



NYC Buildings Department
280 Broadway, New York, NY 10007

Rick D. Chandler, P.E., Commissioner



BUILDINGS BULLETIN 2014-026

Operational

Supersedes: Operations Policy and Procedure Notices #1/03 and #2/05

Issuer: Thomas Fariello, RA
First Deputy Commissioner

Issuance Date: December 5, 2014

Purpose: This document clarifies procedures for building permit applications and certificates of occupancy for tax lots subject to environmental requirements of an (E) designation or environmental restrictive declaration.

Related Zoning Section: ZR 11-15
ZR Appendix C

Subject(s): Environmental requirements; (E) designation; environmental restrictive declaration; potential hazardous materials, noise or air quality impacts; Office of Environmental Remediation (OER); declaration of covenants and restrictions; City Environmental Quality Review (CEQR)

I. Background

An (E) designation or an environmental restrictive declaration (RD) listed in New York City Zoning Resolution Appendix C, City Environmental Quality Review (CEQR) Environmental Requirements, indicates that environmental requirements for potential hazardous materials, noise or air quality impacts have been established for one or more tax lots, per ZR 11-15. Tax lots subject to an (E) designation or RD must receive approval from the Office of Environmental Remediation (OER) before permit application approval, permit issuance (including issuance of amended permits) and permit sign-off in connection with certain types of work. Owners of these tax lots must reference any recorded declarations of covenants and restrictions describing ongoing site management requirements on temporary and final certificates of occupancy (COs).

II. Scope of work subject to OER approval

A. Potential hazardous material contamination. On lots with an (E) designation or RD for hazardous materials, OER approval is required for: i) development; ii) enlargement, extension or change in use of a residential or a community facility use; or iii) enlargement or alteration of a building for any use that disturbs the soil.

B. Air quality impacts. On lots with an (E) designation or RD for air quality, OER approval is required for: i) development; ii) enlargement, extension or change in use; or iii) alteration that involves ventilation or exhaust systems, including but not limited to stack relocation or vent replacement.

C. Noise quality impacts. On lots with an (E) designation or RD for noise quality, OER approval is required for: i) development; ii) enlargement, extension or change in use; or iii) an alteration that involves window or exterior wall relocation or replacement.

III. Auto-populated required items

The Department's Buildings Information System (BIS) is programmed to automatically impose a requirement for OER approval prior to permit application approval, permit, amended permit and permit sign-off in connection with all new building applications, all alteration applications and all ground sign applications filed on lots flagged with an E-designation or restrictive declaration for hazardous materials, air quality and/or noise quality. The absence of an auto-populated required item on a particular application at each stage that OER approval is required is not a waiver of the obligations described in ZR 11-15.

IV. Types of OER approval

A. OER's general notice of no objection to certain work. The attached letter dated November 3, 2014 from OER to the Department of Buildings identifies work types for which OER has no objection to permit application approval, permit, amended application and permit, sign-off, certificate of completion or temporary or final CO notwithstanding that the work may be located on a tax lot with an "E" designation. When an applicant files such an application with the Department, if the application is limited to these work types, the OER Notice of No Objection and Notice of Satisfaction requirements will be waived.

B. Notice of No Objection. An OER Notice of No Objection indicates that work proposed under a building permit application does not present hazardous material contamination or air or noise quality concerns, or that the application work is not subject to ZR § 11-15. The Notice of No Objection is OER's statement that it does not oppose permit application approval, issuance of a permit, issuance of an amended permit, permit sign-off or the issuance of a certificate of completion or temporary or final CO in connection with the work. OER will issue a Notice of No Objection under the following three (3) specific circumstances:

1. Following OER review of the application, the proposed scope of work does not present hazardous material contamination or air or noise quality concerns, or that the application work is not subject to ZR 11-15.
2. Pending TCO Applications: In certain cases, OER will issue a Notice of No Objection for certain units or spaces within a pending application when those particular units or spaces have met all relevant "E" designation requirements.
3. Support of Excavation (SOE)/Foundation (Only): In certain cases, OER will issue a Notice of No Objection for SOE/Foundation (Only), stating no objection to completion of such work within a particular application. This Notice will typically state that it does not apply to superstructure work and that the applicant will submit an interim report to OER detailing removal/disposal of all excavated soil/fill from the site.

