

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on the Office of Environmental Remediation's proposed rule for property owners to comply with (E) Designations, in relation to potential hazardous materials, air quality and noise impacts.

Date / Time: February 27, 2012 from 10:00 AM to 12:00 PM

Location: Large Conference Room,
253 Broadway, 14th floor
New York, NY 10007

Contact: Dr. Daniel C. Walsh
Director of Environmental Remediation
253 Broadway, 14th floor
New York, NY 10007

Proposed Rule Amendment

Pursuant to the authority vested in the Director of Environmental Remediation by subdivision (e) of section 15 and section 1404 of the New York City Charter, the Office of Environmental Remediation ("OER") proposes rules for property owners to comply with (E) Designations, in relation to potential hazardous materials, air quality and noise impacts.

Instructions

- Prior to the hearing, you may submit written comments about the proposed amendment to Dr. Walsh by mail or electronically through NYC RULES at www.nyc.gov/nycrules by February 29, 2012.
- To request a sign language interpreter or other reasonable accommodation for a disability at the hearing, please contact Dr. Walsh by February 15, 2012.
- Written comments and a summary of oral comments received at the hearing will be available one week after the hearing from 9:30 AM to 4:30 PM at the Office of Environmental Remediation, 253 Broadway, 14th floor, New York, New York 10007.

STATEMENT OF BASIS AND PURPOSE

Pursuant to sections 15 (e) and 1404 of the New York City Charter, the Office of Environmental Remediation (“OER”) proposes to amend rules for property owners to comply with (E) Designations in relation to potential hazardous materials, air quality and noise impacts. The proposed (E) Designation rules implement a pending amendment to section 11-15 of the City Zoning Resolution, certified by the Department of City Planning on October 17, 2011, that strengthens, clarifies and increases the flexibility of the (E) Designation Program. In addition, the proposed (E) Designation rules represent the first overhaul of the rules for this citywide environmental program in a decade; the proposed rules would:

- reflect OER’s role of determining whether owners or developers comply with (E) Designation requirements. OER assumed this role from the Department of Environmental Protection through Local Law 27 of 2009.
- incorporate additional requirements for (E) Designation site investigations mandated by the CEQR Technical Manual, which was revised in May 2010. The Manual sets forth methodologies acceptable to the city for addressing potential environmental impacts from discretionary actions including (E) Designations.
- establish procedures for parties to comply with air and noise (E) Designations.
- establish new requirements for parties that seek to investigate and remediate sites with (E) Designations.

Section 1404 of the Charter provides that OER has the power and duty to administer the (E) Designation program. Section 15(e)(15) authorizes the Director of Environmental

Remediation to administer the (E) Designation program. Section 15(e)(18) authorizes the Director to promulgate rules.

(E) Designation

Under section 11-15 of the Zoning Resolution of the City of New York, a Hazardous Materials, Air Quality or Noise (E) Designation in Appendix C of the Zoning Resolution indicates that environmental requirements have been established for a tax lot. Prior to any improvement at such a lot, including the construction of a new structure or the remodeling of an existing structure, property owners must demonstrate to OER that the improvement will satisfy the environmental requirements and will occur without potential hazardous material, air quality or noise impacts that could negatively affect construction workers, future users of the lot or those in close proximity to the lot.

Proposed Rule Amendments

Together the amendments to section 11-15 of the Zoning Resolution and the amended (E) Designation rules would streamline existing regulations, clarify applicability, strengthen enforcement mechanisms, and create more flexibility in the administration of the (E) Designation program. The amended (E) Designation rules would authorize (E) Designations to be placed on properties owned or controlled by private applicants that seek to rezone or modify the use and bulk requirements that apply to their property. Until now, property owned by applicants received an Environmental Restrictive Declaration, primarily addressing hazardous materials conditions on real property, which has proven cumbersome to implement because all parties with a property interest in such a parcel including lenders must execute a restrictive declaration for it to take effect. DEP and the Lead Agency (a government agency proposing a discretionary action that

