge for owner compliance**

Of the buildings issued an Order, 1,022 buildings have been discharged because the property met the criteria for compliance. Of those, 640 buildings had AEP Orders which required system replacement work (2,826 systems) and 311 did not require the replacement of any systems. Among the buildings discharged for compliance, HPD may perform some of the system work and may perform emergency repairs when property owners fail to do so.

### **Discharge for vacancy**

Buildings that are vacant before entering AEP or that become vacant during AEP can be discharged if the buildings remain vacant for more than a year. Of the 236 vacant buildings discharged, 208 (88%) buildings are 3–5-unit buildings.

### **Discharge based on the appointment of a 7A Program Administrator**

AEP may determine that a building does not have the appropriate responsible ownership to address conditions. In such cases, HPD may initiate or support actions in Housing Court for the appointment of a 7A Administrator. Through the 7A Program, administrators are appointed by

the Court (pursuant to New York State Law) to operate privately owned buildings that have conditions that are dangerous to the tenants' life, health, and safety. The Administrators act under court order to collect rents and use the money to provide essential services to the tenants and make necessary repairs. The building may be eligible for 7A Financial Assistance funding if the system work was not already completed by AEP.

The average building size of the AEP buildings discharged to a 7A Administrator has been 9 units (the buildings ranged in size from 4 to 36 units). As of January 31, 2022, 46 buildings were discharged because a 7A Administrator had been appointed. This process has seen success in restoring buildings to habitable condition. Of the 46 buildings, 31 have been discharged from 7A as well. HPD will continue to explore the use of 7A as one means for addressing buildings that remain in AEP for multiple years. However, buildings without systemic issues and buildings with few tenants are not good candidates for 7A, since the building must sustain itself with the income of the rent roll and many AEP buildings have a very small rent roll.

#### *Discharge due to work completed by HPD*

If HPD completes all the system replacement work and meets substantial compliance, HPD may discharge the building once work is completed by HPD. 42 buildings were discharged due to work completed by HPD. 35 of the 42 buildings required system replacement work that was completed by AEP. These 35 buildings are small buildings (average of 4 units).

#### **Active Buildings**

As of January 31, 2022, AEP was monitoring 505 buildings that were active in the program prior to the selection of Round 15 buildings. AEP repair work or system replacement work may still be in progress.

**CHART 2: BUILDINGS DISCHARGED, ACTIVE AND IN MULTIPLE ROUNDS**

Round	Buildings discharged within the first four months	Buildings discharged after the first four months					Buildings active as of 1/31/2022	Buildings selected again in a subsequent round
		Owner Compliance	Vacant	7A Administrator	HPD Work Completed	Other		
RD 1	28	111	37	9	10	3	2	30
RD 2	42	98	30	8	8	4	10	21
RD 3	52	100	31	4	3	3	7	20
RD 4	98	59	21	5	8	2	7	33
RD 5	71	71	23	2	10	2	21	36
RD 6	64	86	19	4	2	3	22	29
RD 7	82	60	16	0	1	1	27	30
RD 8	107	80	20	3	0	3	37	43
RD 9	126	74	10	4	0	4	32	36
RD 10	138	56	12	1	0	0	43	54
RD 11	138	51	10	3	0	3	45	33
RD 12	156	33	5	0	0	0	56	29
RD 13	37	135	2	2	0	1	73	2
RD 14	111	8	0	1	0	7	123	0
Totals	1250	1022	236	46	42	36	505	396

Of the 47 buildings active from rounds 1-5, only 5 buildings have more than 20 units.

### **III. MOLD AND VERMIN**

Local Law No. 7 of 2011 added a “Healthy Homes” component to AEP, specifically identifying work practices related to the correction of mold and vermin violations and imposing work practices, and affidavits about requirements related to the percentage of violations that require correction prior to discharge. Almost all buildings that are selected for AEP have open mold or pest violations. With the passage of Local Law 55 in 2018, the work practices that first applied only to AEP buildings and the affidavits required from property owners to certify the correction of those conditions now apply to all buildings citywide.

