

RULES OF THE CITY OF NEW YORK

TITLE 15: DEPARTMENT OF ENVIRONMENTAL PROTECTION

Chapter 24

§ 24-01 Authority.

This chapter is promulgated pursuant to §§ 15 (e), 1403 and 1404 of the Charter of the City of New York and in accordance with § 11-15 of the Zoning Resolution of the City of New York.

§ 24-02 Applicability.

This chapter shall apply in connection with the environmental review pursuant to City Environmental Quality Review (CEQR) of any Zoning Amendment or Zoning Action subject to review and approval pursuant to §§ 197-c and 197-d of the New York City Charter where one or more tax lots in the area subject to the Zoning Amendment or Zoning Action have been identified by the Lead Agency as likely to be developed as a direct consequence of the action.

§ 24-03 Definitions.

The following definitions shall apply to this chapter, 15 RCNY §§ 24-01 et seq., unless the text specifically indicates otherwise:

Alternate Means of Ventilation. "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. "CEQR" shall mean the City Environmental Quality Review, Chapter 5 of Title 62 of the Rules of the City of New York.

CEQR Determination. "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. "CEQR Technical Manual" shall mean the City Environmental Quality Review Technical Manual issued by OEC in May 2010 together with any updates, supplements and revisions thereto.

CHASP. "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. "City" shall mean the City of New York.

Contamination. "Contamination," "Contaminated," or "to Contaminate" shall mean the effect(s) on a tax lot(s) from hazardous materials, hazardous substances, hazardous wastes and/or petroleum.

Day. "Day" shall mean a business day.

dBA. "dBA" means a measure of sound as experienced by the human ear.

DCP. "DCP" shall mean the New York City Department of City Planning.

DEC. "DEC" shall mean the New York State Department of Environmental Conservation.

Decibel. "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. "Department" shall mean the New York City Department of Environmental Protection.

Development. "Development", or "Develop" shall mean:

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. "Development Site" shall mean 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. "DOB" shall mean the New York City Department of Buildings.

(E) Designation. "(E) Designation" shall mean the designation of an "E" pursuant to § 11-15 of the Zoning Resolution.

Equivalent Sound Level. "Equivalent Sound Level" or "Leq" means a quantification of noise level as a single value for a given period of time.

Environmental Assessment Statement. "Environmental Assessment Statement" means a report

that describes a proposed development, its location, and a first level analysis of environmental impact areas. Its purpose is to determine a project's potential effects on the environment.

Environmental Impact Statement. "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. "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. "EPA" shall mean the United States Environmental Protection Agency.

Full Build Year. "Full Build Year" means the year of completion for the proposed action as indicated in the EAS or EIS.

Hazardous Material. "Hazardous Material" shall mean 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. "Hazardous Waste" shall mean 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.

HVAC. "HVAC" means Heating, Ventilation, and Air Conditioning System.

Installation Report. "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. "Lead Agency" shall mean the agency responsible under CEQR for the conduct of environmental review in connection with a Zoning Amendment or Zoning Action.

Ldn. "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). "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). "L10(1)" means the stated sound level that is exceeded 10 percent of the time during a 1 hour period. It is 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. "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. "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. "OEC" shall mean the New York City Mayor's Office of Environmental Coordination.

OER. "OER" or "Office" means the New York City Mayor's Office of Environmental Remediation.

Owner. "Owner" shall mean the person, including his or her successors or assigns, who is the recorded title holder of a tax lot(s).

Parties-in-Interest. "Parties-in-Interest" shall mean any person with an enforceable property interest in a tax lot(s).

Person. "Person" shall mean any individual, trust, firm, corporation, joint stock company, association, partnership, consortium, joint venture, commercial entity or governmental entity.

Petroleum. "Petroleum" shall mean 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. "Project Site" shall mean 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). "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. "Tax Lot" shall mean a tax lot identified by parcel number on the official tax maps of the City of New York.

Window/Wall Attenuation. "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. "Zoning Action" means an action, such as a special permit, authorization, certification, or variance, pursuant to the provisions of the Zoning Resolution.

