

# CEQR TECHNICAL MANUAL 2012 EDITION

## REVISIONS (EFFECTIVE 6/18/12)

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The Department of City Planning proposed a citywide text amendment to Section 11-15 and related Sections of the Zoning Resolution (ZR) to update the regulations governing Environmental “(E)” designations (see [http://www.nyc.gov/html/dcp/html/e\\_designations/index.shtml](http://www.nyc.gov/html/dcp/html/e_designations/index.shtml)). These zoning text changes were adopted by the City Council and became effective on March 28, 2012. To implement the (E) designation text amendment to the Zoning Resolution, the Office of Environmental Remediation (“OER”) proposed to amend rules for property owners to comply with (E) designations in relation to potential hazardous materials, air quality and noise impacts. The amended rules became effective on June 18, 2012 and, in addition to other changes, clarify that Phase I testing is required during environmental review for lots under the ownership or control of an applicant for zoning text amendments or actions pursuant to the Zoning Resolution. Revisions to Chapters 12, 17 and 19 of the *CEQR Technical Manual* are, therefore, intended to provide guidance with respect to the new rules and text.

This document summarizes the revisions that were made to the 2012 Edition of the *CEQR Technical Manual*. The changes are indicated by section number. When deemed appropriate, an entire section or paragraph is presented below to provide context and indicate specific text changes. Deletions are indicated using a ~~strikethrough~~, and additions are indicated using double underline. Typographical or grammatical errors were also corrected. These changes are not indicated below and have no effect on the substance of the guidance in the *CEQR Technical Manual*.

### CHAPTER 12, “HAZARDOUS MATERIALS”

**Introduction (second paragraph)** – Clarifies that the lead agency, in coordination with DEP, determines whether an institutional control, such as an (E) designation, is required. The paragraph is revised as follows:

As mentioned throughout the Manual, it is important for an applicant to work closely with the lead agency during the entire environmental review process. In addition, the New York City Department of Environmental Protection (DEP) often works with the lead agency during the CEQR process to provide technical review, recommendations and approval relating to hazardous materials. When the review identifies the need for long-term measures to be incorporated after CEQR (prior to or during development), ~~DEP~~the lead agency, in coordination with ~~the lead agency~~DEP, determines whether an institutional control (discussed in more detail in Sections 550 through 552), such as an (E) Designation, ~~Restrictive Declaration, or Memorandum of Understanding (MOU)~~ may be placed on the affected site. The Mayor’s Office of Environmental Remediation (OER) has the authority and responsibility for administering ~~post-CEQR~~ (E) Designations and existing hazardous materials Restrictive Declarations recorded on privately-owned parcels as a result of zoning and/or variance actions approvals, pursuant to Section 11-15 (Environmental Requirements) of the Zoning Resolution of the City of New York and Chapter 24 of Title 15 of the Rules of the City of New York.

**Section 321** – Revises the guidance relating to the conclusions that may result from a Phase I ESA as follows:

The conclusions of this assessment can fall into ~~four~~the following categories:



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- There is little or no likelihood of contamination, and therefore, there would be no significant adverse impacts resulting from hazardous materials, and no further investigation is warranted.
- ~~Contamination may exist, and there is a potential for significant adverse impacts. Enough is known at this point that potential worst-case impacts can be disclosed and mitigation developed. An example is a petroleum spill with substantial contamination that will require total removal of soil, and installation of a sub-slab depressurization system.~~
- ~~Contamination may exist, but not enough is known at this point to disclose the nature and extent of contamination to determine whether significant adverse impacts would occur. Additional work (Phase II ESA, described in Section 330) should be performed to determine the nature and extent of any contamination. At this point, it is strongly recommended that DEP be contacted.~~
- ~~Contamination is known to exist. More work is required to determine its nature and extent so that significant adverse impacts can be fully disclosed and mitigation developed as appropriate. It is strongly recommended that DEP be contacted. A Phase II ESA can be performed to determine the nature and extent of any contamination.~~

Note that a Phase I ESA cannot entirely eliminate uncertainty regarding the potential for hazardous materials or a REC in connection with a property. Therefore, the preparer and reviewer must make certain that all due diligence measures have been undertaken before concluding that no potential adverse impact could occur.