may have a significant impact on the environment) also had to expend resources reviewing the Environmental Restrictive Declarations. The amendment would streamline the process by consolidating these separate mechanisms to address potential hazardous materials contamination and by allowing the placement of (E) Designations instead of Environmental Restrictive Declarations. Related to this rule amendment, the Zoning Resolution text amendment would allow a Lead Agency to place (E) Designations on properties that are subject of site-specific actions such as special permits or authorizations, discretionary actions that allow for modifications to use, bulk, or parking regulations or to zoning requirements if certain findings in the Zoning Resolution are met. Until now, (E) designations were placed only on properties that were to be rezoned, typically by the City but also by private applicants where the rezoning included properties that the applicants did not own.

The Zoning Resolution amendment and the amended rules would grant OER additional flexibility in managing the (E) Designation program. OER, with the Lead Agency's consent, could modify (E) Designations if a property owner demonstrated that a modification to the (E) Designation was equally protective of human health. The Zoning Resolution amendment would also strengthen enforcement of ongoing monitoring of hazardous materials remediation measures by providing that any OER-required ongoing monitoring of properties with hazardous materials (E) Designations (after a property has been remediated and received a notice of satisfaction yet residual contamination remains and requires monitoring of the continued effectiveness of environmental management systems) must be noted on the subject building's certificate of occupancy. As reflected in these proposed rules, the Zoning Resolution amendment authorizes OER to require the property owner to execute and place a Declaration of Covenants and Restrictions on tax lots that require ongoing monitoring. The proposed Zoning Resolution and

rules amendments create a clear mechanism for property owners to remove (E) Designations from their parcels. If the owner or developer achieves a complete cleanup of a tax lot with a hazardous material (E) Designation, or if the source of the noise or air quality (E) Designation is permanently eliminated, OER will issue a final notice of satisfaction which will prompt the Department of City Planning to remove the (E) Designation for the affected lots from the Zoning Resolution.

In addition, the proposed (E) rules describe requirements for property owners who seek to satisfy (E) Designations for hazardous materials, air quality and noise. Specifically, the proposed rule would:

- Amend requirements for submitting investigation work plans, Phase II Environmental Site Assessment reports and Remedial Action Plans to the Office of Environmental Remediation; and
- Authorize OER's nullification of a notice to proceed, which is the approval for a property owner to obtain building department permits allowing construction to begin, if the property owner failed to implement an approved Remedial Action Plan within one year of its issuance.

Process to Submit Remedial Action Plan for Air and Noise (E) Designations

In order to satisfy Air Quality or Noise (E) Designations, the proposed rules require property owners to submit a Remedial Action Plan to OER detailing how their proposed development will meet the environmental requirements of their lot's (E) Designation. The rules provide procedures for an applicant to seek OER approval of a modification for certain types of (E) Designation requirements. If OER determines that the Remedial Action Plan meets the

requirements of the (E) Designation, OER will recommend that DOB issue the relevant permit. Finally, upon completion of the project, property owners must submit an Installation Report to OER documenting that the Remedial Action Plan was properly implemented. If OER approves the Installation Report, OER will recommend that DOB issue a Temporary Certificate of Occupancy or a Certificate of Occupancy.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this office, unless otherwise specified or unless the context clearly indicates otherwise. New text is underlined; deleted material is in [brackets].

Section 1. Sections 24-01 through 24-10 of Chapter 24 of Title 15 of the Rules of the City of New York are amended to read as follows:

§ 24-01 Authority.

[These rules are] 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[(c),] of the Zoning Resolution of the City of New York.

§24-02 Applicability.

