

NEW YORK CITY OFFICE OF ENVIRONMENTAL REMEDIATION

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Office of Environmental Remediation (“OER”) and the Department of Environmental Protection (“DEP”) are considering amending rules relating to the New York City (E) Designation program.

When and where is the hearing? OER and DEP will hold a joint online public hearing on the proposed rule. The public hearing will take place at 11AM on January 19, 2022. To participate in the public hearing, please follow these instructions:

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

+1 347-921-5612,,272003194# United States, New York City

Phone Conference ID: 272 003 194#

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

- **Website.** You can submit comments to OER through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to brownfields@cityhall.nyc.gov.
- **Mail.** You can mail comments to OER, 100 Gold Street, 2nd Floor, New York, NY 10038.
- **Fax.** You can fax comments to OER, (212) 788-2941.
- **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) 341-2015. You can also sign up in the hearing room before the hearing begins on January 19, 2022. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit written comments by January 19, 2022.

What if I need assistance to participate in the hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us 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) 341-2015. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by January 11, 2022.

This location has the following accessibility option(s) available: Not applicable.

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, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at OER's offices.

What authorizes OER to make this rule? Sections 15(e) and 1404 of the New York City Charter ("Charter") authorize OER to make this proposed rule, which was included in OER's regulatory agenda for fiscal year 2022.

Where can I find OER's rules? OER's rules are in Chapter 14 of Title 43 of the Rules of the City of New York.

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

Statement of Basis and Purpose of Proposed Rule

(E) Designations are placed on a property pursuant to Section 11-15 of the New York City Zoning Resolution ("ZR") to provide notice that City Environmental Quality Review ("CEQR") requirements must be met before the property can be redeveloped in accordance with any zoning action.

(E) Designation rules are currently found in Chapter 24 of Title 15 of the Rules of the City of New York ("RCNY") within the Department of Environmental Protection's ("DEP") section of the City's rules. The first half of the (E) Designation rule addresses the placement of (E) Designations on properties, while the second half describes how a property owner satisfies (E) Designation requirements. In 2009 the second half of the (E) Designation program was transferred to the Office of Environmental Remediation ("OER"), yet the (E) Designation rule has remained in DEP's regulations. OER and DEP have agreed to transfer the second half of the (E) Designation rule to Title 43, Chapter 14 of the City's rules, where OER's rules are found. This will allow OER to administer the rule that governs its portion of the (E) Designation program. Definitions common to both the first half and second half of the (E) Designation rule will remain in DEP's rules; future amendments will continue to be coordinated to ensure consistency.

New York City Charter ("Charter") Sections 15(e)(15) and 1404 authorize OER to administer the (E) Designation program, as defined in Section 11-15 of the ZR, acting as successor to DEP for such purpose, and Charter Section 15(e)(18) authorizes OER to promulgate rules to implement these provisions. Section 1403(e) of the Charter and Section 24-105 of the Administrative Code of the City of New York authorize DEP to make these proposed rules.

New material 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 7 to read as follows:

Subchapter 7: (E) Designation and Environmental Restrictive Declaration Program

§ 43-1470 Authority.

This chapter is promulgated pursuant to §§ 15(e) and 1404 of the New York City Charter and in accordance with § 11-15 of the Zoning Resolution of the City of New York.

§ 43-1471 Applicability.

This subchapter applies to tax lot(s) subject to an (E) Designation or an Environmental Restrictive Declaration.

§ 43-1472 Definitions.

The following definitions apply to this subchapter, §§ 43-1470, et seq., unless the text specifically indicates otherwise:

Alternate Means of Ventilation. As also defined in 15 RCNY § 24-03, “Alternate Means of Ventilation” means a device that introduces fresh air into a building and thereby allows operable windows to be closed at all times.

CEQR. As also defined in 15 RCNY § 24-03, “CEQR” means the City Environmental Quality Review, Chapter 5 of Title 62 of the Rules of the City of New York.

CEQR Determination. As also defined in 15 RCNY § 24-03, “CEQR Determination” means any of the following, issued by the Lead Agency pursuant to CEQR: a determination that a proposed action is Type II, as defined under the State Environmental Quality Review Act (NYCRR Part 617); a negative declaration or conditional negative declaration for an Environmental Assessment Statement; or a final Environmental Impact Statement with respect to which findings are made, including any technical memoranda with respect to such final Environmental Impact Statement.

