



Equity Environmental Engineering LLC

March 2010 Newsletter

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Dear Peter,

We hope you've been enjoying the beautiful spring weather including the torrential spring rains.

Good luck to you NCAA basketball and hockey fanatics. Hope you picked the winners for men's and women's basketball? Who will knock off the Connecticut women? Equity was represented by Syracuse, Cornell, and Temple on the men's side and Rutgers on the women's side. So much for our alma maters.

The Frozen Four NCAA Hockey finals should be interesting, particularly with a Cinderella team like the Rochester Institute of Technology (RIT) making it this far.

Starting with this newsletter, we will focus on topics of interest. This time we discuss issues related to Environmental Assessments, from Mark London's article on Four of our projects that made the NYC Planning Commission agenda in January, to Mark's article on Phase II Site Assessments in NYC, to Bob Jackson's article on the value of a \$700 Phase I Environmental Site Assessment. We look forward to hearing your opinions on these topics.

Recalc 100326:

Four-Peat

This month Equity Environmental Engineering (Equity) reached a new high water mark. At the January 4, 2010 meeting of the New York City Planning Commission (CPC), Equity had FOUR projects that we completed Environmental Assessment Statements for on the Commission's Calendar:

- [102 Greene Street](#) was certified into the NYC Uniform Land Use Review Procedure (ULURP), and is now under review by Manhattan's Community District (CD) 2. The proposed action is the granting of a CPC Special Permit pursuant to the NYC Zoning Resolution (ZR) 74-711, allowing Joint Living Work Quarters for

Artists (JLWQA) uses within the existing building located in the SoHo Cast Iron Historic District in Manhattan (SoHo).

The proposed action is a Type I Action, as defined by both NYC City Environmental Quality Review (CEQR) regulations and the NYS Environmental Quality Review Act (SEQRA). Type I Actions, by their very nature imply that they could have potentially significant adverse environmental impacts. CEQR determinations in such cases are granted either a Negative Declaration (i.e., no significant adverse environmental impacts) or a Positive Declaration. In the latter case, the project would then require the preparation of an Environmental Impact Statement (EIS), preceded by the preparation of an EIS and a public scoping session. The EIS process allows for the disclosure of potential impacts for the consideration of the Decision Maker, in this case the CPC. Conditional Negative Declarations (CND), pursuant to SEQRA, are not permitted for Type I Actions.

The Greene Street site located in SoHo makes granting the Special Permit a Type I Action. The project description in both the ULURP application and Environmental Assessment Statement (EAS) included within the project's description specific window / wall noise attenuation specifications. This inclusion provided mitigation of potential noise impacts attributed to the surrounding street network, allowing the project to receive a CPC issued CEQR Negative Declaration. Without the inclusion of the noise mitigation, the project would typically require an EIS.

- 57-63 Greene Street is a request for a request for a ZR 74-711 Special Permit to allow the modification of both use and bulk requirements within an existing 6-story building in SoHo. This too is a CEQR Type I action. To facilitate the issuance of a CPC issued CEQR Negative Declaration, the project description included specifications for required window / wall noise attenuation and HVAC stack location.

The project was presented to the CPC prior to its CPC Public Hearing the following Wednesday. Once the CPC heard and made their determination, the project would then be sent on to the NYC City Council for final review and determination.

- 625 East Fordham Road is a request for CPC approval of a rezoning action from R6 / C8-1 to R6 / C2-4 of a site located on East Fordham Road in the Bronx. The rezoning would facilitate the construction of a 13-story mixed-use building. The CPC issued a CEQR Negative Declaration based on the EAS prepared by Equity. The project has entered the public ULURP review process and is now awaiting Bronx CD 6 review and comment.
- Crotona Terrace Rezoning is an application seeking CPC approval for a zoning map amendment from C8 to R7-1 / C2-4. Once approved, the proposed would provide 175 units of affordable housing, community facility space, and street level commercial / retail uses along Boston Road just south of the Cross Bronx Expressway. The ULURP and CND are currently being

reviewed by Bronx CD 3, as part of the public ULURP review process. Equity developed a Phase II Workplan in addition to the EAS for this project.

Transition Notes:

- James Merani, the former Deputy Director of City Planning's Environmental Assessment and Review Division (EARD), was promoted as of January 1, 2010 to the position of Director of Land Use Review. Congratulations, Jim!
- Celeste Evans, Project Manager, in EARD, was promoted to Deputy Director of EARD as of this Monday. Celeste, Good Luck and Congratulations!

Mark London

When are Phase II Environmental Site Assessments REQUIRED for a New York City Construction Project?

In New York City, as in most of the country, Phase I Environmental Site Assessments (Phase I) are used by prospective purchasers and lenders to determine if a property may or may not have hazardous materials (hazmat) contamination issues. These issues or Recognized Environmental Conditions (RECs), as defined by the American Society for Testing & Materials (E1527-05), are: *"the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, ground water, or surface water of the property."*

Should a REC(s) be identified, the purchaser or lender may require additional information to make an informed decision regarding the potential purchase. Such information may be obtained by conducting a Phase II Environmental Site Assessment (Phase II) (E1903-97 (reapproved 2002)). The Phase II's objectives are to evaluate the identified RECs by providing information adequate to define the presence / absence, nature, and extent of the contamination.