Zoning Amendment. "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. "Zoning Resolution" shall mean the Zoning Resolution of the City of New York, effective December 15, 1961, as amended from time to time.

§ 24-04 Preliminary Screening.

a. The Lead Agency may prepare or may cause to be prepared a preliminary screening assessment consisting of visual or historical documentation of any of the following past or current uses at a Development Site, and/or other tax lot(s) that might have affected or be affecting a Development Site.

- (1) Incinerators;
- (2) Underground and/or above ground storage tanks;
- (3) Active solid waste landfills;
- (4) Permitted hazardous waste management facilities;
- (5) Inactive hazardous waste facilities;

- (6) Suspected hazardous waste sites;
- (7) Hazardous substance spill locations;
- (8) Areas known to contain fill material;
- (9) Petroleum spill locations;
- (10) Any past use identified in Appendix A to the CEQR Technical Manual.

b. Based on the visual or historical documentation prepared under subdivision (a) with respect to lots not under the ownership or control of the person seeking the Zoning Amendment or Zoning Action, the Lead Agency may determine that an (E) Designation should be placed on the tax lot(s) identified under subdivision (a) in connection with the approval of the Zoning Amendment or Zoning Action. In making such determination, the Lead Agency may consult with the Department, and the Lead Agency will inform the Department and OER of such determination.

c. A Phase I Environmental Site Assessment pursuant to § 24-05 shall not be required prior to placement of an (E) Designation on a lot pursuant to this Section unless the lot is under the ownership or control of the applicant for the Zoning Amendment or Zoning Action.

§ 24-05 Phase I Environmental Site Assessment.

a. For any Development Site that is under the control or ownership of the applicant and that, following review of visual or historical documentation pursuant to § 24-04, warrants a hazardous materials assessment, the Lead Agency shall conduct, or shall cause to be conducted, a Phase I Environmental Site Assessment (Phase I ESA) consistent with the current American Society of Testing and Materials (ASTM) Phase I ESA standard.

b. The Phase I ESA may be limited to:

- (1) Historical land use review;
- (2) Regulatory agency list review; and
- (3) Site and surrounding area reconnaissance visit.

c. A report entitled "Phase I ESA Report" and any supplements thereto, summarizing the Phase I ESA shall be prepared by or for the Lead Agency and a copy of such report shall be provided to the Department. The Phase I ESA Report shall include any information discovered in the Phase I ESA. The Department may provide the Lead Agency with any additional information it deems relevant together with any comments regarding the contents of the Phase I ESA and any supplements thereto within twenty (20) days of receipt of the Phase I ESA Report.

d. The Lead Agency may respond to the Department's comments and any additional

information either by placing or causing DCP to place an (E) on the relevant tax lot(s) or by issuing a Final Phase I ESA Report that addresses any such comments and/or additional information. The Lead Agency shall inform the Department and OER of such determination.

e. If a Phase II Environmental Site Assessment or a remedial plan is expected to be conducted during the environmental review, the Lead Agency must coordinate with the Department to ensure that the testing and/or remedial plans are acceptable and protective of public health.

§ 24-06 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 shall:

(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 shall review in accordance with § 24-09.

b. The applicant shall 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 shall 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:

i. 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

ii. 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 shall be implemented in the Phase II ESA for all sampling techniques and methods:

(1) All samples shall 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, sSVOCs 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. 261 and required by OER, or an EPA approved successor method shall be used where appropriate.

(5) Samples from sites on the DEC Registry of Inactive Hazardous Waste Sites shall 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 § 24-09.

f. The applicant shall 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 shall be submitted to OER. The Phase II ESA Report shall 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 shall 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:
 - (i) 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;
 - (ii) Groundwater elevation and flow direction of the uppermost aquifer; and
 - (iii) All identified contamination source areas.
- (6) Appendices, which shall include:
 - (i) All raw data,
 - (ii) Laboratory methods,
 - (iii) Chain-of-custody forms,
 - (iv) A quality assurance/quality control plan, including provisions for blank and duplicate samples and other quality assurance and quality control information as appropriate,
 - (v) Field notes,
 - (vi) Soil boring/monitoring well logs prepared under the guidance of a QEP,

- (vii) As-built well construction details,
- (viii) Modeling programs used,
- (ix) Calculations and formulas, and
- (x) 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 § 24-09.
- 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 §§ 24-07 and 24-09;

(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 shall submit a Remedial Action Plan and CHASP for review by OER in accordance with §§ 24-07 and 24-09.

