

Addendum to Memorandum of Agreement Between the New York State Department of Environmental Conservation and the New York City Office of Environmental Remediation

Preamble

This Addendum provides additional information on process and procedure for items that are identified in the Memorandum of Agreement between the New York State Department of Environmental Conservation (NYSDEC) and the New York City Office of Environmental Remediation (OER), Sections I-VIII. It is anticipated that this addendum will be modified periodically to refine this document.

Section I: Not Applicable since no provisions in Section I (Purpose) of the MOA require additional detail.

Section II: Not Applicable since no provisions in Section II (Applicability) of the MOA require additional detail.

Section III: General Provisions for the New York City Local Brownfield Cleanup Program (LBCP)

(a) OER actions where NYSDEC has projects on nearby real property. In order to ensure that remedial activities on sites enrolled in the LBCP do not interfere with remedial activities on nearby remedial sites managed by NYSDEC, OER will implement the following procedures.

- (1) OER will review available NYSDEC databases to identify properties that are being managed in NYSDEC remedial programs.
- (2) OER will coordinate on the proposed remedy for the LBCP site with the NYSDEC project manager relative to remedy selection at an LBCP site where there is a NYSDEC site nearby that may be impacted by such remedy. Coordination will include communication by OER with NYSDEC's project manager, providing a description of the proposed remedy, sharing of data and reports, and may include meetings. OER shall provide NYSDEC such information as it requests in furtherance of the required coordination.
- (3) OER shall ensure that its selection of remedial actions shall not be inconsistent with, interfere with, or otherwise impair remedial actions that may be developed or implemented by NYSDEC on or near the property.
- (4) OER will communicate all planned active engineering controls for each LBCP project with the NYSDEC project manager as part of its obligations under this subsection.

(b) OER actions where migration of contamination is occurring onto a LBCP site. In order to properly administer LBCP sites where contamination is migrating from an off-site source onto the site, OER will follow the following protocol.

- (1) OER will notify NYSDEC of instances where contaminant migration onto a LBCP site from an off-site source has been identified, including contaminant plumes in groundwater or contaminant plumes in soil vapor.
- (2) If such contaminant migration is believed to constitute a suspected inactive hazardous waste site, OER will notify NYSDEC.
- (3) OER will provide NYSDEC with information in its possession regarding contaminant migration from off-site sources.
- (4) If the off-site source is in a NYSDEC remedial program, OER will coordinate the proposed remedy for the LBCP site with the designated NYSDEC project manager to ensure that the remedial activities for the LBCP site do not prevent or interfere significantly with any proposed, ongoing, or completed remedial program that may be established by NYSDEC for the off-site source.
- (5) If required, OER will confirm contamination is from an off-site source;
- (6) OER will ensure that the remedial program addresses exposures on the LBCP site from contaminants that have migrated from an off-site source under the LBCP remedial program.
- (7) Where appropriate, OER will include a groundwater use restriction institutional control on the property as part of the LBCP remedial action.
- (8) OER will make the remedial decision document and other remedial program documents available to the NYSDEC.

(c) OER actions where there is migration from a LBCP site.

- (1) OER will coordinate with NYSDEC for sites with off-site groundwater contamination prior to enrollment into the LBCP. Coordination will include communication by OER with NYSDEC's project manager, providing a description of the off-site contamination, sharing of data and reports, and may include meetings. OER shall provide NYSDEC such information as it requests in furtherance of the required coordination. NYSDEC may, subject to such terms and conditions on sharing of information and involvement as NYSDEC deems appropriate, concur with OER admitting sites with off-site impacts to enter the LBCP as follows:
 - a. Chlorinated hydrocarbons: Properties with low-level migration of chlorinated hydrocarbons such that the contamination does not rise to the level of being suspected to be an inactive hazardous waste disposal site and further where communities and sensitive receptors are not affected.
 - b. Petroleum spills: Properties with petroleum spills will be managed according to the terms defined in Section V of this Agreement.
 - c. Metals: Properties with low level metal contamination, such that the contamination does not rise to the level of being suspected to be an inactive hazardous waste disposal site.

If NYSDEC does not concur with OER admitting a site identified in 1(a)-(c) into the LBCP, OER will not admit it.

(2) For real property admitted into the LBCP, OER will coordinate with NYSDEC on the proposed remedial program for sites with contamination migration off-site. Coordination will include communication by OER with NYSDEC's project manager, providing a description of the proposed remedy, sharing of data and reports, and may include meetings. OER shall provide NYSDEC such information as it requests in furtherance of the required coordination. OER shall ensure that its selection of remedial actions shall not be inconsistent with, interfere with, or otherwise impair remedial actions that may be developed or implemented by NYSDEC on or near the property. The remedial action will include elements such as source management and control of future off-site migration.

a. For Coordinated Brownfield Sites, in addition to the provisions in subsections (a), (b) and (c) above, OER will, unless otherwise directed by NYSDEC, transmit all the data and information pertinent to the remedial program contemplated under the LBCP. Further, OER shall obtain documentation from NYSDEC that establishes that the remedial construction required by NYSDEC at a coordinated brownfield site has been completed to NYSDEC's satisfaction prior to issuance of a notice of completion as defined in Section 43-1402 of the Rules of the City of New York.

Section IV: Not Applicable since no provisions in Section IV (Statement of Liability) of the MOA require additional detail.