The NYC City Environmental Quality Review (CEQR) process requires City agencies to assess, disclose, and mitigate the environmental consequences of their decisions to fund, directly undertake, or approve a discretionary action. Such actions may be initiated by the City or proposed by private applicants for approval by a City Agency.

Within this framework, the City continues to be concerned about exposing it's inhabitants to increased hazardous materials levels when the City takes a discretionary action. When an action has a hazmat component, which cannot be delineated or mitigated prior to approval or construction, the City employs:

- For approved rezoning actions with hazmat concerns, an (e)

designation is placed on the Zoning Map. This designation assigned to specific zoning lots indicates the presence of an environmental requirement pertaining to a potential hazmat issue (as well as a noise or air quality concern). Hazmat designations typically include a requirement for submitting a Phase I and possibly a Phase II for review and approval. The designations are also recorded by NYC Department of Buildings (DOB) in their Building Information System (BIS).

- A Restrictive Declaration (RD) is an Institutional Control placed on a property in order to allow a discretionary action to receive a CEQR determination. The RD binds the owner to investigate and remediate if necessary mitigate any significant hazmat issues, after the discretionary action is approved. The RD is filed with the City Clerk against the property's title and recorded in the Automated City Register Information System (ACRIS). RDs are not recorded by the DOB in BIS.

Actions initiated by a City agency (typically the Department of City Planning) may require (e) hazmat designations prior to receiving a CEQR determination. This typically occurs when an area-wide rezoning is sponsored by the City, or the (E) is placed on properties not under the control of the project sponsor. Where the applicant for a privately sponsored project is the owner of the property in question, a Restrictive Declaration is generally employed.

As of March 20, 2009, all (e) Designation Environmental Reviews for Hazardous Materials (as well as Air Quality and Window/Wall Noise Attenuation) were transferred from the New York City Department of Environmental Protection (DEP) to the NYC Office of Environmental Remediation (OER).

DOB is responsible for the review and approval of construction plans to ensure that they comply with the Building Code and meet current safety standards and zoning requirements. Once plans are approved, a contractor or contractor's representative may apply for a construction work permit. If a zoning lot has an (e) designation, it will be noted on the DOB's Notice of Objections. No building permits or certificates of occupancy can be issued without mitigation of the (e) designation.

DEP approved Workplans associated with RDs may be implemented without prior OER approval, as an RD is a legally binding document. However, now that the authority to issue Notices to Proceed (NTP) and Notices of Satisfaction (NOS) has moved from DEP to OER, prior discussions with OER are recommended to avoid additional sampling expenses and possible delays. The DOB requires these notices to obtain construction permits and certifies of occupancy.

For more information, contact Mark London at Mark.London@equityenvironmental.com.

A \$700 Phase I Environmental Site Assessment?

Yes, you read it correctly. There are consulting firms out there that are offering \$700 ASTM E1527-05 Phase I Environmental Site Assessments (ESA) that they may assert are also in compliance with the US EPA's All

Appropriate Inquiry (AAI) regulations as well. The questions are, do you want it and what's it worth to you and/or your client?

It is no surprise in this economy (are we tired of that phrase yet?) that somebody would take advantage of the situation to undercut the competition. It raises many questions as to the validity of the Phase I ESA and their compliance with the requirements to prepare one. For example, the ASTM definition of a Qualified Environmental Professional is rather ambiguous. The AAI definition, however, is very clear. According to the AAI regulations, at a minimum, to be considered a qualified environmental professional you have to have the following and I paraphrase:

- You have to have a bachelors degree with 5-years of experience or
- Be a PE/PG with 3-years of experience or
- Hold a license, certification, or registration from a state, tribe, US Territory, federal government or Puerto Rico with 3-years of experience or
- Have 10 years of experience with no degree and
- Remain current in your field through continuing education or other relevant activities

Most firms subcontract the necessary database searches required for the Phase I. They also use these vendors for topographical maps, Sanborn maps, aerial photos, etc. Given the average cost for these items, it doesn't leave much money to compile and interpret the information, conduct a site visit, interview facility and/or municipal staff, and review municipal records even if they're on-line. With the remaining funds, you still have to complete an accurate, responsible, and reliable document. Doesn't seem plausible does it, particularly if you're using a qualified environmental professional?

Maybe the issue is the way in which these documents are now viewed and/or used by the end user. Are lending institutions simply checking a box that a Phase I ESA was completed? Do clients see them as necessary evils to satisfy the lending institutions? More importantly, do the regulatory agencies that often require these documents conduct a critical review of them or simply use them as a tool.

Almost every Phase I ESA that Equity has completed for sites in New York City in the last 18 months has lead to a Phase II Site Investigation based primarily on the database results, regardless of the site specific activities and specific findings and recommendations?

The joy of low cost usual doesn't last nearly as long as the peace of mind and satisfaction of good quality. You get what you pay for and sometimes you pay for what you get.

If you need assistance with Phase I ESA's, contact Bob Jackson at bob.jackson@equityenvironmental.com

Now that the spring flowers are blooming, can the start of baseball season be far behind?

If you would like more information on any of the articles in this newsletter, please call us at (973)527-7451.

Sincerely,

Peter Jaran, LSRP
Equity Environmental Engineering LLC

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