[These rules] This chapter shall apply in connection with the environmental review pursuant to City Environmental Quality Review (CEQR) of any Zoning [Map] 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 [Map] Amendment [, and not under the control or ownership of the person seeking such Zoning Map Amendment,] or Zoning Action have been identified by the Lead Agency as likely to be developed as a direct consequence of the action. [These rules shall not apply to the environmental review by the City of a Zoning Map Amendment as it affects property under the control or ownership of such person, which shall be conducted in accordance with CEQR requirements governing the review of potential hazardous material contamination or noise or air quality impacts for such property.]

§ 24-03 Definitions.

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

Alternate Means of Ventilation. “Alternate Means of Ventilation” means a mechanical circulation device that introduces fresh air into a bedroom or living room and in that way allows a residential unit to be built with permanently closed windows.

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 the requirements that mitigate an adverse impact identified through an environmental review conducted under either the City Environmental Quality Review or the State Environmental Quality Review Act.

CEQR Technical Manual. "CEQR Technical Manual" shall mean the City Environmental Quality Review Technical Manual issued by OEC in [December 1993] 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, development of a new structure or a change of use and/or any work on a tax lot(s) that involves soil disturbance, including, but not limited to [demolition,] grading[,] or excavation related to the construction, enlargement, change of use and/or extension 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 Map Amendment [which is not under the control or ownership of the applicant for such Zoning Map Amendment] or Zoning Action and which the Lead Agency has identified pursuant to CEQR as likely to be developed as a direct consequence of the Zoning Map 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" [on the Zoning

Map] pursuant to § 11-15 of the Zoning Resolution [of the City of New York].

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 noise arising from the environmental review of land use 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.A. § 9601* (1995) et seq., the Resource Conservation and Recovery Act (RCRA) *42 U.S.C.A. § 6901* (1995) et seq., the Clean Water Act (CWA), *33 U.S.C.A. § 1251* (1986) et seq., the Clean Air Act (CAA) *42 U.S.C.A. § 7401* (1995) et seq., Toxic Substances Control Act (TSCA), *15 U.S.C.A. § 2601* (1998) et seq., Transportation of Hazardous Materials Act, *49 U.S.C.A. § 5101* (1997) et seq., the Hazardous Substances Emergency Response Regulations, 15 RCNY Chap. 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.A. § 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 Map 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.

[**Notice of Satisfaction.** Notice of Satisfaction" shall mean a written notice issued by the Department pursuant to § 24-07 of this rule documenting completion of all applicable (E) Designation requirements under this rule.]

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).

[PE Completion Confirmation. "PE Completion Confirmation" shall mean a written notice of completion of a Department approved remediation plan from a Professional Engineer, in a form acceptable to the Department.]

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 [Zoning Map] lot(s) and is subject to 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.

[Restrictive Declaration. "Restrictive Declaration" shall mean an instrument 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 a Remediation Plan pursuant to § 24-07 of these rules.]

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 façade.

Zoning Action. “Zoning Action” shall mean an action authorized by 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 Map. "Zoning Map" shall have the meaning set forth in § 12-10 of the Zoning Resolution of the City of New York.

[**Zoning Map Amendment.** "Zoning Map Amendment" shall mean a proposed amendment to the Zoning Map 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 [subsection] 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 Zoning Map for] the tax lot(s) identified under [subsection] subdivision (a) in connection with [adoption] the approval of the Zoning [Map] 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 the Zoning Map pursuant to this Section unless the lot(s) 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 [has not received an (E) Designation following review of visual or historical documentation pursuant to § 24-04] triggers the need for a hazardous material assessment and is under the control or ownership of the applicant, 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 [shall] may respond to the Department's comments and any additional information either by placing or causing DCP to place an (E) on the Zoning Map for 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 will coordinate with the Department and OER 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 seek any building permit for development from DOB 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] Development; or

(2) Submit to [the Department] OER historical, regulatory or other evidence that a Phase II ESA is not required for the proposed [Project Site] Development, which [the Department] OER shall review in accordance with § 24-09.

