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OPERATIONS
POLICY AND PROCEDURE NOTICE #1/03

TO: Distribution

FROM: Robert LiMandri

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SUBJECT: LOTS DESIGNATED WITH AN “E” ON THE ZONING MAPS OF THE CITY OF NEW YORK FOR POTENTIAL HAZARDOUS CONTAMINATION

Effective: Immediately

Purpose: To set forth procedures and requirements for application approvals and permits related to lots that have an “E” designation on the Zoning Maps of the Zoning Resolution of the City of New York (the “ZR”) for potential hazardous material contamination (“haz-mat E lots”).

Reference:

ZR § 11-15 (Environmental Requirements); Chapter 24 of Title 15 of the Rules of the City of New York

Background:

ZR § 11-15 provides that the Department may not issue a building permit where the subject tax lot has been given an “E” designation on the relevant zoning map due to potential hazardous material contamination, if the building permit would allow: (1) any development; (2) an enlargement, extension or change of use involving a residential or community facility use; or (3) an enlargement that disturbs the soil on said lot, unless and until the Department is provided with a report from DEP stating that the environmental requirements for the lot have been met.

“Ensuring a Safe Foundation”

Thus, ZR § 11-15 requires DEP approval prior to a permit being issued by the Department when two conditions are present: (1) the application proposes work on a haz-mat “E” lot; and (2) the application proposes work falling under one of the three categories listed above.

The Department has identified haz-mat “E” lots on its Building Information System (“BIS”). The Expanded Property Information screen on BIS identifies haz-mat “E” lots as “Little E - H.”¹

The following types of Department applications for proposed work on a haz-mat “E” lot will trigger the procedures discussed herein: New Building, Alteration Type I, Alteration Type II for an enlargement or swimming pool, and Alteration Type III enlargement. These types of applications for work located on a haz-mat E lot are referred to as “E-sensitive applications.”

The category of “E”-sensitive applications may include certain Alteration Type II and Alteration Type III applications that are not subject to ZR § 11-15 because current Department technology cannot eliminate these applications from those that do require DEP approval. Therefore, it is expected that DEP will receive requests to approve applications for which no determination of satisfaction of environmental requirements related to the “E” designation is needed prior to permit pursuant to ZR § 11-15.

Applicants contemplating filing an “E”-sensitive application should be strongly encouraged to consult with DEP and obtain DEP approval of their proposed construction as soon as possible. Up-to-date information as to which lots have “E” designations can be found at the DCP web-site at www.nyc.gov/html/dcp/home.html.

Any permit issued by the Department for work on an “E”-sensitive application is conditioned upon full satisfaction of all DEP environmental requirements related to the haz-mat “E” designation. All work must be performed in compliance with these requirements. Thus, a failure to obtain the appropriate DEP approval prior to an application for certificate of occupancy, or prior to final inspection and verification of compliance with applicable law pursuant to AC § 27-210 (“sign-off”) shall result in a revocation of the permit.

Specifics:

I. Plan Examination/Professional Certification Procedures

BIS will automatically list DEP approval as a required item for “E”-sensitive applications, similar to the requirement for the Landmarks Preservation Commission approval for work on landmarked buildings. Two required items will appear for an “E”-sensitive application: 1) a “DEP Notice to Proceed” that must be satisfied prior to Department application approval and permit; and 2) a “DEP Notice of Satisfaction” that must be satisfied upon completion of permitted work pursuant to a DEP Notice to Proceed.

¹ Other lots with E-designations pertaining to noise and air quality impacts that are not E-designated for potential hazardous material contamination are also identified on the Expanded Property Information screen as “Little E- Y.” This PPN does not apply to such E-designations.

Upon initial review of the application, plan examiners and clerks shall review the application to ensure that the required items are satisfied, as described in detail below. No approval or permit may issue without Department receipt of the proper DEP approval letter as part of the application.

A professional engineer or registered architect (“PE/RA”) may only use the professional certification or limited supervisory check procedures after first obtaining DEP approval for the work.

The DEP approval is given in the form of three types of written notices as follows: a Notice of No Objection, a Notice to Proceed, and a Notice of Satisfaction, as described in detail below. DEP will issue approvals in accordance with its determination as to whether the application affects potential hazardous material contamination on the lot, whether environmental remediation work is necessary in connection with the permit, and whether the applicant completed such remediation work in satisfaction of the environmental requirements related to the haz-mat “E” designation of the lot. The different types of DEP approval will either satisfy each required item separately, or will satisfy both of the required items at once, as set forth below.