- Contamination may exist or is known to exist. More work is required to determine nature and extent of the contamination so that the potential for significant adverse impacts can be fully disclosed and mitigation developed, as appropriate. A Phase II ESA (described in Section 330) should be performed to determine the nature and extent of any contamination.

The Phase I ESA should be summarized as part of the CEQR documentation, including a description of the scope of work, research and activities undertaken, findings, and conclusions.

~~Note that New York City's government information service (311) and/or DEP's Bureau of Environmental Compliance must be contacted immediately when potential significant adverse impacts are identified that present immediate potentially serious health impacts, such as a mercury spill in an occupied building.~~

**Section 322** – Deletes this section.

**Section 330** – Adds final sentence to clarify that when possible, the Phase II ESA should be conducted before a determination of significance is made at the EAS stage or, if a positive declaration is being issued, before the DEIS is completed.

**Section 400 (last paragraph)** – Clarifies that lead agencies should coordinate with DEP and, as appropriate, OER, in developing measures to avoid or mitigate potential impacts.

**Section 500 (first paragraph)** – Clarifies that DEP and OER recommend a “risk-based” approach in determining the proper course of mitigation.

**Section 500** – Removes references to Restrictive Declarations from, and clarifies the list of, institutional controls.



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**Section 500 (last paragraph)** – Clarifies that a RAP should set out appropriate testing protocols and timely submission to DEP or OER, as applicable, of laboratory testing data, documenting both proper off-site disposal and compliant incoming fill materials.

**Section 550** – Removes references to Restrictive Declarations from, and clarifies the list of, institutional controls. Adds references to the Zoning Resolution and Rules of the City of New York.

**Section 551** – Revises guidance relating to (E) Designations, as follows:

The hazardous materials (E) Designation is an institutional control that ~~is implemented through~~ can be placed as a result of the CEQR review of a zoning map or text amendment or action and pursuant to the Zoning Resolution. It provides a mechanism to ensure that testing for and mitigation and/or remediation of hazardous materials, if necessary, are completed prior to, or as part of, future development of the affected site. It is typically used to designate sites that meet all four of the following criteria: an affected site, thereby eliminating the potential for a hazardous materials impact.

- ~~Projected to or potentially would be developed as a consequence of the proposed project;~~
- ~~Not publicly owned;~~
- ~~Not owned or controlled by the applicant; and~~
- ~~The analysis identified the potential presence of hazardous materials.~~

Chapter 24 of Title 15 of the Rules of the City of New York and Section 11-15 of the Zoning Resolution of the City of New York set out the procedures for placing (E) Designations, satisfying related requirements, and removing (E) Designations. Detailed requirements on how to investigate, remediate, satisfy, and receive appropriate sign-offs for sites with (E) designations Designations are included in the Rules. Applicants if necessary, the lead agency may consult with DEP during the CEQR process to identify sites requiring an (E) Designation. After a site has been identified or after the (E) has been placed, applicants are advised to submit all provide the CEQR number to OER and, in order to facilitate OER's review of work proposed to address the requirements of the (E) Designation, it may be necessary for property owners to provide historical technical documentation related to the hazardous materials CEQR review (i.e.g., EAS/EIS, Phase I ESA, Phase II ESA Work Plan/HASP, Phase II ESA Report(s), RAP/CHASP, lead agency and DEP correspondences, Restrictive Declarations, Notices, etc.) to OER (or DEP, in consultation with OER, to the extent that investigations take place during CEQR), for review and approval. Because (E) Designations are developed on a site-specific basis, DEP works with the lead agency during the CEQR process to identify (E) sites. (E) Designations are shown on the Zoning Maps and are listed in a table appended to the Zoning Maps, and they also appear in DOB's online Building Information System (BIS.) to OER. With respect to an applicant-owned or -controlled site, if the lead agency determines that the proposed zoning action warrants a hazardous materials assessment and a Phase I ESA, the Phase I ESA must be completed during CEQR. If the Phase I shows that potential hazardous materials conditions exist, which will need to be addressed during development, the lead agency may assign an (E) Designation to the site, requiring a Phase II ESA and any necessary remediation prior to and/or during redevelopment of the site (see Section 330 above). It is possible that, based on the Phase I and consultation with DEP, the lead agency may determine that the identification and characterization in the EAS/EIS of the actual nature and degree of contamination is appropriate during CEQR. If a Phase II ESA is, therefore, completed during CEQR and remediation is required, the lead agency may assign an