In addition, properties that fail to be discharged from AEP during the initial four-month period are assessed for whether there is a vermin infestation. The criteria for a building being considered vermin infested is that more than one-third of the units have vermin violations. In buildings with an infestation, the property owner is ordered to submit an Integrated Pest Management (IPM) plan and conduct the activities outlined on the plan. The IPM plan captures information about how repairs and continued maintenance will address the vermin in a holistic way which minimizes the use of pesticides. The need for IPM is added as a system replacement to the AEP Order.

Once an IPM plan is submitted to AEP by the owner, it is reviewed for accuracy and then submitted to the Department of Health and Mental Hygiene (DOHMH) for final review and approval. For every plan that is submitted unsuccessfully, conference calls or meetings are attempted between the owner, pest management professional (PMP) and HPD to try to have the plan successfully submitted. Based on the issues with the submission of the plans, DOHMH has provided a “tool kit” for building owners, PMP’s, managers and staff which helps in the understanding and implementation of IPM. Once an IPM plan is approved and the owner indicates that treatment has been completed, AEP staff conducts field inspections to confirm that the proper work has been done and that there is evidence of remediation.

#### **IV. COST EFFECTIVENESS**

This section presents information on the cost of the AEP program (personnel costs and Repair/Utility/System Replacement costs), fees and recoupments. The cost effectiveness of the program is not just a straight dollars and cents comparison. AEP was expected to deter future building deterioration and encourage ongoing building owner compliance and projected savings associated with these preventative strategies are difficult to calculate. It is also not possible to calculate the deterrent effect on other properties who addressed conditions to avoid participation in AEP. Most importantly, it is impossible to calculate the benefits to tenants whose physical and mental health improved along with the conditions in their homes.

##### **Personnel**

In Fiscal Year 2020, AEP had 43 staff, including Housing Inspectors, technical staff, community coordinators and administrative staff, at a cost of approximately \$2.9 million per year (approximately \$4.5 million when counting fringe benefits). Housing Inspectors issue violations and conduct reinspections of corrected conditions. Technical staff issue orders for system repair; issue work orders for repair and system replacements to be completed through agency-hired contractors; and monitor the work of both agency contractors and property owners. Community coordinators are the contact points for property owners and occupants of AEP buildings. Community coordinators ensure that outreach to property owners is a constant process, guiding property owners through compliance requirements. Community coordinators also work to keep all parties informed about upcoming work and process buildings for discharge.

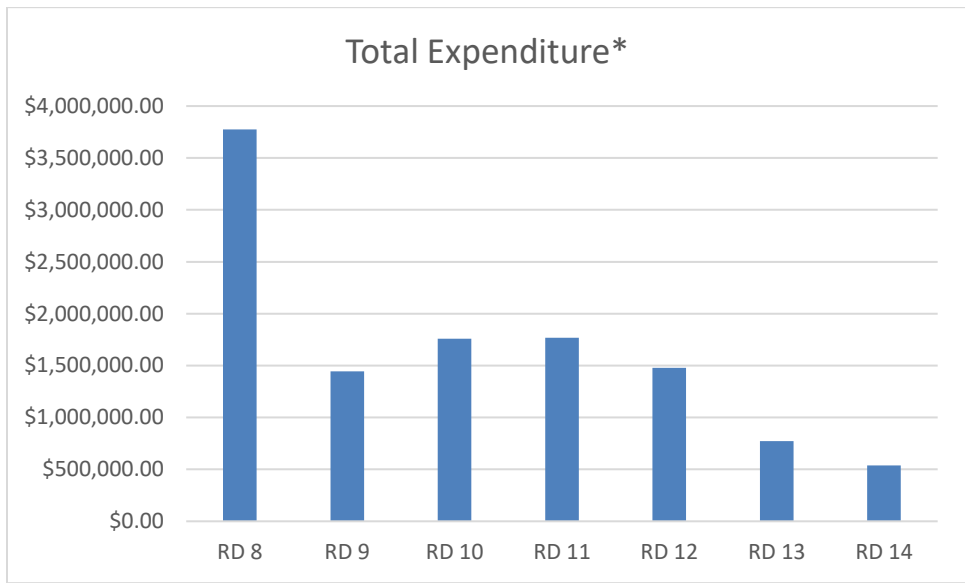
##### **Emergency Repairs, Provision of Utilities and System Replacements**

As of January 31, 2022, HPD has spent over \$56.2 million on repairs, utilities, and system replacement work on buildings in AEP. Money continues to be spent on buildings active in the program regardless of the round, well beyond the expected timeline for spending. However, overall spending on system replacements and repairs has decreased for buildings each round, which reflects the increasing number of buildings discharged during the initial four months (prior to the issuance of an order), the decrease in the number of small buildings (which more often requires HPD to complete the system replacement and to pay for utilities even in the early rounds) and the generally better condition of the average building entering the program.