(3) OER may allow an alternate process to a Phase II Investigation Work Plan if such Plan is established under a remedial program operated by OER or the State of New York Department of Environmental Conservation (DEC).

b. The applicant shall prepare and submit to [the Department] OER a Phase II Investigative Work Plan to [the] 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 [proposed] 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 department of buildings permit application numbers.
- (3) A description of the [projected time frame for development at] development schedule for the Project Site;
- (4) [A description of the proposed use of the Project Site;
- (5)] Copies of reports of [any] 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 CFR 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. 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) 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);

(3) EPA SW-846, 40 C.F.R. 261, which delineates the EPA Target Compound List/Target Analyte List, or an EPA approved successor method shall be used;]

(1) Soil and ground water samples should be analyzed for Full List VOCs with 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 a New York State Department of Health - Environmental Laboratory Approval Program (NYSDOH-ELAP) certified laboratory.

(2) Soil gas, sub-slab soil gas, and indoor air samples should be analyzed for VOCs by EPA Method TO-15 at a NYSDOH-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. NYSDOH Category B Deliverables are not required.

[(4)] (3) 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.

d. [The Department] OER will review the Work Plan submitted pursuant to subdivisions (b) and (c) of this section in accordance with § 24-09.

e. The applicant shall [undertake] implement the Work Plan as approved by [the Department]OER.

f. Upon completion of the Phase II ESA, a report entitled "Phase II ESA Report" summarizing the Phase II ESA shall be submitted to [the Department]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 [reconnaissance] and investigation techniques in accordance with applicable Federal and State [laws] standards, criteria, and guidance and [Department guidelines] OER templates;

[(3)] (4) Sampling Results, which shall be presented in summary tables and compared to all relevant State and Federal [guidance values, standards and regulations] standards, criteria, and guidance;

[(4)] (5) Maps of the tax lots (1"=50') including but not limited to: USGS quadrangle map, name of quad and [North] north arrow, on which the following is clearly indicated:

(i) All physical site characteristics with location of all [location of all soil borings, soil gas points, groundwater monitoring wells, USTs, vent lines, fill lines,] 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) [Where relevant based on the conditions of the Project Site, a depiction of groundwater] Groundwater elevation and flow direction of the uppermost aquifer; and

(iii) [Where relevant based on the conditions of the Project Site, a soil-gas concentration map with contours; and

(iv)] All identified [sources] contamination source [of releases and the extent and concentrations of contaminant plumes in all media] areas.

[(5)] (6) Appendices, which shall include:

- (i) All raw data,
- (ii) Laboratory methods,
- (iii) Chain-of-custody forms,
- (iv) A quality assurance/quality control [QA/QC] 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.

[(6)] (7) An assessment, based on findings of the Phase II ESA, of whether or not a [Remediation] Remedial Action Plan is required for the Project Site.

g. The applicant may submit a [Remediation] Remedial Action Plan with the Phase II ESA Report.

h. [The Department] OER will review the Phase II ESA Report in accordance with § 24-09.

i. Upon completion of its review of the Phase II ESA Report, [the Department] OER will determine whether a [Remediation] Remedial Action Plan and site-specific Construction HASP (CHASP) is required.

(1) If [the Department] OER determines that a [Remediation] Remedial Action Plan is not required, [the Department] OER will issue a notice of [Satisfaction letter] no objection to DOB;

(2) If a [Remediation] Remedial Action Plan and CHASP [has] have been submitted, [the Department] OER will review it in accordance with §§ 24-07 and 24-09;

(3) If [the Department] OER determines that a [Remediation] Remedial Action Plan [is] and CHASP are required and a [Remediation] Remedial Action Plan has not already been submitted by the applicant, the applicant shall submit a [Remediation] Remedial Action Plan and CHASP for review by [the Department] OER in accordance with §§ 24-07 and 24-09.

§ 24-07 [Remediation] Remedial Action Plan.

a. Preparation of the [Remediation] Remedial Action Plan.

