

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on the Office of Environmental Remediation's proposed amendments to the city brownfield cleanup program rule.

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 to amend the City's brownfield cleanup program rules.

This proposed rule amendment was not included in the office's regulatory agenda, because it was not anticipated at the time 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 Mayor's Office of Environmental Remediation ("OER" or "the office") proposes to amend the rules of New York City's brownfield cleanup program ("VCP" or "voluntary cleanup program") to allow E Designations to function as a declaration of covenants and restrictions. The office administers the City's brownfield cleanup program, which provides landowners and developers with government approval and oversight of cleanup plans for light to moderately contaminated sites across the City. Under the program's rules, owners and developers must record a declaration of covenants and restrictions, also known as a deed restriction, against their property deed when they complete an office-approved site remedy that allows low-level soil contamination to remain at a remediated property. Under the proposed amendments, if such a remediated site had a hazardous material E Designation, OER would not require the owner to record a deed restriction.

An E Designation is assigned to a site during a rezoning when a lead agency, during an environmental review, identifies a property as likely to be redeveloped due to the rezoning and further finds that the property's redevelopment may disturb soil and cause construction workers or site occupants to be exposed to potential hazardous materials or petroleum buried at the site. To protect against such exposures, the lead agency assigns an E Designation for hazardous materials to the site, which prevents the property owner from obtaining a City building permit authorizing construction until OER determines that the new development will not expose construction workers and future site occupants to contaminated soil. A hazardous material E

Designation remains on a rezoned property as long as residual contamination remains at the site, repeatedly blocking the issuance of building permits for subsequent development until OER determines that the redevelopment will not expose construction workers or site occupants to hazardous materials in site soil.

OER proposes the rule amendment because it will maintain public health protection and encourage participation in the City's voluntary cleanup program. Because the E Designation is enforced through the City's Department of Buildings, the E Designation will remain on sites, controlling exposures to soil contamination until a complete cleanup is achieved and the E Designation can be removed. In addition, OER anticipates that by ending the use of deed restrictions on E Designation sites, the proposed amendments will increase participation in the City voluntary cleanup program. Under the existing rules for the City brownfield cleanup program, owners may hesitate to enter the program, because they do not want to record a deed restriction against their property record, which they may view as a stigma on their land, depressing its value and making resale more difficult.

The director of OER is authorized to develop and administer a local brownfield cleanup program by paragraph (4) of subdivision (e) of section 15 of the New York City Charter. The office operates the E Designation program under paragraph (15) of that subdivision. The director is authorized by paragraph 18 of that subdivision to adopt rules to implement both programs.

“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; deleted material is in [brackets].

Section 1. Subdivision m of Section 43-1402 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

m. “Declaration of covenants and restrictions” means controls on the use of a site that are listed on the deed or that are established under a hazardous materials e-designation and that seek to prevent potential exposure to any residual contamination remaining at the site.

§ 2. Section 43-1402 of Chapter 14 of Title 43 of the Rules of the City of New York is amended by re-lettering subdivisions z through hhh as subdivisions aa through iii and by adding a new subdivision z to read as follows:

z. “hazardous materials e-designation” means the designation of an (E) pursuant to §11-15 of the zoning resolution of the city of New York, because of potential soil contamination at a rezoned property.

§ 3. Subparagraph A of Paragraph 5 of Subdivision c of Section 43-1404 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

A. An application that states that a property meets the definition of a qualified local brownfield site based on section 43-1402([tt] uu)(1)(A) shall include a confirmation of such statement from a qualified environmental professional, made after the completion of the remedial investigation report. The office shall not execute a final local brownfield cleanup agreement for entry into the program without receipt of this confirmation. The office shall independently evaluate whether the property meets the definition of a qualified local brownfield site based on section 43-1402([tt] uu)(1)(A).

§ 4. Paragraph 1 of Subdivision e of Section 43-1404 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

1. Qualified local brownfield sites that are not coordinated brownfield sites. If the office determines that a property meets the definition of a qualified local brownfield site based on section 43-1402([tt] uu)(1)(A) and the applicant meets all other conditions of eligibility pursuant to section 43-1403, the office shall admit the applicant into the program.

§ 5. Subparagraph B of Paragraph 2 of subdivision e of Section 43-1404 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

B. if the office determines that such property is not a coordinated brownfield site because the state and/or federal agency has not provided express written authorization, and the office determines that a portion of such property may meet the definition of a qualified local brownfield site based on section 43-1402([tt] uu)(1)(A), the office may allow the applicant to amend its application to (i) describe the site boundaries, pursuant to section 43-1405(a)(1), that meet the definition of a qualified local brownfield site based on section 43-1402([tt] uu)(1)(A), and (ii) comply with subparagraph A of paragraph five of subdivision c of this section. The office shall evaluate the modified application pursuant to paragraph one of this subdivision.

§ 6. Subparagraph A of Paragraph 2 of Subdivision l of Section 43-1407 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

A. Any use restrictions, any other institutional controls, any engineering controls and/or any site management requirements applicable to the qualified local brownfield site shall be contained in a declaration of covenants and restrictions which shall be:

i. created and recorded, prior to the issuance of the notice of completion, in the recording office for the borough(s) where any portion of the site is located, or in the case of a hazardous materials e-designation, in the official records of the New York city department of buildings; and

ii. in a form and manner as prescribed by the director.

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

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

RULE TITLE: Amendment of Brownfield Cleanup Program Rules

REFERENCE NUMBER: 2012 RG 85

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/ Hunter Gradie
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: Amendment of Brownfield Cleanup Program Rules

REFERENCE NUMBER: 2012 RG 85

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