

## NOTICE OF PUBLIC HEARING

**Subject:** Opportunity to Comment on the Office of Environmental Remediation's Proposed Amendments to the New York City Brownfield Cleanup Program

**Date / Time:** November 4, 2013 11 AM to 1 PM

**Location:** Central Park Room  
100 Gold Street, 2nd floor  
New York, NY 10038

**Contact:** Dr. Daniel C. Walsh  
Director of Environmental Remediation  
100 Gold Street, 2nd floor  
New York, NY 10038

### Proposed Rule Amendment

Pursuant to the authority vested in the Director of Environmental Remediation by the New York City Charter § 15(e) and § 24-903 of the Administrative Code of the City of New York, the Office of Environmental Remediation ("OER") proposes to amend the New York City Brownfield Cleanup Program rules.

### 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](http://www.nyc.gov/nycrules) by November 1, 2013.
- To request a sign language interpreter or other reasonable accommodation for a disability at the hearing, please contact Dr. Walsh by October 25, 2013.
- 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, 100 Gold Street, 2nd floor, New York, New York 10038.

## STATEMENT OF BASIS AND PURPOSE

The Mayor's Office of Environmental Remediation ("OER" or "the Office") proposes to amend the rules of the New York City Brownfield Cleanup Program to obtain information and tighten cleanup requirements for new industrial uses in connection with remediation of coastal properties in New York City. The Office administers the Brownfield Cleanup Program, which provides landowners and developers with City government approval and oversight of cleanup plans for light to moderately contaminated sites across the City. New York City Charter § 15(e)(4) authorizes the Director of OER to develop and administer a local brownfield cleanup program. The Director is further authorized by Charter § 15(e)(18) and Administrative Code § 24-903 to adopt rules to implement the program.

In the aftermath of Hurricane Sandy, it has become clear that flooding and coastal erosion have the potential to disperse contaminants located on coastal properties to neighboring properties. The proposed amendments to the Brownfield Cleanup Program rules would require parties to compile information on natural factors that could mobilize contaminants, and would tighten cleanup standards for when certain coastal properties are redeveloped.

Under the proposed amendments, the remedial investigation required by the Office would include a determination of the property's elevation above sea level and its proximity to tidal surface water bodies. The proposed amendments would also recognize coastal erosion as a natural force that can relocate contaminants. The amendments would tighten cleanup standards for properties that are susceptible to significant coastal erosion from severe storms and are proposed for industrial use. If the owner of such a parcel opts to implement a Track Two cleanup, the amendments would require the property to be remediated in accordance with commercial cleanup standards.

In addition to these changes, the amendments would allow a property owner to certify to the Office that a physical barrier or cover, used as part of a site remedy, will continue to function as an effective barrier to residual contamination at a property remediated under the Brownfield Cleanup Program. The amendments would also authorize the Office-issued notice of completion to be recorded in a public repository on the Office's website, in lieu of requiring the site owner to record the notice in the property recording office of the borough in which the site is located. Posting the notice of completion on the Office's website would be a simpler and faster way of notifying the public that a site has been remediated under the Brownfield Cleanup Program.

Finally, the amendments would authorize OER to issue acceptance letters, as contemplated by City Charter § 15(e)(14), to facilitate the financing of real estate transactions where a party has raised concern that the property might contain contamination. Upon request, OER would review contaminant data for the site and the owner's plans for the property, and would conduct a site inspection. If OER were to determine that a property has no more than minimal contamination and does not require further action, the Office would issue an acceptance letter, which can serve to reassure parties to a real estate transaction. The Office would charge a \$3,500 fee for the issuance of such letters.

These proposed rules were not included in the Office's regulatory agenda because they were not contemplated when the regulatory agenda was issued.