(1) Before an applicant may [seek] receive any building permits from DOB with respect to a tax lot(s) subject to an (E) Designation or an Environmental Restrictive Declaration, where [the Department] OER has determined that [Remediation] a Remedial Action Plan is required pursuant to § 24-06, the applicant shall prepare a [Remediation] Remedial Action Plan and CHASP. The [Remediation] Remedial Action Plan shall address [all

aspects of] contamination [, actual and/or potential,] 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 [law and/or DEC guidelines] DEC standards, criteria, and guidance;
- (ii) [The sources of contamination] Contaminant source areas;
- (iii) The exposure pathways for contamination;
- (iv) Environmental exposure to contamination;
- (v) [Human health] 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). [;and
- (viii) Health and Safety of the public and future users of the tax lot(s) within the constraints of technical feasibility, remedial technology, and monitoring requirements.]

(2) In preparing a [Remediation] Remedial Action Plan, the applicant shall use templates provided by OER and consider [all applicable] appropriate remediation techniques, including, but not limited to, those set forth in the CEQR Technical Manual. The [Remediation] Remedial Action Plan shall include a list of all [techniques considered and an explanation for the acceptance or rejection of those techniques] remedial action objectives and explain how the proposed remedial action achieves these objectives.

(3) [The Department] OER shall review the [Remediation] Remedial Action Plan in accordance with § 24-09.

(4) In conjunction with its review of the [Remediation] Remedial Action Plan, [the Department] OER may require the execution of a [Restrictive Declaration] Declaration of Covenants and Restrictions by the [owner, or the owner's designee approved by the Department,] title holder for the tax lot(s) subject to the (E) Designation or the Environmental Restrictive Declaration prior to the issuance of a notice of satisfaction.

(i) The [Restrictive Declaration] Declaration of Covenants and Restrictions shall bind the [owner] title holder, or [the owner's] a designee approved by [the Department,] OER to [performance of] perform the [Remediation] Remedial Action Plan in accordance with its terms, and [shall] may include [restrictions upon development of the subject tax lot(s)] 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 [Remediation] Remedial Action Plan, the [Restrictive Declaration] Declaration of Covenant and Restrictions may require [monitoring or other measures] controls on (E) Designation hazardous material sites that extend beyond the date of issuance of a Temporary Certificate of Occupancy or a Certificate of Occupancy for the Project Site;

(iii) The [Restrictive Declaration] Declaration of Covenant and Restrictions [shall] may include a procedure for [Department review of satisfaction of any] the periodic reporting to OER of the attainment and maintenance of any

requirements contained in the [Restrictive Declaration] Declaration of Covenant and Restrictions pursuant to this subsection [and release therefrom]; [and]

(iv) The [Restrictive Declaration] Declaration of Covenant and Restrictions shall be executed by [all Parties-in-Interest to] the title holder of [to] 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 [Remediation] Remedial Action Plan.

(1) Prior to implementation of the [Remediation] Remedial Action Plan, the applicant shall [:

(i) the Department] provide OER with ten (10) days written notice of such planned implementation.[; and

(ii) A copy of the recorded Restrictive Declaration, if such was required by the Department.]

(2) After [the Department] OER has reviewed and approved the [Remediation] Remedial Action Plan in accordance with § 24-09 [and a Restrictive Declaration, if required by the Department, has been completed in accordance with paragraph (4) of subsection a. of this section, the Department may recommend to], OER will issue a notice to proceed which authorizes DOB [issuance of] to issue such building permit or permits as are necessary to

[undertake] implement the approved [Remediation] remedial action. In no event, however, shall the applicant [seek or accept] receive from DOB a Temporary Certificate of Occupancy or a Certificate of Occupancy until [the Department] 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.

(3) If implementation of [a Department] an OER-approved [Remediation] Remedial Action Plan does not commence within one year of the date of [the Department's] OER's approval thereof, such approval and any notice to proceed shall expire.

