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Hon. Daniel C. Walsh
Director
Office of Environmental Remediation
253 Broadway, 14th floor
New York, NY 10007

Re: Rule Relating To A New York City Green Property
Certification Program
No. 2009 RG 68

Dear Director Walsh:

Pursuant to New York City Charter § 1043 subd. c, the above-referenced rule has been reviewed and determined to be within the authority delegated by law to your agency.

Sincerely,

A handwritten signature in cursive script that reads "Steven L. Goulden".

STEVEN GOULDEN
Senior Counsel
Division of Legal Counsel

cc: Mark McIntyre (Office of Environmental Remediation)

OFFICE OF ENVIRONMENTAL REMEDIATION

NOTICE OF ADOPTION OF RULES RELATING TO A NEW YORK CITY GREEN
PROPERTY CERTIFICATION PROGRAM

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Director of Environmental Remediation by subdivision e of section 15 of the New York City Charter and section 24-903(h) of the Administrative Code of the City of New York, that the Office of Environmental Remediation promulgates and adopts rules relating to a New York City Green Property Certification Program.

The rules were proposed and published on September 17, 2009. A public hearing was held on October 19, 2009.

Section 1. Chapter 14 of Title 43 of the Rules of the City of New York is amended by adding a new Subchapter 3 to read as follows:

SUBCHAPTER 3

New York City Green Property Certification Program

§ 43-1428 Purpose

The New York city green property certification program is established to acknowledge the benefits to public health and the environment of remedial action to property in New York city performed by enrollees in the New York city local brownfield cleanup program and in other government remediation programs that achieve equivalent property remediation.

§ 43-1429 Definitions

For the purposes of this subchapter, the following terms shall have the following meanings:

a. “Agreement” means (1) for the New York city local brownfield cleanup program, the

local brownfield cleanup agreement, (2) for the New York state brownfield cleanup program, an agreement between the enrollee and the New York state department of environmental conservation setting forth the enrollee's remedial obligations, or (3) for any other governmental remediation program, the agreements, stipulations, statutory requirements or regulations that govern management of such program.

b. "Green property certification" means formal recognition by the office that a property in New York city under the New York city local brownfield cleanup program or the New York state brownfield cleanup program, or that a property in New York city that is an equivalent remediation property, has been successfully remediated and that such remediation protects public health and the environment.

c. "Enrollee" means an enrollee in the New York city local brownfield cleanup program, as defined in section 43-1402 of this chapter, an applicant in the New York state brownfield cleanup program, pursuant to section 27-1405 of the environmental conservation law, or a party who has submitted an application for admission into the New York city green property certification program as an equivalent remediation property.

d. "Equivalent remediation property" means a property that the office has determined to have met the requirements of section 43-1430(a)(2).

e. "Office" means the office of environmental remediation.

f. "Recipient" means an enrollee who is eligible for and has been issued green property certification, as well as such enrollee's successors and assigns.

§ 43-1430 Eligibility

a. To be eligible for green property certification, a property shall be located in the city of New York and (1) be admitted to the New York city local brownfield cleanup program or the New York state brownfield cleanup program or (2) be an equivalent remediation property.

1. A property admitted to the New York city local brownfield cleanup program or the New York state brownfield cleanup program shall be eligible if the enrollee has completed the requirements of the local brownfield cleanup agreement or the state brownfield cleanup agreement and received a certificate of completion from such program.

2. A property shall be eligible as an equivalent remediation property if the office determines that:

A. the property has been the subject of a governmental remediation program, including the New York state voluntary cleanup program, the New York state petroleum spills remediation program, and the New York city e-designation hazardous materials program;

B. the enrollee has successfully completed the requirements of such governmental remediation program and received a certificate of completion or equivalent notification of completion from the appropriate city or state office or agency;

C. for a property where residual contamination will remain after the completion of the remediation, the remedial action required pursuant to such governmental remediation program includes establishment of institutional and engineering controls for the property that are equivalent to those required pursuant to the New York city local brownfield cleanup program, as provided in subchapter one of this chapter, including the maintenance of a site management plan to ensure compliance with institutional and engineering controls;

D. the property is in compliance with such requirements for institutional and engineering controls; and

E. the remedial action required pursuant to such governmental remediation program includes the investigation and remediation of the entire property for which a green property certification is sought and addresses all media, including soil, soil vapor and groundwater, to an equivalent extent as required pursuant to the New York city local brownfield cleanup program, as provided in subchapter one of this chapter.