“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. Subparagraphs B and C of paragraph 1 of subdivision e of section 43-1407 of Subchapter 1 of Chapter 14 of Title 43 of the Rules of the City of New York are amended to read as follows:

B. characterization of the surface and subsurface characteristics of the site, including topography, surface drainage, stratigraphy, depth to groundwater, [and] any aquifers that have been impacted or have the potential to be impacted, property elevation and proximity to tidal surface waterbodies;

C. identification of the sources of contamination, the migration pathways [and], actual or potential receptors of contaminants and natural mechanisms for relocation of contaminants, such as coastal erosion;

§ 2. Subparagraph C of paragraph 2 of subdivision h of section 43-1407 of Subchapter 1 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

C. The requirement to achieve contaminant-specific soil cleanup objectives pursuant to the table in 6 NYCRR section 375-6.8(b) for all soils above bedrock shall not apply to soils at a depth greater than fifteen feet below ground surface, provided that:

- i. the soils below fifteen feet do not represent a source of contamination;
- ii. the declaration of covenants and restrictions for the site requires that any contaminated soils remaining at depth will be managed along with other site soils, pursuant to a site management plan;
- iii. off-site groundwater affected by on-site contamination does not exceed standards; and
- iv. on-site groundwater use is restricted.

If the office determines that a site is susceptible to significant coastal erosion from severe storm events and is proposed for industrial use, the soil component of the remedial program must achieve the contaminant-specific soil cleanup objectives set forth in 6 NYCRR section 375-6.4(b)(3).

§ 3. Subparagraph A of paragraph 4 of subdivision h of section 43-1407 of Subchapter 1 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

A. In developing the site-specific soil cleanup objectives, the enrollee may, solely or in combination:

i. use the soil cleanup objectives, as set forth in 6 NYCRR subpart 375-6, except if the office determines that a site is susceptible to significant coastal erosion from severe storm events and is proposed for industrial use, the enrollee may, solely or in combination, use the soil cleanup objectives as set forth in 6 NYCRR section 375-6.4(b)(1)-(3);

ii. develop or modify site specific soil cleanup objectives, as set forth at 6 NYCRR section 375-6.9;  
or

iii. propose site specific soil cleanup objectives that are protective of public health and the environment.

§ 4. Subparagraph A of paragraph 3 of subdivision l of section 43-1407 of Subchapter 1 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

A. The enrollee or owner at a site at which institutional or engineering controls are employed as part of a remedy, shall annually submit, unless an alternate certification period is provided in writing by the office, a written certification:

i. by a professional engineer for all active remedial systems;

ii. by a professional engineer or a qualified environmental professional for all mitigation or passive remedial systems; or

iii. where the only control is an institutional control on the use of the property or a physical barrier or cover, the written certification may be made by the property owner.

§ 5. Subdivision d of section 43-1408 of Subchapter 1 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

d. Recording of the notice of completion. [1.] Within sixty days of issuance, the [enrollee must record the notice of completion in the recording office for the borough(s) where any portion of the site is located] notice of completion shall be recorded in a public repository established by the office.

[2. The notice of completion shall be deemed recorded when it is delivered to the recording officer.

3. The enrollee shall submit to the office proof of such recording within thirty days after recording, or within thirty days after the enrollee's receipt of such proof of filing from the recording office, whichever is later.]

§ 6. Subdivisions b through g of section 43-1410 of Subchapter 1 of Chapter 14 of Title 43 of the Rules of the City of New York are re-lettered as c through h, and a new subdivision b is added to read as follows:

*b. Acceptance Letter.*

The office may issue acceptance letters if requested to do so by a person or entity. An acceptance letter is typically issued in connection with a proposed financing or re-financing of real property and states that the existing condition of a site does not require further action. The fee for obtaining an acceptance letter from OER is \$3,500.

**NEW YORK CITY LAW DEPARTMENT**

**DIVISION OF LEGAL COUNSEL**

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**NEW YORK, NY 10007**

**212-356-4028**

**CERTIFICATION PURSUANT TO**

**CHARTER §1043(d)**

**RULE TITLE:** Proposed Amendments to the New York City Brownfield Cleanup Program

**REFERENCE NUMBER:** 2013 RG 029

**RULEMAKING AGENCY:** Mayor's 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: September 19, 2013

Acting Corporation Counsel