(i) The applicant may request in writing to extend [a Department] an OER approval for a [Remediation] Remedial Action Plan not less than thirty (30) days prior to the expiration of such [Department] OER approval.

(a) Any written request for an extension shall explain the circumstances for the delay in implementation of the [Remediation] Remedial Action Plan [and document that the Remediation Plan remains valid].

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

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

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

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

(1) [Any written request for a renewed approval shall explain the circumstances for the delay in implementation of the Remediation Plan and document that the Remediation Plan remains valid.

(2) The Department] OER will review a [written request for an extension by the Applicant] new Remedial Action Plan or a request for a renewed approval in accordance with § 24-09.

[(3) The Department] (2) OER shall have the right to inspect any tax lot(s) subject to remediation pursuant to this [rule with respect to the remediation,] chapter consistent with applicable health and safety regulations, and the applicant shall allow any such inspection by [the Department] OER.

(3) If DEC approves a remedial action at a tax lot, OER may apply the state 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 [Remediation] Remedial Action Plan.

(1) Upon the completion of [the Department-approved Remediation] a Remedial Action Plan or written confirmation of completion of a substantially equivalent remediation from New York State, the applicant shall deliver to [the Department] OER, a [PE Completion Confirmation] Remedial Closure Report in a form satisfactory to [the Department] 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 [Remediation] 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 [Restrictive Declaration] Declaration of Covenant and Restrictions in accordance with paragraph (4) of [subsection] subdivision a of this section, shall not preclude the issuance of a [PE Completion Confirmation] Remedial Closure Report.

(2) Upon [the Department's] OER's review and approval of the [PE Completion Confirmation] Remedial Closure Report, [the Department] OER shall issue a notice of satisfaction to the applicant, [OEC,] DOB and DCP within ten (10) days.

(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 [monitoring] site management or other measures in the [Remediation] Remedial Action Plan that extend beyond the issuance of a Temporary Certificate of Occupancy or a Certificate of Occupancy for the [Project] Development Site [that] have been included in a [Restrictive Declaration] Declaration of Covenant and Restrictions in accordance with paragraph (4) of [subsection] subdivision a of this section.

§ 24-08 [Satisfaction] Removal of (E) Designation Requirements.

a. [Issuance of the] OER will issue a final notice of satisfaction [by the Department constitutes the Department's report specifying] 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 that achieves a DEC Track 1 cleanup qualifies for a final notice of satisfaction. 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 environmental requirements have been completely satisfied for a specific block and lot(s). OER will send the final notice of satisfaction to both DOB and DCP within ten (10) days.

b. [The owner of any tax lot(s) subject to an (E) Designation may file a copy of a Notice of Satisfaction with the Department of City Planning.] Upon receipt of [such Notice of Satisfaction] a final notice of satisfaction, DCP shall [indicate such satisfaction as to] remove the affected tax lot(s) [on the listing of (E) Designations appended to the Zoning Map] from the list appended to the Zoning Resolution.

c. When DCP has received [Notices of Satisfaction] final notices of satisfaction for all tax lot(s) within a block specified in the CEQR [declaration] Determination with respect to the placement of an (E) Designation [on the Zoning Map] listed in Appendix C of the Zoning Resolution, it shall administratively remove such (E) Designation from [the Zoning Map] Appendix C.

d. DCP shall notify DOB[, OEC] and [DEP] OER [in writing of the satisfaction of (E) Designation requirements for a tax lot(s) or] of the removal of [an (E) Designation] tax lots and (E) Designations from [a] the list appended to the Zoning [Map] Resolution.

§ 24-09 [Department] Fees and OER Review and Approval [Fee and] 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 [Department] OER approval of a minor alteration(s) and/or other action on a tax lot subject to an (E) designation or [a restrictive declaration that does not require

a full technical review by the Department] an Environmental Restrictive Declaration resulting in the issuance of a notice of no objection shall pay a fee of \$250.

