

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on the Office of Environmental Remediation's proposed rule for a clean soil bank.

Date / Time: November 30, 2012 at 12:00 PM

Location: Central Park Room
100 Gold Street, 2nd Floor
New York, NY 10038

Contact: Dr. Daniel C. Walsh
Director of Environmental Remediation
100 Gold Street, 2nd floor
New York, NY 10038

Proposed Rule Amendment

Pursuant to the authority vested in the Director of Environmental Remediation by subdivision (e) of section 15 of the New York City Charter, the Office of Environmental Remediation ("OER") proposes rules for a clean soil bank.

This proposed rule was not included in the office's regulatory agenda, because it was not anticipated when the agenda was published.

Instructions

- Prior to the hearing, you may submit written comments about the proposed amendment to Dr. Walsh by mail or electronically through NYC RULES at www.nyc.gov/nycrules by November 30, 2012.
- To request a sign language interpreter or other reasonable accommodation for a disability at the hearing, please contact Dr. Walsh by November 22, 2012.
- Written comments and a summary of oral comments received at the hearing will be available one week after the hearing from 9:30 AM to 4:30 PM at the Office of Environmental Remediation, 100 Gold Street, 2nd floor, New York, New York 10038.

STATEMENT OF BASIS AND PURPOSE

The Office of Environmental Remediation (“OER”) proposes rules to implement a Clean Soil Bank program. Through OER’s experience in administering the New York City Brownfield Cleanup Program (“Voluntary Cleanup Program” or “VCP”), OER has found that VCP projects incur significant costs when contractors excavate and remove soil for disposal at offsite facilities and when contractors purchase soil as backfill. OER recognizes that a portion of the surplus soil is often of significant value, and after disposal is often purchased in the marketplace as backfill for city capital construction projects and other construction projects.

The proposed new rule would establish a New York City Clean Soil Bank program that would match soil-generating construction sites that need to dispose of surplus soil with receiving sites that need to use the soil for backfill. By participating in the program, both the generating and receiving sites would lower their costs.

The program would be open to City capital construction sites, sites participating in City and State environmental remediation programs, and other construction sites. In matching sites, OER would prioritize City capital construction sites first; sites participating in City and State remedial programs second; and sites not enrolled in government oversight programs third. In order to ensure the quality of the soil, generating sites that are not enrolled in a City or State remedial program may only participate if they perform a remedial investigation and remedial action overseen by OER that is equivalent to remedial investigation and remedial action in a government oversight program.

Under the Clean Soil Bank program, representatives of a site wishing to dispose of soil will contact OER. OER will confirm the soil quality and then connect the site with representatives of sites that have contacted OER asking to receive surplus soil. The parties will

then negotiate terms of the soil transfer. OER will consult with the State Department of Environmental Conservation to ensure that all soil complies with applicable laws, rules, regulations, agreements between the office and the Department of Environmental Conservation. Before a soil exchange can occur, all private parties involved in the transfer must agree to release the City from any liability and indemnify the City.

OER is proposing the rules under its authority granted in subdivision (e) of section 15 of the New York City Charter to:

- establish City policy to promote the remediation and redevelopment of brownfields in support of the city's economy (§ 15(e)(1));
- act as an intermediary for City agencies regarding brownfield matters (§ 15(e)(8));
- take such actions as are necessary to facilitate the remediation and redevelopment of brownfields in support of the City's economic development (§ 15(e)(14)); and
- promulgate rules to implement these provisions (§ 15(e)(18)).

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this office, unless otherwise specified or unless the context clearly indicates otherwise.

New text is underlined.

Section 1. Chapter 14 of Title 43 of the Rules of the City of New York is amended by adding a new Subchapter 4 to read as follows:

SUBCHAPTER 4

New York City Clean Soil Bank Program

§43-1440-- Applicability

The New York City Clean Soil Bank is available for properties that are enrolled in the Local Brownfield Cleanup Program, properties with an (E) Designation or a restrictive declaration that are remediating their sites under OER oversight, properties in a remedial program administered by DEC, City-owned capital construction properties, and other private development properties.

§43-1441--Definitions

“DEC” means the New York State Department of Environmental Conservation.

“Eligible soil” means soil that meets the requirements of 6 NYCRR Part 360 and 6 NYCRR Part 375 that are applicable and consistent with lawful soil transfer and agreements between the office and DEC.

“Generating property” means a property that the office admits into the New York City Clean Soil Bank to dispose of surplus eligible soil.

“Office” or “OER” means the New York City Office of Environmental Remediation.

“Receiving property” means a property that the office admits into the New York City Clean Soil Bank to receive eligible soil that will be used for backfill on the property.

§ 43-1442--Eligible Properties

Properties that are enrolled in the Local Brownfield Cleanup Program, properties with an (E) Designation or with a restrictive declaration that are remediating their sites under OER oversight,

properties in a remedial program administered by DEC, City-owned capital construction properties, and other private development properties are eligible to participate in the New York City Clean Soil Bank as properties that generate or receive eligible soil for transfer. Generating properties that are not in remedial programs operated by the office or DEC must perform equivalent remedial investigation and remedial action under the office's oversight in order to be eligible.

§ 43-1443--Operation of the New York City Clean Soil Bank

a. To apply to be a generating property, eligible properties must submit a soil availability form to the office. The office will determine if the soil is eligible for transfer to a receiving property by comparing the soil quality to the soil quality required by applicable laws, rules, regulations and agreements between the office and DEC.

b. To apply to be a receiving property, eligible properties must submit a soil request form to the office.

c. If the office determines that the needs of a receiving property and a generating property may match, the office will inform each property. In matching eligible properties, the office will adhere to the following priority order: City-owned capital construction properties first, properties enrolled in City or State remedial programs second, and private sites not enrolled in a City or State remedial program third.

d. Parties must negotiate terms for the transfer of eligible soil directly with each other. Reaching an agreement to terms for transfer is the responsibility of the generating and receiving property, and not the responsibility of the office.

e. Once a generating property has reached an agreement with a receiving property to transfer eligible soil, the parties must notify the office.

f. All transfers of soil must be in compliance with all applicable laws, rules and regulations and applicable agreements between the office and DEC.

g. Prior to the transfer of any eligible soil, all private parties participating in the New York City Clean Soil Bank Program must agree to release the City from any liability and indemnify the City.

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

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

RULE TITLE: Clean Soil Bank Rules

REFERENCE NUMBER: OER-5

RULEMAKING AGENCY: 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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Amina Masood
Mayor's Office of Operations

10/24/2012
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

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

RULE TITLE: Clean Soil Bank Rules

REFERENCE NUMBER: 2012 RG 78

RULEMAKING AGENCY: 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: October 24, 2012