3. The office may determine that one or more sub-parcels of a property are eligible as an equivalent remediation property and that one or more other sub-parcels are not eligible as an equivalent remediation property.

b. Properties that have fulfilled the eligibility requirements for green property certification pursuant to this section prior to the effective date of this section shall be eligible for such certification.

§ 43-1431 Applications

a. No application is required for properties admitted to the New York city local brownfield cleanup program.

b. An application is required for all other properties, including those that have completed the New York state brownfield cleanup program and those for which eligibility under an equivalent remediation property is sought. The office may require information and documentation sufficient for the office to determine whether a property is an equivalent

remediation property.

§ 43-1432 Records

a. The office shall maintain a public record of all properties certified under the New York city green property certification program. The office shall provide confirmation of such certification to any member of the public upon request.

b. The office shall provide a certificate and/or make available other symbols of green property certification to the recipient.

§ 43-1433 Rescission and termination

a. The office may rescind a green property certification if it determines that a certified property is no longer in compliance with the agreement, the certificate of completion or equivalent notice of completion, or the site management plan governing institutional and/or engineering controls established within the respective remediation program to which the property is admitted. Compliance for the purpose of this subdivision includes compliance with reporting requirements. The office may reinstate a green property certification if it determines that the recipient has cured the non-compliance.

1. If the office seeks to rescind a green property certification, it shall provide notice to the recipient by certified mail specifying the basis for the office's proposed action and facts in support of that action.

2. The recipient shall have thirty days after the effective date of the notice to cure the non-compliance and submit proof of cure to the office or to seek a hearing.

3. If the recipient does not seek a hearing within such thirty day period, the green property certification shall be rescinded on the thirty-first day.

4. If the office determines that the non-compliance has been cured, the proposed rescission shall be withdrawn.

5. If the office determines that the recipient has not proven that the non-compliance has been cured, the office shall provide notice to the recipient by certified mail. The recipient shall have thirty days after the effective date of the notice to seek a hearing. If the recipient does not seek a hearing within such thirty day period, the green property certification shall be rescinded on the thirty-first day.

6. A hearing pursuant to paragraph two or five of this subdivision shall be held before the director of the office of environmental remediation or his or her designee, or in the director's discretion, by the office of administrative trials and hearings. If the matter is

referred to the office of administrative trials and hearings, the hearing officer shall submit findings of fact and a recommended decision to the director. The director or his or her designee shall make a final determination and shall notify the recipient within a reasonable period of time of such determination.

7. For purposes of this subdivision, the effective date of notice shall be two business days after the office mails such notice by certified mail.

b. The recipient of a green property certification may terminate the certification upon written request to the office.

§ 43-1434 Miscellaneous

a. Certification categories. The office may establish certification categories, including categories that recognize a cleanup for unrestricted use of the property and categories that recognize the use of sustainable methods for remediation and redevelopment of the property.

STATEMENT OF BASIS AND PURPOSE

Local Law No. 27 of 2009 amended the New York City Charter to create an Office of Environmental Remediation, led by a director. The office oversees all aspects of the city's brownfield policy and administers the E-designation program, as defined in the zoning resolution.

Local Law No. 27 also amended the Administrative Code of the City of New York to establish the local brownfield cleanup program. In particular, section 24-903(h) of the Administrative Code requires the director to promulgate rules for the issuance of a green property certification to properties that have successfully completed the local brownfield cleanup program or other remedial programs equivalent to the local brownfield cleanup program.

The Office now promulgates the following rules to implement section 24-903(h) of the Administrative Code. The rules provide that the Office will issue a green property certification to properties in the City of New York that have obtained a certificate of completion under the local brownfield cleanup program or equivalent remedial programs, including the New York State brownfield cleanup program. The rules set forth the eligibility requirements for the green property certification and an application process for properties in other state or city remediation programs that attain equivalent levels of remediation. The rules also provide that the Office of Environmental Remediation may rescind the certification if it determines that a party has failed to maintain the property in compliance with requirements established under the respective remediation programs.