

DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE OF ADOPTION OF AMENDMENTS TO NEW YORK CITY'S ENVIRONMENTAL REMEDIATION RULES

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Department of Environmental Protection (“DEP”) by Section 1403(e) of the City Charter and by authority vested in the Office of Environmental Remediation (“OER”) by Sections 15(e)(15) and (17) and Section 1043 of the City Charter, that DEP and OER have jointly promulgated and adopted amendments to rules relating to E-Designations.

The rules were proposed and published in the City Record on September 27, 2018. A public hearing was held on October 29, 2018. No comments on the proposed rule amendments were received from the public prior to, during, or after the hearing. Following the hearing, a technical non-substantive drafting change was made to § 24-09(i).

STATEMENT OF BASIS AND PURPOSE

The Office of Environmental Remediation (“Office” or “OER”) was established by Local Law No. 27 of 2009. Charter § 15(e)(14) authorizes the Director to take such actions as may be necessary to facilitate the remediation of brownfields, and § 15(e)(15) authorizes OER to administer the E-Designation program. Charter § 15(e)(17) authorizes the Director to establish fees for the administration of the Office’s programs, while § 15(e)(18) authorizes the Director to promulgate rules to implement the programs. Section 1403(e) of the City Charter authorizes DEP to review environmental consequences of an activity requiring city agency approval where such activity may have a significant impact on the physical aspects of the environment of the city.

OER administers compliance with the E-Designation program. After E-Designations are assigned to properties during rezoning actions (Zoning Resolution, § 11-15), OER works with developers of E-designated sites to ensure that the environmental requirements for hazardous materials and/or noise and/or air quality are met during construction and redevelopment. At times, development plans are delayed and changed after OER has already approved remedial plans, prompting a developer to request that OER conduct a second analysis of their property.

DEP and OER now add new E-Designation fees for OER to review and approve submissions. First, the Office is increasing certain fees that developers pay for OER review of their projects to account for increased OER costs in administering the program. Second, the Office is assigning fees to time-consuming E-Designation reviews not accounted for by existing fees.

DEP and OER therefore amend the City’s environmental remediation rules as follows:

1. Section 24-09 of Chapter 24 of Title 15 of the Rules of the City of New York is amended as follows:

- The fee for issuance of a Notice of No Objection by OER is increased from \$375 to \$475 (§ 24-09(b)). This increase reflects OER's increased costs in project reviews necessary to deliver these notices.
- The fee for seeking a phased review and sign-off procedure by OER resulting in a Notice To Proceed or a Notice of Satisfaction is increased from \$1,050 to \$1,325 (§ 24-09(c)). This increase reflects OER's increased costs in conducting project reviews to issue these notices.

2. Projects requiring additional OER review after issuance of a Notice To Proceed will be subject to a fee of \$475 (§ 24-09(d)). Developments which are delayed or modified may require the re-issuance of a Notice To Proceed, requiring further review by OER staff to determine how the approved remedial action plan needs to be modified.

3. Projects requiring OER review of a request to convert an active sub-slab depressurization system to a passive sub-slab depressurization system will pay a fee of \$475 (§ 24-09(e)). This fee accounts for the time spent by OER staff reviewing results from soil vapor tests and determining whether a change to the site management plan is appropriate.

4. Projects with active sub-slab depressurization systems will be charged a fee of \$275 for review of periodic reports required by their site management plans (§ 24-09(f)). This fee accounts for OER staff review of periodic reports of properties with active remedial systems.

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

Section 1. Section 24-09 of Chapter 24 of Title 15 of the Rules of the City of New York is amended to read as follows:

§24-09 Fees and OER Review and Approval Procedure.

a. OER will conduct an initial review of an application to determine the extent of review required for approval of the application. OER [shall] will inform the applicant of the fee amount.

b. An applicant who seeks OER approval of a minor alteration(s) and/or other action on a tax lot subject to an (E) Designation or an Environmental Restrictive Declaration resulting in the issuance of a notice of no objection [shall] must pay a fee of [~~\$375~~] \$475.

c. An applicant for a new development or for alterations on a tax lot subject to an (E) Designation or an Environmental Restrictive Declaration that requires a detailed review by OER involving a phased approval and sign-off procedure (e.g., investigation, remedial action plan or remedial action report) [shall] must pay a fee of [~~\$1,050~~] \$1,325.

d. An applicant proposing a new development or alterations on a tax lot subject to an (E) Designation or an Environmental Restrictive Declaration that requires a second OER review after issuance of a notice to proceed must pay a fee of \$475.

e. An applicant who seeks to convert an active sub-slab depressurization system to a passive sub-slab depressurization system following OER approval of a remedial closure report must pay a fee of \$475.

f. An applicant who requires OER review of periodic reports of the performance of active remedial systems must pay a fee of \$275.

[d.] g. Each payment shall be in the form of a personal, business or certified check or money order made payable to the New York City Department of Environmental Protection/Office of Environmental Remediation (DEP/OER) and shall be sent to:

Office of Environmental Remediation
100 Gold Street, 2nd floor
New York, NY 10038
Attn. Accounts Receivable

The applicant [shall] must include the OER project number and/or project name on the certified check.

[e.] h. At the request of the applicant, OER will meet with the applicant regarding (1) the required contents of any plan or report required pursuant to §§ 24-06 and 24-07 of this chapter, and (2) the timeline to meet program milestones to expedite such work.

[f.] i. Upon initial receipt of a submission required pursuant to this chapter, including plans and reports, OER will review such submission and attempt to provide written comments within thirty (30) days of receipt of such initial submission. [(1)] The applicant must submit all documents, plans, and reports in digital form and in a format established by OER.

[g.] j. If OER requests additional information or a revised submission, the applicant [shall] must resubmit the document, plan, or report with this additional information for review.

1. Revised submissions will be reviewed by OER as expeditiously as possible;
2. Upon receipt of all information requested, OER [shall] will approve the document, modify the document, or issue comments with respect to the submission within thirty (30) days.

[h.] k. If the applicant disagrees with OER's comments, the applicant [shall] will have the opportunity to respond.

[i.] l. Upon receipt and review of all required submissions, OER will issue a determination within thirty (30) days.