§ 24-07 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 § 24-06, the applicant shall prepare a Remedial Action Plan and CHASP. The Remedial Action Plan shall address contamination identified in the Phase II ESA Report to the satisfaction of OER, including, but not limited to:

- (i) Elevated levels of contaminants pursuant to applicable DEC standards, criteria, and guidance;
- (ii) Contaminant source areas;
- (iii) The exposure pathways for contamination;

- (iv) Environmental exposure to contamination;
- (v) Public exposure to contamination;
- (vi) Proposed cleanup criteria; and
- (vii) 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 shall 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 shall include a list of all remedial action objectives and explain how the proposed remedial action achieves these objectives.

(3) OER shall review the Remedial Action Plan in accordance with § 24-09.

(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 shall be recorded against the property prior to the issuance of a notice of satisfaction.

(i) The Declaration of Covenants and Restrictions shall 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;

(ii) 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;

(iii) 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;

(iv) The Declaration of Covenants and Restrictions shall be executed by the title holder of such tax lot(s) and shall be recorded against such tax lot(s) in the applicable county office of land records; and

(v) 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 shall provide OER with ten (10) days written notice of such planned implementation.

(2) The applicant shall 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 § 24-09, 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, shall 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 subsection (c) of this section.

(i) 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.

(ii) 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 shall expire.

(i) 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.

(a) Any written request for an extension shall explain the circumstances for the delay in implementation of the Remedial Action Plan.

(b) OER shall review a written request for an extension by the applicant in accordance with § 24-09.

(ii) If an approval for a Remedial Action Plan expires, the Applicant shall:

(a) Submit a new Remedial Action Plan for OER review in accordance with § 24-09; or

(b) Submit a written request for a renewed approval of the expired Remedial Action Plan.

(1) OER will review a new Remedial Action Plan or a request for a renewed approval in accordance with § 24-09.

(2) OER shall 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 shall allow any such inspection by OER.

(3) 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 shall 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.

(i) The Remedial Closure Report must be certified by a QEP or professional engineer.

(ii) All engineering controls employed at a Development Site must be certified by a professional engineer.

(iii) 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, shall not preclude the issuance of a Remedial Closure Report.

(2) Upon OER's review and approval of the Remedial Closure Report, OER shall 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.

(i) The notice of satisfaction shall 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.

§ 24-08 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 shall 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 shall administratively remove such (E) Designation from the list appended to the Zoning Resolution.
- d. DCP shall notify DOB and OER of the removal of tax lots and (E) Designations from the list appended to the Zoning Resolution.

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

- a. OER will conduct an initial review of an application to determine the extent of review required for approval of the application. OER shall inform the applicant of the fee amount.
- b. An applicant who seeks OER approval of a minor alteration(s) and/or other action on a tax lot subject to an (E) Designation or an Environmental Restrictive Declaration resulting in the issuance of a notice of no objection shall pay a fee of \$375.
- c. An applicant for a new development or for alterations on a tax lot subject to an (E) Designation or an Environmental Restrictive Declaration that requires a detailed review by OER involving a phased approval and sign-off procedure (e.g., investigation, remedial action plan or remedial action report) shall pay a fee of \$1050.
- d. Each payment shall be in the form of a personal, business or certified check or money order

made payable to the New York City Department of Environmental Protection/Office of Environmental Remediation (DEP/OER) and shall be sent to:

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

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

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

f. Upon initial receipt of a submission required pursuant to this chapter, including plans and reports, OER will review such submission and attempt to provide written comments within thirty (30) days of receipt of such initial submission.