C. Notice to Proceed. An OER Notice to Proceed indicates that work proposed under a building permit application is necessary for remediation or satisfaction of environmental requirements. **The Notice to Proceed is OER's statement that it does not oppose permit application approval or issuance of a permit; however, the Notice to Proceed does not authorize issuance of an amended permit, permit sign-off or the issuance of a certificate of completion or temporary or final CO in connection with the work.** In their November 3, 2014 letter, OER stated that, pursuant to Section 24-07 (b) (4) of Title 15 of the Rules of the City of New York (the "E" Designation Rule), a Notice to Proceed is void if an applicant does not commence work on an OER approved Remedial Action Plan within one year from the date of approval thereof.

D. Notice of Satisfaction. An OER Notice of Satisfaction indicates that building permit work performed in accordance with an OER Notice to Proceed has met environmental requirements including the recordation of a declaration of covenants and restrictions for ongoing site management if such a declaration is required by OER. The Notice of Satisfaction is OER's statement that it does not oppose permit sign-off or the issuance of a certificate of completion or temporary or final CO in connection with the work.

V. CO reference to declaration for ongoing site management

All temporary and final COs issued after the recording of a declaration of covenants and restrictions for ongoing site management must reference the title of the declaration, the City Register File Number (CRFN) and date of recording.

VI. (E) designations and environmental restrictive declarations on subdivided and merged tax lots

(E) designations and environmental restrictive declarations are considered assigned to all portions of merged or subdivided lots. The environmental requirements of the (E) designation or environmental restrictive declaration apply to the merged or subdivided lots, or portions thereof, as determined by OER.

Attachment: Office of Environment Remediation Letter dated November 3, 2014



OFFICE OF ENVIRONMENTAL REMEDIATION
100 Gold Street - 2nd Floor
New York, New York 10038

Daniel Walsh, Ph.D.
Director
Tel: (212) 788-8841
Fax: (212) 788-2941

November 3, 2014

Thomas Fariello, R.A.
First Deputy Commissioner
NYC Department of Buildings
280 Broadway, 7th Floor
New York, NY 10007

Re: **DOB Screening Criteria – “E” Designation Requirements**
Any combination of Hazmat/Air/Noise “E” Designation

Dear Commissioner Fariello:

In an effort to streamline the E-Designation review process, OER has determined that specific DOB permit applications do not trigger the “E” designation, require an OER technical review, or require any additional OER approval(s), and ultimately result in the issuance of a *Notice of No Objection* by OER. As a result, OER has determined that DOB should waive the “E” designation requirement for the following Jobs/Project Types:

- Alterations limited to the following work types:
 - Curb Cut
 - Sidewalk Shed/Fence
 - Scaffolding
 - Construction Equipment
 - Sprinkler/Standpipe
 - Fire Alarm System
- Sign (SN)
 - Wall sign application (only)
 - Ground or Pylon supported sign (only) - no associated foundation/structural support work
- Place of Assembly (PA)
 - No work action

Under no circumstances shall self-certification by an applicant (PE/RA or filing representative) justify a DOB waiver; nor shall any additional/subsequent applications under a filing action listed in bullets above (outside the original permit scope) be waived. As per Section 11-15 of the NYC Zoning Resolution, all other job filings at “E” designated lots will be flagged by DOB. OER should be consulted if any questions arise as to whether a permit/action should be waived.

Separately, pursuant to Section 24-07 (b)(4) of Title 15 of The Rules of The City of New York (The “E” Designation Rule), a Notice To Proceed is void if an applicant does not commence work on an OER approved Remedial Action Plan within one year from the date of approval thereof.

If you have any questions or comments, please feel free to contact me directly at 212.788.3922.

Sincerely,

Maurizio Bertini, Ph.D.
Assistant Director

cc: D. Walsh, M. McIntyre, PMA-OER
Felicia Miller, DOB - femiller@buildings.nyc.gov