CEQR Technical Manual. As also defined in 15 RCNY § 24-03, “CEQR Technical Manual” means the current City Environmental Quality Review Technical Manual as issued by OEC together with any updates, supplements and revisions thereto.

CHASP. As also defined in 15 RCNY § 24-03, “CHASP” means a site-specific construction health and safety plan developed for remediation and construction phases of a project that is designed to protect on-site workers from exposure to known site contaminants.

City. As also defined in 15 RCNY § 24-03, “City” means the City of New York.

Contamination. As also defined in 15 RCNY § 24-03, “Contamination,” “Contaminated,” or “to Contaminate” means the effect(s) on a tax lot(s) from hazardous materials, hazardous substances, hazardous wastes and/or petroleum.

Day. As also defined in 15 RCNY § 24-03, “Day” means a business day.

dBA. As also defined in 15 RCNY § 24-03, “dBA” means a measure of sound as experienced by the human ear.

DCP. As also defined in 15 RCNY § 24-03, “DCP” means the New York City Department of City Planning.

DEC. As also defined in 15 RCNY § 24-03, “DEC” means the New York State Department of Environmental Conservation.

Decibel. As also defined in 15 RCNY § 24-03, “Decibel” or “dB” means the practical unit of measurement for sound pressure level. The number of decibels of a measured sound is equal to 20 times the logarithm to the base 10 of the ratio of the sound pressure to the pressure of a reference sound.

Department or DEP. As also defined in 15 RCNY § 24-03, “Department” or “DEP” means the New York City Department of Environmental Protection.

Development. As also defined in 15 RCNY § 24-03, “Development”, or “Develop” means:

1. with respect to hazardous materials, the development of a new structure, an enlargement, extension or change of use with respect to an existing structure involving a residential or community facility use, and/or any work on a tax lot(s) that involves soil disturbance, including, but not limited to grading or excavation related to the construction or alteration of a new or existing structure(s) on a tax lot(s), and
2. with respect to air quality and noise, development of a new structure, or a change of use, enlargement, extension or alteration of an existing structure(s) on a tax lot(s).

Development Site. As also defined in 15 RCNY § 24-03, “Development Site” means a tax lot(s) located within the area of a proposed Zoning Amendment or Zoning Action and which is proposed to be developed by the applicant for such Zoning Amendment or Zoning Action or which the Lead Agency has identified pursuant to CEQR as likely to be developed as a direct consequence of the Zoning Amendment or Zoning Action.

DOB. As also defined in 15 RCNY § 24-03, “DOB” means the New York City Department of Buildings.

(E) Designation. As also defined in 15 RCNY § 24-03, “(E) Designation” means the designation of an “E” pursuant to § 11-15 of the Zoning Resolution.

Equivalent Sound Level. As also defined in 15 RCNY § 24-03, “Equivalent Sound Level” or “Leq” means a quantification of noise level as a single value for a given period of time.

Environmental Assessment Statement. As also defined in 15 RCNY § 24-03, “Environmental Assessment Statement” means a report that describes a proposed development, its location, and a first level analysis of environmental impact areas, the purpose of which is to determine a project’s potential effects on the environment.

Environmental Impact Statement. As also defined in 15 RCNY § 24-03, “Environmental Impact Statement” means a report that provides a complete analysis of all appropriate environmental impact areas and provides a means for agencies, project sponsors, and the public to consider a project’s significant adverse environmental impacts, alternatives, and mitigations.

Environmental Restrictive Declaration. As also defined in 15 RCNY § 24-03, “Environmental Restrictive Declaration” means a document recorded against a tax lot(s) in the county office of land records and executed by all Parties-in-Interest to such tax lot(s), setting forth restrictions and enforcement provisions with respect to implementation of environmental requirements regarding hazardous materials, air quality and/or noise arising from the environmental review of zoning actions.

EPA. As also defined in 15 RCNY § 24-03, “EPA” means the United States Environmental Protection Agency.

Full Build Year. As also defined in 15 RCNY § 24-03, “Full Build Year” means the year of completion for the proposed action as indicated in the EAS or EIS.