(1) The applicant must submit all documents, plans, and reports in digital form and in a format established by OER.

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

(1) Revised submissions will be reviewed by OER as expeditiously as possible;

(2) Upon receipt of all information requested, OER shall approve the document, modify the document, or issue comments with respect to the submission within thirty (30) days.

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

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

§ 24-10 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.

§ 24-11 Lead Agency Records/Agency Consultation.

- a. The Lead Agency shall maintain a single file containing copies of all Phase I ESA Reports issued pursuant to § 24-05 of this rule, together with the relevant Environmental Assessment Statement, Environmental Impact Statement, or other CEQR determinations made in connection therewith.
- b. The Department, DCP, and OEC shall meet and confer on a periodic basis concerning the implementation of this rule.

§ 24-12 Air Quality and Noise (E) Designations.

- a. *Placement of Air Quality and Noise (E) Designations.* The Lead Agency may place Air Quality (E) Designations and Noise (E) Designations on real property as a result of an environmental review of a Zoning Amendment or Zoning Action.

- (1) An Air Quality (E) Designation is placed on Development Sites that are not publicly owned, that have the potential to be developed as a consequence of the Zoning Amendment or Zoning Action, and that have been identified by the environmental review as having the potential to contribute to or experience a significant adverse air quality impact related to HVAC systems emissions or industrial or other source emissions.

- (2) A Noise (E) Designation may be placed on tax lots that are not publicly owned, that have the potential to be developed as a consequence of the Zoning Amendment or Zoning Action, and that have been identified by the environmental review as having the potential to experience significant adverse noise impacts.

- b. *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:

- (i) Have been personally developed by the registered architect or professional engineer or under the registered architect's or professional engineer's direct supervision; and

- (ii) 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:

- (i) Be licensed in the State of New York;
- (ii) Affix his/her professional engineer or registered architect stamp to the certification; and
- (iii) Include his/her 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:

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

- (a) 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.

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

- (a) 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.

(b) The applicant must submit its Noise Monitoring Protocol to OER for review and approval before starting any testing.

(c) 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.

(d) 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.

(e) 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.

c. 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 d 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.

d. 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.

APPENDIX A

LIST OF FACILITIES, ACTIVITIES OR CONDITIONS REQUIRING ASSESSMENT

1. A facility, on or adjacent to a tax lot, which generates (including small quantity generators), stores, treats or disposes of hazardous waste, as defined by RCRA and regulated by EPA and/or DEC.

2. A facility, on or adjacent to a tax lot, which manufactures, produces, prepares, compounds, processes, uses, repackages or disposes of hazardous chemicals, as defined under New York City's Community Right-to-Know Law, N.Y.C. Admin. Code tit. 24, ch. 7 (1992).

3. A facility, on or adjacent to a tax lot, which is included on the following list:

- Adhesives and sealants manufacture
- Advertising displays manufacture
- Agricultural machinery manufacture (including repairs)
- Aluminum manufacture or aluminum products manufacture
- Aircraft manufacture (including parts)
- Airports Appliance (electrical) manufacture
- Art goods manufacturer
- Asphalt or asphalt products manufacture
- Athletic equipment manufacture
- Automobile and other laundries
- Automobile manufacture
- Automobile rental establishments
- Automobile wrecking establishments
- Automobile service stations
- Battery manufacture
- Bicycle manufacture
- Blacksmith shops
- Boat repair
- Boat fuel sales
- Boat storage
- Business machine manufacture
- Camera manufacture
- Canvas or canvas products manufacture
- Carpet cleaning establishments
- Carpet manufacture
- Cement manufacture
- Ceramic products manufacture
- Charcoal manufacture
- Chemical compounding or packaging