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(E) Designation if such remediation will involve more than standard construction practices and the proper removal of soil and site preparation in accordance with applicable laws and regulations. Such (E) Designation will require the preparation of a Remediation Action Plan in consultation with OER. Otherwise, remediation proposed to be undertaken in accordance with standard construction practices should be reviewed and approved by DEP, and an (E) Designation may not be warranted.

(E) Designations are listed in a table, “CEQR Environmental Requirements,” appended to the Zoning Resolution and appear in DOB’s online Buildings Information System (BIS).

With respect to lots with (E) Designations, DOB will not issue building permits or certificates of occupancy in connection with the following permits/actions until it receives an appropriate “Notice” from OER that the environmental requirements have been met:

- ~~Permits that would allow development;~~
- ~~Permits that would allow enlargement, extension~~ Developments;
- Enlargements, extensions or change ~~changes~~ of use, involving residential or community facility use; or
- ~~Permits~~ Enlargements or alterations ~~that would allow enlargement that disturbs~~ disturb the soil.

As appropriate, OER will issue the applicable notices to DOB including a Notice of No Objection, Notice to Proceed or Notice of Satisfaction.

**Section 552** – Revises guidance relating to Restrictive Declarations as follows:

~~When~~ Historically – until the amendments to the (E) Rules, which became effective on June 18, 2012, allowing lead agencies to place (E) Designations on applicant-owned or -controlled sites and controls the development site, in connection with all zoning actions – Restrictive Declaration may be ~~Dec-~~ larations were used as an institutional control to ensure that the required testing, remediation and/or mitigation occur ~~occurred~~ prior to or as part of the development of applicant-owned or -controlled sites.

~~A Restrictive Declaration should not be used as a means to forego the CEQR investigation, and should only be used when testing is not feasible or possible or when residual impacts remain on site, requiring the protection of future uses. The lead agency should consult with DEP in determining whether a Restrictive Declaration is appropriate.~~

~~The Restrictive Declaration are recorded instruments, binds~~ binding ~~the applicant, as property owner and/or long-term lessee, future owners/lessees and other parties-in-interest, to investigation and/or remediation requirements at pre-determined stages of the project, as overseen by DEP during the CEQR review process or by OER during post-CEQR review for approved zoning and variance actions. In particular, a Restrictive Declarations~~ requires written notice from OER before DOB may issue building permits or certificates of occupancy in connection with the actions described above under (E) Designations.

- ~~Written notice from OER before DOB may issue certain permits (typically the three types described above under (E) Designations); and~~



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- ~~Written notice from OER (typically a Notice of Satisfaction, but sometimes a Notice of No-Objection) before DOB may issue a Temporary Certificate of Occupancy or Permanent Certificate of Occupancy.~~

~~Because Restrictive Declarations and the other institutional controls are developed on a site-specific basis, DEP must approve the form and content of the document before it is executed. The If an applicant must submit acceptable proof of recording of an approved proposes a Restrictive Declaration prior with requirements to DEP's issuance of a final determination to address potential hazardous materials contamination as part of a proposed project, as described in Section 421.1 of Chapter 2, the lead agency may instead elect to incorporate such provisions in an (E) Designation.~~

### CHAPTER 17, "AIR QUALITY"

**Introduction (second paragraph)** – Clarifies that the lead agency, in coordination with DEP, determines whether an institutional control, such as an (E) designation, is required. The paragraph is revised as follows:

As mentioned throughout the Manual, it is important for an applicant to work closely with the lead agency during the entire environmental review process. In addition, the New York City Department of Environmental Protection (DEP) often works with the lead agency during the CEQR process to provide technical review, recommendations and approval relating to air quality. When the review identifies the need for long-term measures to be incorporated after CEQR (prior to or during development), ~~DEP~~the lead agency, in coordination with ~~the lead agency~~DEP, determines whether an ~~Institutional Control~~institutional control, such as an (E) Designation, ~~Restrictive Declaration, or Memorandum of Understanding~~ may be placed on the affected site. The Mayor's Office of Environmental Remediation (OER) has the authority and responsibility for administering post-CEQR (E) Designations and existing Restrictive Declarations recorded on privately-owned parcels, pursuant to Section 11-15 (Environmental Requirements) of the Zoning Resolution of the City of New York and Chapter 24 of Title 15 of the Rules of the City of New York.

**Section 540** – Renames the section as "(E) Designations," and revises the guidance relating to (E) designations, as follows:

The (E) ~~designation~~Designation is an institutional control that is implemented through CEQR review of a zoning action and map or text amendment or action pursuant to the Zoning Resolution. It provides a mechanism to ensure that testing measures aimed at avoiding a significant adverse impact and, if necessary, remediation are completed ~~prior to or~~ as part of future development. ~~It is typically used to designate sites that meet all four of the following criteria:~~

- ~~Potential to be developed as a consequence of the proposed project;~~
- ~~Not publicly owned;~~
- ~~Not controlled by the applicant;~~

~~The analysis identified, thereby eliminating the potential significant adverse for an air quality impact related to HVAC emissions or industrial sources.~~



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~~Because (E) designations are developed on a site-specific basis, DEP works with if necessary, the lead agency may consult with DEP during the CEQR process to identify ~~(E) sites requiring an (E)~~. ~~As of May 11, 2009,~~ ~~†~~The Mayor's Office of Environmental Remediation (OER) is responsible for administering post-CEQR determinations for assigned (E) ~~designations~~Designations and existing Restrictive Declarations ~~recorded on privately-owned parcels,~~ pursuant to Section 11-15 (Environmental Requirements) of the Zoning Resolution of the City of New York and Chapter 24 of Title 15 of the Rules of the City of New York and Section 11-15 of the Zoning Resolution (Rules). If property owners have applied for an action that will result in placement of the City of New York an (E) Designation, they are advised to provide the CEQR number to OER and, in order to facilitate OER's review of the proposed work to address the requirements of the (E) Designation, it may be necessary for property owners to provide historical technical documentation related to the CEQR Air Quality analysis (*e.g.*, EAS/EIS, Technical Memoranda, CEQR determination, modeling results, lead agency and DEP correspondences, Restrictive Declarations, Notices) to OER. The Rules and Section 11-15 of the Zoning Resolution set out the procedures for placing, satisfying and removing (E) ~~designations~~Designations. OER should review and approve all ~~material~~documents needed to satisfy the requirement of the Air Quality (E) designation ~~(Designation (e.g., boilers/HVAC specs specifications, fuel usage, stack location, etc.))~~. On (E) designated lots, )~~

(E) Designations are listed in a table, "CEQR Environmental Requirements," appended to the Zoning Resolution, and appear in the Department of Buildings Buildings' (DOB) online Buildings Information System (BIS).

With respect to (E) designated lots, DOB will not issue the following building permits or certificates of occupancy in connection with the following actions until they receive it receives an appropriate "Notice" from OER (or formerly by DEP) that the (E) requirements have been met:

- Permits that would allow development; Developments;
- Enlargements, extensions or  
Permits that would allow enlargement, extension or change changes of use involving residential or community facility use.; or
- Alterations that involve ventilation or exhaust systems, including, but not limited to, stack relocation or vent replacement.

