

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

### Notice of Public Hearing and Opportunity to Comment on Proposed Rules

**What are we proposing?** The Department of Environmental Protection (the “Department” or “DEP”), in coordination with the Office of Environmental Remediation (“OER”), is proposing amendments to DEP’s “(E) Designation” rules, set forth in Chapter 24 of Title 15 of the Rules of the City of New York.

**When and where is the Hearing?** DEP and the Office of Environmental Remediation will hold a public hearing, at which the public and interested parties are invited to submit comments and testimony on the amended rules, on July 17, 2017 from 10:30 AM to 12:00 PM. The hearing will be held in the Prospect Park Room at 100 Gold Street, 2<sup>nd</sup> Floor, New York, NY 10038.

This location has the following accessibility option(s) available: there are curb cuts, elevator to the 2<sup>nd</sup> floor.

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- **Mail.** You can mail written comments to OER, 100 Gold Street, 2<sup>nd</sup> floor, New York, NY 10038.
- **Email.** You can email written comments to OER at [brownfields@cityhall.nyc.gov](mailto:brownfields@cityhall.nyc.gov).
- **Website.** You can submit comments to OER through the NYC rules Website at <http://rules.cityofnewyork.us>.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 788-3015. You can also sign up in the hearing room before the session begins on July 17, 2017. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** Yes, you must submit written comments by July 17, 2017 at 5:00 PM.

**Do you need assistance to participate in the Hearing?** You must tell OER if you need a reasonable accommodation of a disability at the Hearing, or if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 788-3015. You must tell us by July 13, 2017.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, a transcript of the Hearing and copies of the written comments will be available to the public at OER’s offices.

**What authorizes DEP and OER to make this rule?** Section 1403(e) of the City Charter authorizes DEP, and sections 15(e)(5) and (8), and Section 1043 of the City Charter authorize OER, to make this proposed rule. This proposed rule was not included in DEP’s regulatory agenda for this Fiscal Year because the need for it was not contemplated when DEP published the agenda.

**Where can I find DEP and OER’s rules?** DEP’s rules are in Title 15, and OER’s rules are in Title 43, of the Rules of the City of New York.

**What rules govern the rulemaking process?** DEP and OER must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

### **STATEMENT OF BASIS AND PURPOSE**

DEP is proposing to revise the rule governing (E) Designations, which are placed on a tax lot or lots pursuant to Section 11-15 of the New York City Zoning Resolution (“ZR”) to provide notice that environmental requirements must be met before the property can be redeveloped. The proposed rule would:

1) Authorize OER to approve final cleanups without site management at properties that achieve a level of remediation that does not rely on institutional or engineering controls. Site management is not required in these instances because the activities that a site owner would otherwise monitor under a site management plan are already prohibited by the City. ZR Section 11-15 allows hazardous materials (E) Designations to be removed by the Department of City Planning upon receipt of a duly issued Notice from OER stating that no further testing, remediation or ongoing site management is required for hazardous materials contamination. OER has been issuing said Notices once a site achieves a complete site cleanup, also known as a Track 1 cleanup. For consistency of implementation, DEP proposes to amend the (E) Designation rule to also allow for the removal of hazardous materials (E) Designations from properties that achieve a cleanup without reliance on engineering or institutional controls.

2) Allow for the removal of an (E) Designation for noise and/or air quality under specified circumstances. The amended rule would allow for (E) Designations related to air quality and noise to be removed from a tax lot upon notice from OER that the environmental requirements for noise or air quality have been completed. The rule will clarify that where a development project with an (E) Designation for noise and/or air quality has been built out to its full development potential according to zoning, and installation reports demonstrate that the noise or air quality requirements have been fully completed, the (E) Designations for air quality and noise can be removed from a tax lot consistent with Section 11-15 (d)(1) of the Zoning Resolution of the City of New York.

New text is underlined; deleted material is in [brackets].

Section 1. Subdivision a of section 24-08 of Chapter 24 of Title 15 of the Rules of the City of New York is amended to read as follows:

**§24-08 Removal of (E) Designation Requirements.**

\* \* \*

a. OER will issue a final notice of satisfaction when OER determines that the environmental requirements relating to the (E) Designation or the Environmental Restrictive Declaration have been completely satisfied for a specific block and lot(s). A tax lot with an (E) Designation for hazardous materials or an Environmental Restrictive Declaration [that achieves a DEC Track 1 cleanup qualifies] will qualify for a final notice of satisfaction if the remediation allows the tax lot to be put to any use allowed on the site that does not require engineering and institutional controls, as determined by OER. A tax lot with an (E) Designation for air quality or noise may also qualify for a final notice of satisfaction if OER determines that the source of air emissions or noise which resulted in the (E) Designation has been permanently eliminated or that the environmental requirements related to an (E) designation for air quality or noise have been completed. Completion of air and noise requirements occur when a development project has been built out to its full development potential according to zoning, and installation reports demonstrate that air and noise requirements have been satisfied. OER will send the final notice of satisfaction to [both] DEP, DOB and DCP within ten (10) days.

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Amendment of E-Designation Rules

**REFERENCE NUMBER:** 2017 RG 047

**RULEMAKING AGENCY:** Department of Environmental Protection (with Office of Environmental Remediation)

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: June 6, 2017

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of E-Designation Rules**

**REFERENCE NUMBER: OER-13**

**RULEMAKING AGENCY: Department of Environmental Protection (with Office of Environmental Remediation)**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because a cure period is not practicable under the circumstances.

/s/ Najma Ali  
Mayor's Office of Operations

June 7, 2017  
Date