Hazardous Material. As also defined in 15 RCNY § 24-03, “Hazardous Material” means any material, substance, chemical, element, compound, mixture, solution, product, solid, gas, liquid, waste, byproduct, pollutant, or contaminant which when released into the environment may present a substantial danger to the public health or welfare or the environment, including, but not limited to those classified or regulated as “hazardous” or “toxic” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 (1995) et seq., the Resource Conservation and Recovery Act (RCRA) 42 U.S.C. §§ 6901 (1995) et seq., the Clean Water Act (CWA), 33 U.S.C. §§ 1251 (1986) et seq., the Clean Air Act (CAA) 42 U.S.C. §§ 7401 (1995) et seq., Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 (1998) et seq., Transportation of Hazardous Materials Act, 49 U.S.C. §§ 5101 (1997) et seq., the Hazardous Substances Emergency Response Regulations, 15 RCNY Chapter 11, and/or the List of Hazardous Substances, 6 NYCRR Part 597.

Hazardous Waste. As also defined in 15 RCNY § 24-03, “Hazardous Waste” means any waste, solid waste or combination of waste and solid waste listed or regulated as a hazardous waste or characteristic hazardous waste pursuant to RCRA, 42 U.S.C. §§ 6901 (1995), et seq. and/or Identification and Listing of Hazardous Wastes, 6 NYCRR Part 371, et seq.

Installation Report. As also defined in 15 RCNY § 24-03, “Installation Report” means the report that the applicant submits to OER to demonstrate that the Window/Wall Attenuation, Alternate Means of Ventilation, fuel type and stack location approved in the notice to proceed and installed at the site satisfy the Noise and/or Air Quality (E) Designation.

Lead Agency. As also defined in 15 RCNY § 24-03, “Lead Agency” means the agency responsible under CEQR for the conduct of environmental review in connection with a Zoning Amendment or Zoning Action.

Ldn. As also defined in 15 RCNY § 24-03, “Ldn” means the equivalent sound level for a 24-hour period with an additional 10 dB imposed on the equivalent sound levels for night time hours between 10 PM and 7 AM.

Leq(1). As also defined in 15 RCNY § 24-03, “Leq(1)” means the equivalent continuous sound level that over a 1-hour period of time has the same total energy as the actual fluctuating sound level over a 1-hour period.

L10(1). As also defined in 15 RCNY § 24-03, “L10(1)” means the stated sound level that is exceeded 10 percent of the time during a 1 hour period, derived from $L_x(t)$, where “x” is the percentage of time that the sound level has been exceeded and “t” is the total period of time that the sound has been recorded.

Noise Descriptor. As also defined in 15 RCNY § 24-03, “Noise Descriptor” means a continuous sound level measured during a noise monitoring test according to an approved Noise Monitoring Protocol. Leq(1), L10(1) and Ldn are Noise Descriptors.

Noise Monitoring Protocol. As also defined in 15 RCNY § 24-03, “Noise Monitoring Protocol” means a document prepared by an acoustical specialist describing the conditions, locations, and Noise Descriptors to be used in assessing existing noise levels during a continuous 24-hour period.

OEC. As also defined in 15 RCNY § 24-03, “OEC” means the New York City Mayor’s Office of Environmental Coordination.

OER. As also defined in 15 RCNY § 24-03, “OER” or “Office” means the New York City Mayor’s Office of Environmental Remediation.

Owner. As also defined in 15 RCNY § 24-03, “Owner” means the person, including their successors or assigns, who is the recorded title holder of a tax lot(s).

Parties-in-Interest. As also defined in 15 RCNY § 24-03, “Parties-in-Interest” means any person with an enforceable property interest in a tax lot(s).

Person. As also defined in 15 RCNY § 24-03, “Person” means any individual, trust, firm, corporation, joint stock company, association, partnership, consortium, joint venture, commercial entity or governmental entity.

Petroleum. As also defined in 15 RCNY § 24-03, “Petroleum” means oil or petroleum of any kind and in any form, including, but not limited to oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other waste, crude oil, gasoline and kerosene.

Project Site. As also defined in 15 RCNY § 24-03, “Project Site” means a tax lot(s) that is under the control or ownership of the applicant for the satisfaction and removal of an (E) Designation from the lot(s) and is subject to the proposed Development by such applicant.

Qualified Environmental Professional (QEP). As also defined in 15 RCNY § 24-03, “Qualified environmental professional” (QEP) means a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property or off-site areas, sufficient to meet the objectives and performance factors for the areas of practice identified by this chapter. Such a person must:

1. Hold a current professional engineer’s or a professional geologist’s license or registration issued by any state, or hold a baccalaureate degree or higher in engineering or geology and have the equivalent of three years of full-time relevant experience in site investigation and remediation of the type detailed in this chapter; or
2. Be a site remediation professional licensed or certified by the federal government, any state or a recognized accrediting agency, to perform investigation or remediation tasks consistent with office guidance, and have the equivalent of three years of full-time relevant experience.