II. Types of DEP Approval

(A) Notice of No Objection

If DEP determines that the proposed “E”-sensitive application work does not present hazardous material contamination concerns (or that the “E”-sensitive application work is not subject to ZR § 11-15) DEP shall issue a “Notice of No Objection” letter. The Notice of No Objection letter shall state that DEP does not oppose issuance of an application approval and permit, and that DEP approval is not required upon completion of the “E”-sensitive application work. Thus, a Notice of No Objection shall satisfy both the “DEP Notice to Proceed” required item and the “DEP Notice of Satisfaction” required item and the permit may issue without further review of the application work by DEP.

The Notice of No Objection shall be issued to both the applicant and the appropriate Department Borough Commissioner and shall identify the application by application number, street address, Block and Lot. In addition, DEP shall indicate its approval and date of approval on one complete set of application plans. The Notice of No Objection and a copy of the DEP-approved plans shall be retained in the Department job folder.

(B) Notice to Proceed

DEP may determine that work under a proposed “E”-sensitive application is necessary for remediation of hazardous material contamination on a haz-mat “E” lot. In such cases, it is anticipated that DEP’s review of the application will occur in two stages. One review will occur prior to the “E”-sensitive application work. DEP may require a PE/RA to submit modified plans to DEP to address the necessary environmental concerns. If DEP approves of such work, DEP shall issue a “Notice to Proceed.” The second review will occur upon completion of the “E”-sensitive application work. If DEP approves the completed work, DEP shall issue a “Notice of Satisfaction,” as described below.

The Notice to Proceed shall state that the referenced application meets environmental requirements related to the “E” designation provided that all such requirements are fully satisfied upon completion of the permitted work. Once the applicant files a Notice to Proceed and DEP-approved plans with the Department as part of the application, the “DEP Notice to Proceed” required item shall be satisfied and the permit may issue subject to DEP’s review and approval of the completed application work.

The Notice to Proceed shall be issued to both the applicant and to the appropriate Department Borough Commissioner and shall identify the application by application number, street address, block and lot. In addition, DEP shall indicate its approval and approval date on one complete set of application plans. The Notice to Proceed and a copy of a complete set of DEP-approved plans shall be retained in the job folder.

(C) Notice of Satisfaction

Upon completion of “E”-sensitive application work, that has received a permit pursuant to a Notice to Proceed, DEP must determine that all environmental requirements related to the hazardous material “E” designation of the lot are satisfied. Upon such determination, DEP shall issue a “Notice of Satisfaction” letter that states that work in connection with the referenced application has met all environmental requirements related to the “E” designation. Once the applicant files a Notice of Satisfaction with the Department, the “DEP Notice of Satisfaction” required item shall be satisfied.

The Notice of Satisfaction shall be issued to both the applicant and the appropriate Department Borough Commissioner and shall identify the application by application number, street address, block and lot. A copy of the Notice of Satisfaction shall be retained in the job folder.

III. Failure to comply with a condition of permit

If the Department determines that work has been completed in a manner contrary to the approved and permitted application and plans, including requirements specified in the DEP-approved plans and Notice to Proceed, or in the event DEP denies issuance of a Notice of Satisfaction, the Department shall revoke the permit for failure to comply with a condition or conditions of permit per AC §§ 27-200 and 27-201.

IV. Post-approval amendments

PE/RAs who have received any type of DEP approval and who wish to submit a post-approval amendment (“PAA”) subsequent to DOB approval or permit must return to DEP and receive approval of the modified application and plans if the PAA involves work that would disturb the soil, or increase the scope of previously approved remediation work.

V. Subdivisions, Mergers, Map Amendments

Prior to filing an application for a haz-mat “E” lot subdivision, the application must be forwarded to the BIS Director for creation of property profiles for the proposed lots with the designation “Little E- H.”

Prior to filing an application for a merger of tax lots, of which at least one lot has a haz-mat “E” designation, the application must be forwarded to the BIS Director for creation of property profiles for the applicable lots with the designation “Little E – H.” Thus, when a haz-mat “E” lot is subdivided, all newly created lots must be identified as haz-mat “E” lots.

Notification of amendments to the City Map that create new haz-mat “E” lots shall be conveyed to the BIS Director for identification of the applicable lots as “Little E – H.”