- Chemical manufacture
- Cleaning or cleaning and dyeing establishments
- Clock manufacture
- Clothing manufacture
- Coal products manufacture
- Coal sales or storage
- Coke products manufacture
- Coil coating
- College, university, trade school laboratories
- Construction machinery manufacture
- Copper forming or copper products manufacture
- Cosmetics or toiletries manufacture
- Dental instruments manufacture
- Dental laboratories
- Disinfectant manufacture
- Drafting instruments manufacture
- Dry cleaning establishments
- Dumps
- Electric power or steam generating plants
- Electric power substations
- Electric and electronic components manufacture
- Electric appliance manufacture
- Electric supplies manufacture
- Electroplating or stereotyping
- Engraving or photo-engraving
- Exterminators
- Explosives manufacture
- Felt products manufacture
- Felt products bulk processing, washing or curing
- Fertilizer manufacture
- Filling stations
- Film manufacture
- Fire stations
- Foundries ferrous or non-ferrous
- Fuel sales
- Fungicides manufacture
- Fur tanning, curing, finishing or dyeing
- Furniture manufacture
- Garbage incineration, storage or reduction
- Gas manufacture, storage
- Gasoline service stations
- Generating plants, electric or steam
- Glass manufacture
- Glue manufacture
- Golf courses
- Graphite or graphite products manufacture
- Gum and wood chemicals manufacture or processing
- Hair products manufacture
- Hardware manufacture
- Heliports
- Incineration or garbage reduction

- Ink or ink ribbon manufacture
- Insecticides manufacture
- Inorganic chemicals manufacture
- Iron and steel manufacture
- Jewelry manufacture
- Junk yards
- Laboratories, medical, dental, research, experimental
- Leather tanning, curing, finishing or dyeing
- Linoleum manufacture
- Luggage manufacture
- Lumber processing
- Machine shops including tool, die, or pattern making
- Machine tools manufacture
- Machinery manufacture or repair
- Mechanical products manufacture
- Medical appliance manufacture
- Medical instruments manufacture
- Medical laboratories
- Metals manufacture including alloys or foil
- Metal casting or foundry products
- Metal finishing, plating, grinding, polishing, cleaning, rust-proofing, heat treatment
- Metal ores reduction or refining
- Metal product treatment or processing
- Metal reduction, refining, smelting or alloying
- Metal treatment or processing
- Mining machinery manufacture
- Mirror silvering shops
- Motorcycle manufacturer
- Motor freight stations
- Musical instrument manufacture
- Newspaper publishing
- Non-ferrous metals manufacture
- Office equipment or machinery repair shops
- Oil, public utility stations for metering or regulating oil sales
- Oil storage
- Optical equipment manufacture
- Organic chemicals manufacture
- Orthopedic appliance manufacture
- Ore mining
- Paint and ink manufacture
- Paper and pulp mills Paper products manufacture
- Pesticides manufacture
- Petroleum or petroleum products refining
- Petroleum or petroleum products storage and handling
- Pharmaceutical products manufacture or preparation
- Photographic equipment and supplies manufacture
- Plastics and synthetic products manufacture and processing
- Plastics raw manufacture
- Plumbing equipment manufacture
- Porcelain enameling
- Precision instruments manufacture

- Printing and publishing
- Pumping stations, sewage
- Radioactive waste disposal services
- Railroad equipment manufacture
- Railroad rights-of-ways, substations
- Railroad freight terminals, yards or appurtenances
- Refrigerating plants
- Rubber processing or manufacture
- Rubber products manufacture
- Sewage disposal plants, pumping stations
- Ship or boat building repair yards
- Shipping waterfront
- Shoes manufacture
- Sign painting shops
- Silver-plating shops
- Silverware manufacture, plate or sterling
- Slag piles
- Soap and detergent manufacture
- Soldering shops
- Solvent extraction
- Steam electric power plants
- Steel products manufacture
- Tar products manufacture
- Textiles bleaching, products manufacture or dyeing
- Textile mills
- Thermometer manufacture or assembly
- Tile manufacture
- Timber products manufacture
- Tool or hardware manufacture
- Toys manufacture
- Trailer manufacture
- Transit substations
- Truck manufacture
- Trucking terminal or motor freight stations
- Turpentine manufacture
- Varnish manufacture
- Vehicles manufacture
- Venetian blind manufacture
- Welding shops
- Wood distillation