Tax Lot. As also defined in 15 RCNY § 24-03, “Tax Lot” means a tax lot identified by parcel number on the official tax maps of the City of New York.

Window/Wall Attenuation. As also defined in 15 RCNY § 24-03, “Window/Wall Attenuation” means the sound reduction mandated by the Noise (E) Designation, expressed in dBA and based upon the American Society of Testing and Materials (E-1332.90) Outdoor Indoor Transmission Class (OITC) values of individual components of a building’s facade.

Zoning Action. As also defined in 15 RCNY § 24-03, “Zoning Action” means an action, such as a special permit, authorization, certification, or variance, pursuant to the provisions of the Zoning Resolution.

Zoning Amendment. As also defined in 15 RCNY § 24-03, “Zoning Amendment” means a proposed amendment to the text or maps of the Zoning Resolution, subject to review and approval pursuant to §§ 197-c, 197-d and 200 of the New York City Charter.

Zoning Resolution. As also defined in 15 RCNY § 24-03, “Zoning Resolution” means the Zoning Resolution of the City of New York, effective December 15, 1961, as amended from time to time.

§ 43-1473 Phase II Environmental Site Assessment.

- a. Before an applicant may receive a building permit from DOB for any Development with respect to a tax lot(s) subject to an (E) Designation or an Environmental Restrictive Declaration, the applicant must:
 1. Complete a Phase II Environmental Site Assessment (Phase II ESA) in accordance with this section to determine the level and extent of contamination at the proposed Project Site; or
 2. Submit to OER historical, regulatory or other evidence that a Phase II ESA is not required for the proposed Development, which OER will review in accordance with 43 RCNY § 1476.
- b. The applicant must prepare and submit to OER a Phase II Investigative Work Plan to implement an ASTM compliant or otherwise OER-approvable Phase II ESA, prepared in accordance with the CEQR Technical Manual. Such Work Plan must be prepared using an OER-approved format and must also include:
 1. A detailed description of the previous and current uses of the Project Site;
 2. A detailed description of the proposed development at the Project Site certified by the registered architect (RA) or professional engineer (PE) of record including:
 - A. Supporting registered architect or professional engineer certified plans depicting foundation and subsurface utility layouts and depths, grade-level courtyards, landscaped open areas, and other grade-level areas not covered by structures; and
 - B. all corresponding DOB permit application numbers.

3. A description of the development schedule for the Project Site;
 4. Copies of reports of all previous investigations related to the presence or suspected presence of contamination on the Project Site;
 5. A site-specific investigation health and safety plan (HASP), consistent with applicable U.S. Occupational Health and Safety Administration requirements found at 29 C.F.R. § 1910.120, to protect the health and safety of on-site personnel and the surrounding community. The HASP will identify all potential chemicals of concern at the Project Site and include material safety data sheets for each chemical compound group or chemical of concern. As a default, all chemical groups such as volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), pesticides, polychlorinated biphenyls (PCBs), and target analyte list (TAL) metals will be included in the investigation HASP;
 6. The location of all proposed sampling points and sampling depths where applicable for soil, groundwater and soil vapor;
 7. A description of the sampling and analytical methods and other investigative field work that complies with ASTM Phase II reporting requirements or other requirements of OER.
- c. OER may allow an alternate process to a Phase II Investigation Work Plan if such process is established under a remedial program operated by OER or DEC.
- d. Where applicable and at a minimum, the following procedures or requirements must be implemented in the Phase II ESA for all sampling techniques and methods:
1. All samples must be analyzed by a laboratory accredited by the New York State Department of Health Environmental Laboratory Approval Program (ELAP);
 2. Soil and ground water samples must be analyzed for full list VOCs with methyl tertiary butyl ether (MTBE) analyzed by EPA Method 8260B, SVOCs by EPA Method 8270C, PCBs by EPA Method 8081A, pesticides by EPA method 8082, and TAL metals by EPA Method 6020 at an ELAP-certified laboratory.
 3. Soil gas, sub-slab soil gas, and indoor air samples should be analyzed for VOCs by EPA Method TO-15 at an ELAP-certified laboratory. If ELAP certification is not available, certification by other agencies and/or organizations is recommended. Additional analyses may be warranted if the type of contamination suspected cannot be adequately characterized by these analyses. New York State Department of Health Category B Deliverables are not required to satisfy an (E) Designation.
 4. Toxicity Characteristic Leaching Procedure, Method 1311, as delineated in EPA SW-846, 40 C.F.R. Part 261 and required by OER, or an EPA approved successor method must be used where appropriate.
 5. Samples from sites on the DEC Registry of Inactive Hazardous Waste Sites must use a laboratory certified under EPA's Contract Laboratory Program or DEC's Analytical Services Program (ASP).

