



(E) designations Text Amendment - **Approved!**

Update March 28, 2012:

On March 28, 2012 the City Council adopted the (E) designations Text Amendment. The zoning text changes are now in effect.

 [View the adopted text amendment.](#)

Overview

The Department of City Planning proposes a citywide text amendment to Section 11-15 and related Sections of the Zoning Resolution (ZR) to update the regulations governing Environmental “(E)” designations. This text amendment is being closely coordinated with the New York City Office of Environmental Remediation (OER) and will result in a more streamlined and transparent (E) Program – the City’s process for establishing environmental requirements related to hazardous materials, air quality and noise on potential development sites identified during [CEQR](#) for proposed [rezonings](#).



Background



A site likely to receive an (E) for hazardous materials due to a history of automotive uses



An (E) for noise would include a requirement to install noise-attenuating windows

Information about what (E) designations are and when they are used is available [here](#).

ZR Section 11-15 (Environmental Requirements) was first established in 1983. It provided for the placement of an (E) designation on the [zoning maps](#), indicating that there were environmental requirements relating to the potential for significant adverse air quality or noise impacts pertaining to specific [tax lots](#) within an area proposed for rezoning. (E) designations enabled the City to assure that the environmental requirements would be implemented at the time the property was developed. The text was expanded in 1989 to address potential significant adverse impacts due to the presence of underground gasoline storage tanks. The [City Planning Commission](#) recognized that the City, as well as private applicants for rezonings, could not access potential development sites that they did not own or control to assess the potential for contamination or to test for the degree of contamination. The (E) would ensure that testing and any necessary remediation would occur prior to or during the development of such sites, assuring the City that potential adverse impacts in connection with the development of properties within areas proposed for rezoning would be addressed at the time that the sites were developed. Section 11-15 was amended again in 1994 to replace the reference to “underground gasoline storage tanks” with a general reference to “potential hazardous material contamination”. This amendment also added the requirement that the resolution of hazardous materials (E)s be a condition to building permit issuance and provided a process for the administrative removal of hazardous materials (E)s. Further, this amendment required that the New York City Department of Environmental Protection (DEP) adopt related rules for the administration of hazardous materials (E)s (see Chapter 24 of Title 15 of the Rules of the City of New York) and that



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the Commission adopt a rule regarding notice to property owners of proposed (E) designations (see [Section 2.02\(e\)](#) of the [ULURP](#) Rules).

In 2009, OER, within the Mayor's Office of Operations, was created by a local law, amending the City Charter and Administrative Code. Among other things, this local law, referred to as the "New York City brownfield and community revitalization act," granted OER the authority to administer the (E) Program, acting as successor to DEP for such purpose.

Proposed Text Changes

Six main issues with the current (E) Program have been identified, which are proposed to be addressed through this text amendment, alone or in combination with changes proposed by OER to its Rules:

1. **Environmental Restrictive Declarations**

(This issue is a key change to OER's Rules for the administration of the (E) Program. The specific text change related to this issue is described in Issue 2)

The City established the (E) Program to be able to rezone large areas which would include lots the City, as applicant, had no access to and therefore could not test for potential hazardous materials contamination. As a result, current (E) Program Rules only allow the placement of (E)s on non-applicant controlled properties. For applicant-controlled properties, the practice has been to use Environmental [Restrictive Declarations](#) (RDs) to ensure further testing and remediation. Having these two different mechanisms within the (E) Program that achieve the same result is unnecessary. Further, Environmental RDs are cumbersome to prepare and administer and difficult for both the City and the public to track. As a solution, and concurrent with this amendment, OER will be amending its Rules to permit the City to assign hazardous materials (E) designations to applicant-controlled properties. This will consolidate the two mechanisms for applying environmental requirements, thereby streamlining the process.

2. **Applicability**

The (E) Program currently limits the use of (E) designations to zoning map amendments. As part of this text amendment, and with OER's proposed Rule change, (E) designations will be able to be applied in connection with all actions under the Zoning Resolution, including [special permits](#) and [authorizations](#). This is related to OER's rule change in Issue 1 to permit (E) designations on applicant-controlled properties.