Over \$11.5 million dollars was spent on emergency repairs, utilities, and system replacements for buildings in rounds 8 through 14. As noted, due to COVID, system work for Round 13 selected January 2020 and Round 14 selected 2021 was delayed; work may still be in progress and expenses may not be finalized until the current fiscal year is over.

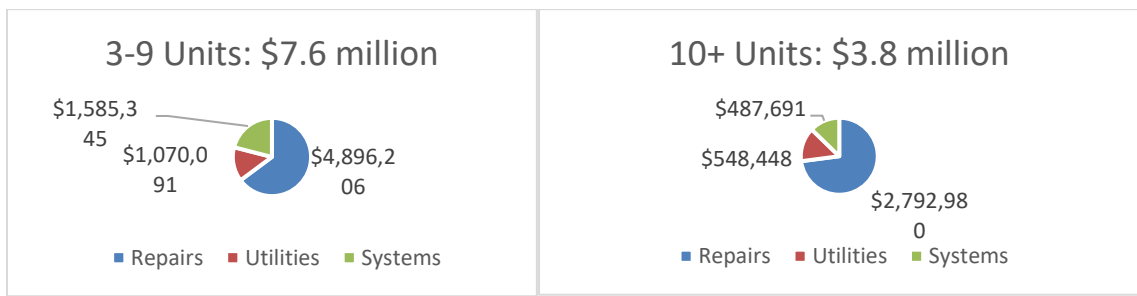
**CHART 3: TOTAL REPAIR, UTILITY AND SYSTEM REPLACEMENT EXPENDITURE, ROUNDS 8-14**



\*Includes: Repairs, System Replacements, Utilities, Fuel

HPD has spent the most money since the start of AEP in 3-5 unit and 6–9-unit buildings. For Rounds 8-14, 66% of all expenditures have been in 3–9-unit buildings, with significantly higher expenditures in all categories of expenditure.

**CHART 4: EXPENDITURES BY BUILDING SIZE AND TYPE OF EXPENDITURE, ROUNDS 8-14**



**CHART 5: AEP ORDERS TO CORRECT: SYSTEMS REQUIRING REPLACEMENT, ROUNDS 8-14**

<b>System Replacement</b>									
	Round 8	Round 9	Round 10	Round 11	Round 12	Round 13	Round 14	Total	% of Total
Perform Integrated Pest Management Throughout	46	39	33	30	21	25	49	243	19%
Pointing	55	40	49	31	23	13	22	233	18%
Replace Roof	47	28	26	22	17	15	16	171	13%
Re-Wire Entire Building	32	25	28	3	2	0	2	92	7%
Replace Waste Lines	33	12	18	9	6	1	2	81	6%
Upgrade Electric System & Re-Wire	31	19	10	3	2	0	5	70	5%
Replace Apt Entrance Doors	20	8	15	8	7	0	1	59	5%
Replace Domestic Water Supply	33	6	13	3	4	0	0	59	5%
Replace Heating Plant	11	9	7	5	4	1	5	42	3%
Replace Floor Covering in Apts	32	8	0	1	0	0	0	41	3%
Replace Defective Floor Joists Throughout	32	8	0	0	0	0	0	40	3%
Replace Windows	7	7	13	3	1	0	4	35	3%
Replace Gas Meters & Gas Distribution System	3	4	8	2	3	1	5	26	2%
Replace Hot Water Heater	10	4	3	3	1	1	1	23	2%
Replace Gas Distribution System	1	6	3	0	2	1	6	19	1%
Waterproof Exterior Walls	5	7	1	0	2	1	1	17	1%
Replace Heat Distribution System	3	3	2	1	0	0	1	10	1%
Replace Interior Staircase	2	4	1	2	1	0	0	10	1%
Replace Floor Covering in Public Areas	1	3	1	0	0	0	0	5	0%
Replace Water Main	1	0	0	0	1	0	0	2	0%
Replace Fire Escape or provide 2nd Egress	0	1	0	0	0	0	0	1	0%
	<b>405</b>	<b>241</b>	<b>231</b>	<b>126</b>	<b>97</b>	<b>59</b>	<b>120</b>	<b>1279</b>	