- e. OER will review the Work Plan submitted pursuant to subdivisions b and c of this section in accordance with § 43-1476 of this subchapter.
- f. The applicant must implement the Work Plan as approved by OER.
- g. Upon completion of the Phase II ESA, a report entitled "Phase II ESA Report" summarizing the Phase II ESA must be submitted to OER. The Phase II ESA Report must include:
 - 1. A summary of the findings of all the studies and/or investigations performed;
 - 2. A description of a site inspection performed by a QEP;
 - 3. A description of all assessment and investigation techniques in accordance with applicable Federal and State standards, criteria, and guidance and OER templates;
 - 4. Sampling Results, which must be presented in summary tables and compared to all relevant State and Federal standards, criteria, and guidance;
 - 5. Maps of the tax lots (1"=50') including but not limited to: United States Geological Survey quadrangle map, name of quad and north arrow, on which the following is clearly indicated:
 - A. All physical site characteristics with location of all historical features of environmental significance and recognized environmental conditions, including underground storage tanks, vent lines, fill lines, interior floor drains, exterior drywells and other pertinent information; maps of sampling locations and depths for soil, groundwater and soil vapor samples showing chemical analytical results that highlight exceedances of applicable standards, criteria, and guidance; and other pertinent information;
 - B. Groundwater elevation and flow direction of the uppermost aquifer; and
 - C. All identified contamination source areas.
 - 6. Appendices, which must include:
 - A. All raw data,
 - B. Laboratory methods,
 - C. Chain-of-custody forms,
 - D. A quality assurance/quality control plan, including provisions for blank and duplicate samples and other quality assurance and quality control information as appropriate,
 - E. Field notes,
 - F. Soil boring/monitoring well logs prepared under the guidance of a QEP,

- G. As-built well construction details,
 - H. Modeling programs used,
 - I. Calculations and formulas, and
 - J. Physical/chemical properties of chemical compounds of concern.
7. An assessment, based on findings of the Phase II ESA, of whether or not a Remedial Action Plan is required for the Project Site.
- h. The applicant may submit a Remedial Action Plan with the Phase II ESA Report.
 - i. OER will review the Phase II ESA Report in accordance with § 43-1476 of this subchapter.
 - j. Upon completion of its review of the Phase II ESA Report, OER will determine whether a Remedial Action Plan and site-specific Construction HASP (CHASP) is required.
 - 1. If OER determines that a Remedial Action Plan is not required, OER will issue a notice of no objection to DOB;
 - 2. If a Remedial Action Plan and CHASP have been submitted, OER will review it in accordance with 43 RCNY §§ 1474 and 1476;
 - 3. If OER determines that a Remedial Action Plan and CHASP are required and a Remedial Action Plan and CHASP has not already been submitted by the applicant, the applicant must submit a Remedial Action Plan and CHASP for review by OER in accordance with §§ 43-1474 and 1476 of this subchapter.

§ 43-1474 Remedial Action Plan.

- a. Preparation of the Remedial Action Plan.
 - 1. Before an applicant may receive a building permit from DOB for any Development on a tax lot(s) subject to an (E) Designation or an Environmental Restrictive Declaration, where OER has determined that a Remedial Action Plan is required pursuant to § 43-1473 of this subchapter, the applicant must prepare a Remedial Action Plan and CHASP. The Remedial Action Plan must address contamination identified in the Phase II ESA Report to the satisfaction of OER, including, but not limited to:
 - A. Elevated levels of contaminants pursuant to applicable DEC standards, criteria, and guidance;
 - B. Contaminant source areas;
 - C. The exposure pathways for contamination;
 - D. Environmental exposure to contamination;