[b] c. An applicant for a new development or for alterations on a tax lot subject to an (E) designation or [a restrictive declaration] an Environmental Restrictive Declaration that requires a detailed review by [the Department] OER involving a phased approval and sign-off procedure (e.g., [monitoring, modeling, testing, remediation] investigation, remedial action plan or remedial action report) shall pay a fee of \$750.

[c. The Department shall conduct an initial review of the application to determine the extent of review required for approval of the application. The Department shall inform the applicant of the fee amount.]

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

[Attn. Budget Manager

253 Broadway, 14th floor]

100 Gold Street, 2nd floor

New York, NY [10007] 10038

Attn. Accounts Receivable

The applicant shall include the OER project [name] number and/or [address and the Office of Environmental Remediation project number] project name on the certified check.

e. At the [written] request of the applicant, [the Department] OER will [conduct a pre-submission conference] meet with the applicant regarding (1) the required contents of any [submission] plan or report required pursuant to §§ 24-06 and 24-07 of this [rule and the schedule for proceeding with such submission] chapter, and (2) the timeline to meet program milestones to expedite such work.

f. Upon initial receipt of a submission required pursuant to this [rule] chapter, [the Department] 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 [the Department] OER requests additional information or a revised submission, the applicant shall resubmit [the submission] the document, plan, or report with this additional information for review.

(1) Revised submissions will be reviewed by [the Department] OER as expeditiously as possible;

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

h. If the applicant disagrees with [the Department's] OER's comments, the applicant shall have the opportunity [thirty (30) days, or such time as agreed upon by the Department and the applicant,] to respond.

i. Upon receipt and review of all required submissions, [the Department] OER will issue [its] a determination [either approving or disapproving the submission] within thirty (30) days.

[j. If at any point in its review of a submission by the applicant, the Department requires more than the specified time period for the review, the Department will notify the applicant in writing of the necessity of such additional time.

k. If at any time the Department fails to provide written comments within a time period specified under this section, or such time as agreed upon by the Department and the applicant, and fails to provide written notice of the necessity of additional time, the applicant may submit a written notification to the Department requesting that any comments be provided 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 [applicable Federal, State or local] law[s], 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] federal, state, or local [guidelines] law, regulation, or rule, must be reported by the applicant in accordance with such [applicable Federal, State or local laws] law, regulation, or rule.

§2. Chapter 24 of Title 15 of the Rules of the City of New York is amended by adding a new section 24-12 to read as follows:

§ 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 or a professional engineer that all architectural and/or engineering plans, specifications, and associated 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 protection of public health and the environment mandated by the (E) Designation.

(3) The certifying professional engineer 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 seek or accept a Temporary Certificate of Occupancy or a Certificate of Occupancy from DOB until OER issues a notice of no objection-temporary certificate of occupancy only or notice of satisfaction according to 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 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 recommending to DOB that it issue a certificate of ccupancy or, where circumstances warrant, OER will issue a notice of no objection for a temporary certificate of occupancy.

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS

253 BROADWAY, 10th FLOOR

NEW YORK, NY 10007

212-788-1526

CERTIFICATION / ANALYSIS

PURSUANT TO CHARTER SECTION 1043(d)

RULE TITLE: Hazardous Materials, Air Quality and Noise (E) Designations

REFERENCE NUMBER: OER-1

RULEMAKING AGENCY: Mayor's Office of Environmental Remediation

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Ruby B. Choi

Mayor's Office of Operations

1/25/2012

Date

NEW YORK CITY LAW DEPARTMENT

DIVISION OF LEGAL COUNSEL

100 CHURCH STREET

NEW YORK, NY 10007

212-788-1087

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Hazardous Materials, Air Quality, and Noise (E) Designations

REFERENCE NUMBER: 2011 RG 13

RULEMAKING AGENCY: Office of Environmental Remediation

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN

Date: January 25, 2012

Acting Corporation Counsel