As appropriate, OER issues the applicable notices to DOB including a Notice of No Objection, Notice to Proceed or Notice of Satisfaction. ~~(E) designations are shown on the Zoning Maps and are listed in a table appended to the Zoning Maps, and also appear in DOB's online Building Information System (BIS).~~

**Section 552** – Deletes this section.

### CHAPTER 19, "NOISE"

**Introduction (third paragraph)** – Clarifies that the lead agency, in coordination with DEP, determines whether an institutional control, such as an (E) designation, is required. The paragraph is revised as follows:

As mentioned throughout the Manual, it is important for an applicant to work closely with the lead agency during the entire environmental review process. In addition, the New York City Department of Environmental Protection (DEP) often works with the lead agency during the CEQR process to provide



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technical review, recommendations and approvals relating to noise. When the review identifies the need for long-term measures to be incorporated after CEQR (prior to or during development), ~~DEP~~the lead agency, in coordination with ~~the lead agency~~DEP, determines whether an Institutional Control~~institutional control~~, such as an (E) designation, Restrictive Declaration, or Memorandum Designation, may be placed on the affected site. The Mayor's Office of Environmental Remediation (OER) has the authority and responsibility for administering post-CEQR (E) designations and Restrictive Declarations recorded on privately owned parcelsDesignations and existing Restrictive Declarations, pursuant to Section 11-15 (Environmental Requirements) of the Zoning Resolution of the City of New York and Chapter 24 of Title 15 of the Rules of the City of New York.

**Section 530** – Renames the section as “(E) Designations,” and revises the guidance relating to (E) designations, as follows:

The “(E)” Designation is an institutional control that is implemented through CEQR review of a zoning ~~project and map or text amendment or action pursuant to the Zoning Resolution.~~ It provides a mechanism to ensure that measures aimed at avoiding a significant adverse impacts and, if necessary, remediation impact are part of future development. ~~It is typically used to designate sites that meet all four of the following criteria:~~

- ~~Potential to be developed as a consequence of the proposed project;~~
- ~~Not publicly owned;~~
- ~~Not controlled by the applicant;~~

~~The analysis identified, thereby eliminating the potential significant adverse for a noise impacts.~~impact.

~~Because (E) designations are developed on a site-specific basis, DEP works with~~ If necessary, the lead agency may consult with DEP during the CEQR process to identify ~~(E) sites requiring an (E).~~ As of May 11, 2009, ~~the Mayor's Office of Environmental Remediation (OER) is responsible for administering post-CEQR determinations for projects with assigned (E) designations~~Designations and existing Restrictive Declarations recorded on privately owned parcels, pursuant to Section 11-15 (Environmental Requirements) of the Zoning Resolution of the City of New York and Chapter 24 of Title 15 of the Rules of the City of New York and Section 11-15 of the Zoning Resolution (Rules). If property owners have applied for an action that will result in placement of the City of New York an (E) Designation, they are advised to provide the CEQR number to OER and, in order to facilitate OER's review of the proposed work to address the requirements of the (E) Designation, it may be necessary for property owners to provide historical technical documentation related to the CEQR Noise analysis (e.g., EAS/EIS, Technical Memoranda, CEQR determination, modeling results, lead agency and DEP correspondence, Restrictive Declarations, Notices) to OER. The Rules and Section 11-15 of the Zoning Resolution set out the procedures for placing, satisfying and removing (E) designationsDesignations. OER reviews and approves all material documents needed to satisfy the requirement of a noise (E) designation. ~~On "E" designated lots,~~ Designation.

(E) Designations are listed in a table, “CEQR Environmental Requirements,” appended to the Zoning Resolution, and appear in the Department of Buildings Buildings’ (DOB) online Buildings Information System (BIS).



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With respect to (E) designated lots, DOB will not issue the following building permits or certificates of occupancy in connection with the following actions until they receive it receives an appropriate “Notice” from OER (or formerly DEP) that the “E” designation(E) requirements have been met:

- Permits that would allow development; Developments;
- Enlargements, extensions or
- Permits that would allow enlargement, extension or change changes of use involving residential or community facility use; or
- Alterations that involve window or exterior wall relocation or replacement.

As appropriate, OER issues the applicable notices to DOB including a Notice of No Objection, Notice to Proceed or Notice of Satisfaction.

~~(E) designations are shown on the zoning maps and are listed in a table appended to the zoning maps, and also appear in DOB’s online Building Information System (BIS).~~

**Section 540** – Deletes this section.

2012 Technical Manual - DO NOT USE