- E. Public exposure to contamination;
 - F. Proposed cleanup criteria; and
 - G. Health and Safety of construction workers and the general public during remedial action on the tax lot(s).
 - 2. In preparing a Remedial Action Plan, the applicant must use templates provided by OER and consider appropriate remediation techniques, including, but not limited to, those set forth in the CEQR Technical Manual. The Remedial Action Plan must include a list of all remedial action objectives and explain how the proposed remedial action achieves these objectives.
 - 3. OER must review the Remedial Action Plan in accordance with § 43-1476 of this subchapter.
 - 4. In conjunction with its review of the Remedial Action Plan, OER may require the execution of a Declaration of Covenants and Restrictions by the title holder for the tax lot(s) subject to the (E) Designation or the Environmental Restrictive Declaration, which must be recorded against the property prior to the issuance of a notice of satisfaction.
 - A. The Declaration of Covenants and Restrictions must bind the title holder, or a designee approved by OER to perform the Remedial Action Plan in accordance with its terms, and may include institutional controls, including restrictions on use of the property, and the maintenance of engineering controls, including the implementation of a site management plan for the operation, maintenance, monitoring, inspection, certification, and reporting of engineering controls as required by OER;
 - B. In accordance with the Remedial Action Plan, the Declaration of Covenants and Restrictions may require controls that extend beyond the date of issuance of a temporary certificate of occupancy or a certificate of occupancy for the Project Site;
 - C. The Declaration of Covenants and Restrictions may include a procedure for the periodic reporting to OER of the attainment and maintenance of any requirements contained in the Declaration of Covenants and Restrictions pursuant to this subsection;
 - D. The Declaration of Covenants and Restrictions must be executed by the title holder of such tax lot(s) and must be recorded against such tax lot(s) in the applicable county office of land records; and
 - E. The Remedial Action Plan must be certified by a QEP or professional engineer, and all engineering controls must be certified by a professional engineer.
- b. *Implementation of the Remedial Action Plan.*

1. Prior to implementation of the Remedial Action Plan, the applicant must provide OER with ten (10) days written notice of such planned implementation.
2. The applicant must ensure that field oversight of the remedial action is performed by a professional engineer, a QEP, or a trained associate under the direct supervision of a professional engineer or QEP, and that the field oversight of engineering controls is performed by a professional engineer or a trained associate under the direct supervision of a professional engineer.
3. After OER has reviewed and approved the Remedial Action Plan in accordance with § 43-1476 of this subchapter, OER will issue a notice to proceed which authorizes DOB to issue such building permit or permits as are necessary to implement the approved remedial action. In no event, however, will the applicant receive from DOB a temporary certificate of occupancy or a certificate of occupancy until OER issues a notice of satisfaction pursuant to paragraph 2 of subdivision c of this section.
 - A. If the proposed Development of the tax lot is altered in any way after the Remedial Action Plan is approved and before the remedial action is completed and prior to any Development, OER's approval of the Remedial Action Plan is invalidated, and the applicant must submit a new or amended Remedial Action Plan for approval or demonstrate to OER that the previously approved Remedial Action Plan is appropriate.
 - B. For a tax lot with a Development that has been altered after the Remedial Action Plan is approved, OER may review the effectiveness of the site's completed remedial action.
4. If implementation of an OER-approved Remedial Action Plan does not commence within one year of the date of OER's approval thereof, such approval and any notice to proceed will expire.
 - A. The applicant may request in writing to extend an OER approval for a Remedial Action Plan not less than thirty (30) days prior to the expiration of such OER approval.
 - i. Any written request for an extension must explain the circumstances for the delay in implementation of the Remedial Action Plan.
 - ii. OER will review a written request for an extension by the applicant in accordance with 43 RCNY § 1476.
 - B. If an approval for a Remedial Action Plan expires, the Applicant must:
 - i. Submit a new Remedial Action Plan for OER review in accordance with 43 RCNY § 1476; or
 - ii. Submit a written request for a renewed approval of the expired Remedial Action Plan.

OER will review a new Remedial Action Plan or a request for a renewed approval in accordance with § 43-1476 of this subchapter.

5. OER will have the right to inspect any tax lot(s) subject to remediation pursuant to this chapter consistent with applicable health and safety regulations, and the applicant must allow any such inspection by OER.
6. If DEC approves a remedial action at a tax lot, OER may apply DEC's approval to satisfy one or more or all of the requirements of this section for approval of a Remedial Action Plan.

c. Completion of the Remedial Action Plan.