3. **Enforcement**

ZR Section 11-15 is currently unclear regarding DOB's jurisdiction over air and noise (E) designations and all Environmental RDs. This text amendment would clarify that DOB does have jurisdiction and that satisfying air quality and noise requirements of (E) designations and complying with the environmental requirements embodied in existing Environmental RDs are prerequisites to obtaining building permits and certificates of occupancy from DOB.

4. **Post-Approval Modifications**

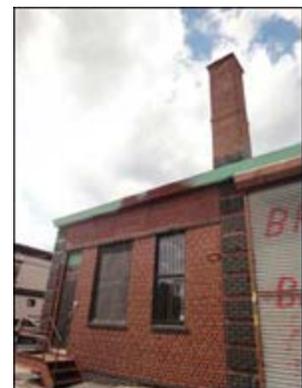
The current text does not provide for the modification of the environmental requirements associated with an (E) designation once it is adopted with a rezoning. This text amendment would allow OER, with the consent of the lead agency, to modify the requirements of an existing (E) designation, provided that the modification is equally protective. Such a modification could be necessary due to new information or changes in technology.

5. **Ongoing Monitoring**

The current text does not ensure the ongoing monitoring of environmental control technologies, such as a vapor barrier installed beneath a building foundation, once a building is constructed and occupied. The proposed text amendment would require that any ongoing monitoring requirements be reflected on the next issued certificate of occupancy for the building, to provide notice and improve the City's enforcement capabilities in this regard.

6. **Duplicative and Outdated Text**

ZR Section 11-15 contains outdated provisions and many Special District chapters contain regulations that would be duplicative of the language in the proposed amended Section 11-15. This text amendment would remove duplicative provisions and obsolete language, clarifying existing regulations.



An (E) for air quality could require developments adjacent to an emissions source to use non-operable windows

Addressing the above issues with the proposed text amendment, in conjunction with OER's Rule changes, would result in a more predictable and streamlined land use and environmental review process, benefitting land use practitioners, property owners, the public and city agencies. This amendment will also result in increased transparency and easier tracking of environmental requirements and enhanced enforcement of the (E) Program. Ultimately, these changes will

result in greater protection of the health and safety of future residents, commercial occupants, their neighbors and construction workers.

For more information, contact the Zoning Division of the Department of City Planning at (212) 720-3268.

Public Review

The (E) designations Text Amendment began formal public review on October 17, 2011 with the City Planning Commission's referral of the non-ULURP zoning text amendment (N 120090 ZRY) to all Community Boards, Borough Boards, and Borough Presidents for a 60-day review period.

Milestone	Date
Department of City Planning Certification/ Referral	October 17, 2011
Comment deadline for Community Boards, Borough Boards and Borough Presidents	December 27, 2011
City Planning Commission Public Hearing	January 4, 2012
City Planning Commission Approval (with modifications*)  Read the CPC Report.	February 29, 2012
City Council Approval	March 28, 2012

* CPC Modifications

The Commission approved the zoning text as proposed, with the following technical modifications/clarifications:

1. Moved the proposed provision for OER modifications of (E) designations to its own separate paragraph (paragraph c) to make it more visible to the reader.
 2. In the third paragraph of Section 11-15, further clarified the provision for the application of environmental requirements when lots with (E) designations or environmental restrictive declarations are merged with other lots or are subdivided into multiple lots.
 3. In paragraph (b) of the text, replaced references to "ongoing monitoring" with "ongoing site management", and replaced "shall" with "OER may require" a declaration of covenants and restrictions for ongoing site management.
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Related Notes

-  Items accompanied by this symbol require the [free Adobe Acrobat Reader](#).
- Brief explanations of terms in *green italics* can be viewed by [visiting glossary page](#). Words and phrases followed by an asterisk (*) are defined terms in the Zoning Resolution, primarily in Section 12-10. Consult the Zoning Resolution for the official and legally binding definitions of these words and phrases.