**Fees**

If the owner fails to have his/her building discharged from AEP in the first four months, he/she is subject to the following fees:

- \$500 per dwelling unit on the date of the building wide inspection;
- \$500 per dwelling unit six months from the date of the building wide inspection if the building is still active in AEP;

- \$200 for any complaint inspection performed that results in the issuance of a class B or C violation while the building is in AEP; and
- \$100 for each re-inspection pursuant to a certification of correction of violation(s) submitted to HPD where HPD finds one or more violations have not been corrected.

The fee charges are transferred to DOF for billing and collection. As of January 31, 2022, HPD has imposed **\$21.5** million in fees.

**CHART 6: FEES IMPOSED BETWEEN PROGRAM INCEPTION AND 1/31/2022**

<b>FEE TYPE</b>	<b># of Fees</b>	<b>Total amount of fees imposed</b>
Initial Re-inspection Fee	1,739	\$9,200,000
Six Month Program Fee	1,676	\$8,756,000
AEP Complaint Inspection Fee	17,559	\$3,511,800
False Certification Fee	688	\$68,800
<b>Total Fees</b>	<b>21,662</b>	<b>\$21,536,600</b>

**Recoupment**

All costs, including the system replacements, repairs, and utilities (and the respective administrative fee) are billed to the owner through DOF. If the charges remain unpaid, interest accrues, and they become tax liens against the property, and may be enforced by the City.

Over \$100 million (including interest) has been recouped:

- \$40 million in ERP charges
- \$53 million in AEP charges
  - \$18 million for system replacement
  - \$35 million for emergency repairs and utilities
- \$15 million in AEP fees

## **V. RECOMMENDATIONS**

AEP continues to be effective in improving living conditions for thousands of New Yorkers every year. When addressing larger buildings, buildings with active property owners, and buildings with systemic issues, AEP pushes property owners to be responsive and make repairs or systemic improvements using its combination of fees, inspections, and Orders. AEP's challenge continues to be compliance among smaller properties.

Recommendations to improve the program include:

- **Building Selection**
  - Exclude buildings from consecutive rounds if the building was vacant upon discharge (since these building will often continue to meet the criteria for selection and have no occupied units). This will require a change to AEP's Rules.
  - Exclude Housing Development Fund Corporations
- **Mold and Vermin**
  - Work practices and affidavits for mold and vermin defined in AEP have now been eclipsed by those in Local Law 55 of 2018. It would be beneficial to require the work practices in Local Law 55 requirements instead of having a separate requirement for AEP. This will simplify the process for owners regarding mold and vermin. This will require a legislative change.
- **Increase maximum inspection fees**
  - Allow HPD to determine by rule additional inspection fees for each year after the issuance of the initial inspection fee that a building with more than 9 units remains in the program.

## APPENDIX A

**CHART 1A: BUILDINGS SELECTED ROUNDS 1-7**

	Round 1	Round 2	Round 3	Round 4	Round 5	Round 6	Round 7
Total buildings	200	200	200	200	200	200	187
Total units	1,362	1,768	1,476	3,339	2,373	2,552	2,700
Avg number of units per building	6.8	8.8	7.4	16.7	11.9	12.8	14.4
Total B & C Violations	32,547	30,183	22,358	30,067	21,226	21,225	21,086
Total B & C Violations- Look-back Period	22,850	21,244	15,844	20,352	15,211	15,843	16,566
Violations per Unit- Look-back Period	16.8	12	10.7	6.1	6.4	6.2	6.1
Comprehensive Litigation	67	63	67	57	47	42	45
Past Due ERP Balance- Look- back Period (Millions)	\$ 1.99	\$ 1.43	\$ 1.40	\$ 2.15	\$ 1.11	\$ 1.22	\$ 0.84

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<sup>i</sup> These numbers reflect the sum of all the buildings selected each round. Since a building can be in multiple rounds, this is not a count of distinct buildings.