1. Upon the completion of a Remedial Action Plan or written confirmation of completion of a substantially equivalent remediation from New York State, the applicant must deliver to OER, a Remedial Closure Report in a form satisfactory to OER. If required by OER, a site management plan and proof of recording of a Declaration of Covenants and Restrictions must be included in the Remedial Closure Report.
 - A. The Remedial Closure Report must be certified by a QEP or professional engineer.
 - B. All engineering controls employed at a Development Site must be certified by a professional engineer.
 - C. Requirements for monitoring or other measures in the Remedial Action Plan that extend beyond the issuance of a temporary certificate of occupancy or a certificate of occupancy for the Project Site and are included in a Declaration of Covenants and Restrictions in accordance with paragraph 4 of subdivision a of this section, will not preclude the issuance of a Remedial Closure Report.
2. Upon OER's review and approval of the Remedial Closure Report, OER must issue a notice of satisfaction to the applicant, DOB and DCP within ten (10) days, authorizing DOB to issue a temporary certificate of occupancy or a certificate of occupancy.
3. The notice of satisfaction must specify that the environmental requirements relating to the (E) Designation have been satisfied and if applicable, a summary of any requirements for site management or other measures in the Remedial Action Plan that extend beyond the issuance of a temporary certificate of occupancy or a certificate of occupancy for the Project Site have been included in a Declaration of Covenants and Restrictions in accordance with paragraph 4 of subdivision a of this section.

§ 43-1475 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 will qualify for a final notice of satisfaction if the remediation is completed, does not require engineering or institutional controls and is protective of public health and the

environment for any allowable use, 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 DEP, DOB and DCP within ten (10) days.

- b. Upon receipt of a final notice of satisfaction, DCP will remove the affected tax lot(s) from the list appended to the Zoning Resolution.
- c. When DCP has received final notices of satisfaction for all tax lot(s) specified in the CEQR Determination with respect to an (E) Designation, it will administratively remove such (E) Designation from the list appended to the Zoning Resolution.
- d. DCP will notify DOB and OER of the removal of tax lots and (E) Designations from the list appended to the Zoning Resolution.

§ 43-1476 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 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 must pay a fee of \$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) must pay a fee of \$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.
- g. Each payment must be in the form of
 - 1. an electronic payment; or
 - 2. 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 sent to:

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

The applicant must include the OER project number and/or payment transaction number on the check or money order.

- 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 §§ 43-1473 and 1474 of this subchapter, and (2) the timeline to meet program milestones to expedite such work.
- i. Upon initial receipt of a submission required pursuant to this subchapter, 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. The applicant must submit all documents, plans, and reports in digital form and in a format established by OER.
- j. If OER requests additional information or a revised submission, the applicant 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 will approve the document, modify the document, or issue comments with respect to the submission within thirty (30) days.
- k. If the applicant disagrees with OER's comments, the applicant will have the opportunity to respond.
- l. Upon receipt and review of all required submissions, OER will issue a determination within thirty (30) days.

§ 43-1477 Notification.

- a. Discovery of a petroleum spill or the discharge of other contaminants on a tax lot(s) for which reporting requirements have been established by federal, state or local law, regulation, or rule must be reported by the applicant in accordance with such law, regulation, or rule.
- b. Discovery of evidence of "reportable quantities" of hazardous materials or hazardous wastes by the Department and/or the applicant on a tax lot(s) that pose a potential or actual significant threat to public health or the environment under federal, state, or local law, regulation, or rule, must be reported by the applicant in accordance with such law, regulation, or rule.

§ 43-1478 Air Quality and Noise (E) Designations.

a. Remedial Action Plan for Air Quality and Noise (E) Designations.

1. To address an Air Quality (E) Designation or a Noise (E) Designation, an applicant must submit a Remedial Action Plan to OER.
2. The Remedial Action Plan must include a certification by a registered architect that all architectural plans and associated specifications and designs, or a certification by a professional engineer that all engineering plans and associated specifications and designs, included in the Remedial Action Plan:
 - A. Have been personally developed by the registered architect or professional engineer or under the registered architect's or professional engineer's direct supervision; and
 - B. Achieve the requirements mandated by the (E) Designation to achieve protection of public health and the environment.
3. The certifying professional engineer and/or registered architect must:
 - A. Be licensed in the State of New York;
 - B. Affix their professional engineer or registered architect stamp to the certification; and
 - C. Include their New York State professional engineer/registered architect license number on the certification.
4. OER will review the Remedial Action Plan to determine if it achieves the specific requirements established for the tax lot by the Lead Agency.
5. When a Project Site encompasses more than one tax lot, and at least one, but not all, of the lots has an Air Quality or Noise (E) Designation or an Environmental Restrictive Declaration, the environmental requirements will apply to the entire Project Site, unless the applicant demonstrates to OER's satisfaction that application of the environmental requirements to the entire Project Site is not warranted.
6. When a Project Site encompasses a portion of a lot which has an Air Quality or Noise (E) Designation or an Environmental Restrictive Declaration, the environmental requirements will apply to all portions of the lot, unless the applicant demonstrates to OER's satisfaction that application of the environmental requirements to a portion of the Project Site is not warranted.
7. Modification of Environmental Requirements. When a proposed Development cannot satisfy the Air Quality or Noise (E) Designation for a tax lot(s), the owner of the tax lot(s) may apply to OER for a modification of the environmental requirements as described in a CEQR Determination based upon new information or technology, additional facts or updated standards, as applicable, provided such modifications are equally protective of public health and the environment. With the consent of the Lead Agency, OER may modify the environmental requirements described in a CEQR Determination provided that such modifications are equally protective of public health

and the environment. Specific modifications include, but are not limited to:

- A. Placement of an exhaust stack where a tax lot's dimensions lack sufficient depth to locate the stack according to the (E) Designation requirements.

The applicant must submit a study showing that the proposed stack location is as protective to public health and the environment as required by the (E) Designation. The study must be based on the same level of analysis used in the associated Environmental Assessment Statement or Environmental Impact Statement.

- B. Modification of a Window/Wall Attenuation mandated by a Noise (E) Designation.

- i. The applicant must conduct a 24-hour noise monitoring test of the lot to record in dBA the Leq(1), L10(1), and the Ldn Noise Descriptors.
- ii. The applicant must submit its Noise Monitoring Protocol to OER for review and approval before starting any testing.
- iii. Where applicable, the Noise Descriptors must be projected to the Full Build Year of the relevant Zoning Amendment or Zoning Action, according to the same methodology used in the environmental review from which the (E) Designation was assigned.
- iv. Following a 24-hour noise monitoring test, the applicant must submit to OER a report summarizing the results of the test and include in its Remedial Action Plan all documents generated by the 24-hour noise monitoring study.
- v. OER will evaluate the test results based on the (E) Designation requirements and the values and guidance found in the CEQR Technical Manual. If the results satisfy the CEQR Technical Manual, OER will agree to modify the Window/Wall Attenuation as described in the lot's Noise (E) Designation.

b. Implementation of the Remedial Action Plan for Air Quality and Noise (E) Designations.

1. After OER has reviewed and approved a Remedial Action Plan for an Air Quality or Noise (E) Designation, OER will issue a notice to proceed recommending that DOB issue the permit necessary for the applicant to carry out the approved remediation. However, the applicant must not accept a temporary certificate of occupancy or a certificate of occupancy from DOB for any Development until OER issues a notice of no objection authorizing issuance of a temporary certificate of occupancy only or a notice of satisfaction in accordance with subdivision c of this section.
2. Once the Remedial Action Plan is approved, an applicant must carry out the remediation in its entirety without any omissions, changes, or deviations. Any changes to an approved Remedial Action Plan must be submitted with appropriate documentation to OER for its approval before an applicant implements the changes.

3. OER has the right to inspect any tax lot(s) subject to remediation according to this section, and the applicant must allow any such inspection by OER.

c. *Completion of the Remedial Action Plan.*

1. Following implementation of the OER-approved Remedial Action Plan, the applicant must submit an Installation Report certified by a professional engineer or a registered architect to OER in a form satisfactory to OER.
2. The Installation Report must document that the remedial activities contained in the OER-approved Remedial Action Plan have been implemented in compliance with the Remedial Action Plan and satisfy the (E) Designation.
3. Upon review and approval of the certified Installation Report, OER will issue a notice of satisfaction authorizing DOB to issue a certificate of occupancy or, where circumstances warrant, OER will issue a notice of no objection for a temporary certificate of occupancy.

**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: Compliance with E-Designation Requirements

REFERENCE NUMBER: 2021 RG 050

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: December 8, 2021

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: Compliance with E-Designation Requirements

REFERENCE NUMBER: OER-16

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/ Francisco X. Navarro
Mayor's Office of Operations

December 8, 2021
Date