Section V: Technical Assistance by OER on Petroleum Spills

OER may, subject to NYSDEC approval, provide technical assistance for Petroleum Spills for sites enrolled in the LBCP. Regardless of OER's involvement as agreed to by NYSDEC, NYSDEC retains full authority for the spill, including spill closures. This addendum sets forth two paths. The level of technical assistance that may be provided may include scoping and oversight of investigations and scoping and development of work plans, oversight of field activities, oversight of document and record management, and oversight of development of reports. The types of petroleum spills admitted to each path and the procedures to be followed are defined below. OER shall provide NYSDEC information relative to petroleum sites addressed under this MOU when such information obtained subsequent to the NYSDEC decision to allow the site to be addressed under this MOA and addendum is materially different than known at the time of the decision to allow the spill to be managed by OER. NYSDEC may change the path for any spill at any time during the remedial program or withdraw its approval to have OER provide technical assistance. NYSDEC will manage, without OER assistance, all spills unless otherwise approved by NYSDEC and assigned Path 1 or Path 2 below.

Path 1: Maximum Technical Assistance by OER

Spills managed under this path may, subject to NYSDEC approval, include spills from: (i) heating oil tanks; (ii) older spills; and (iii) viscous petroleum (for instance, number 4 and 6 oil); provided such spills are only causing on-site impacts.

For sites in Path 1, NYSDEC will generally not be actively involved in the development and implementation of work plans. NYSDEC will review the project at the closure stage to ascertain that the spill has been appropriately addressed and is ready for closure. The NYSDEC may require additional investigative and/or remedial activities without limitation in order to advance the site to closure. The following process will be followed by the Government Entities for petroleum spills under Path 1.

Investigation Plan

- Party develops investigation plan consistent with the requirements of the LBCP, NYSDEC Petroleum Spill Guidance Manual and NYSDEC guidance.
- OER approves the work plan, if appropriate, and notifies the Party.
- OER notifies NYSDEC of the start of field work.
- OER conducts field inspection and oversight for the investigation.
- OER ensures reporting of any open petroleum spills that are discovered on the LBCP site.
- OER ensures registration of any unregistered tanks.

Investigation Report

- Party develops and submits an investigation report consistent with the requirements of the LBCP, NYSDEC Petroleum Spill Guidance Manual and NYSDEC applicable guidance.
- Repeat of investigation steps by the Party as necessary.
- OER provides comments to the Party and instructs the Party to revise/finalize the investigation report.
- OER arranges for site specific project meetings with NYSDEC (as necessary).

Remedial Action Plan

- Party develops and submits a remedial action plan to OER consistent with the requirements of the LBCP, NYSDEC Petroleum Spill Guidance Manual and NYSDEC guidance, including *DER-15 Presumptive/Proven Remedial Technologies* (February 27, 2007)..
- OER arranges for site specific project meetings with NYSDEC (as necessary).
- OER approves the work plan, if appropriate.
- OER notifies NYSDEC of the start of field work.
- OER conducts field inspection for the remedial activities
- OER can institute permanent institutional and engineering controls to the extent that it is not feasible to obtain a pre-release cleanup. Note: NYSDEC will determine, during its review in conjunction with a closure request, whether the cleanup satisfies NYSDEC requirements.
- OER provides project updates, if requested, to NYSDEC in an acceptable format.

- OER notifies DER of any site that does not complete the approved cleanup under OER oversight.

Remedial Action Report

- Party develops and submits a remedial action report consistent with the requirements of the LBCP, NYSDEC Petroleum Spill Guidance Manual and NYSDEC guidance.
- OER communicates the results set forth in the remedial action report to NYSDEC. NYSDEC may request to see the report at this time.
- OER submits all project related documents to the NYSDEC in a format acceptable to NYSDEC.
- OER will transmit to the NYSDEC its recommendation relative to closure of the spill.
- NYSDEC reviews the reports and site related information.
- NYSDEC advises OER whether closure of the spill is appropriate or whether additional work is necessary.

Path 2: Intermediate Technical Assistance by OER

Petroleum spills managed under this path include: (i) spills that include non-aqueous phase liquid (NAPL) that is limited to on-site; (ii) spills that result in soil vapor that is limited to the site; and (iii) spills with limited off-site impacts.

For sites in Path 2, NYSDEC will review and approve the remedial action plan but generally will not be actively involved in the implementation of work plans. NYSDEC may review and approve each work plan and report, including the closure report. NYSDEC will advise OER what work plans and reports that will be approved by the NYSDEC on a site-specific basis. Where NYSDEC is approving a work plan or report, OER shall provide such work plan or report to NYSDEC for review/approval and NYSDEC will communicate to OER the outcome of the review. The NYSDEC may require additional investigative or remedial activities without limitation in order to advance the site to closure. The following process will be followed by the Government Entities for petroleum spills administered under Path 2.

Investigation Plan

- Party develops investigation plan consistent with the requirements of the LBCP, NYSDEC Petroleum Spill Guidance Manual and NYSDEC guidance.
- OER approves the work plan, if appropriate, and notifies the Party.
- OER notifies NYSDEC of the start of field work.
- OER conducts field inspection and oversight for investigation.
- OER ensures reporting of any open petroleum spills that are discovered on the LBCP site.
- OER ensures registration of any unregistered tanks.

Investigation Report

- Party develops and submits an investigation report consistent with the requirements of the LBCP, NYSDEC Petroleum Spill Guidance Manual and NYSDEC applicable guidance.
- OER provides comments to the Party and instructs the Party to revise the investigation report.
- Repeat of investigation steps as necessary.
- OER shall provide the NYSDEC with a copy of the proposed final investigation report along with the proposed remedial action plan.
- NYSDEC will review the investigation report in conjunction with the remedial action plan as identified below.

Remedial Action Plan

- NYSDEC reassesses Path and may change to Path 1 or remove the site from review by OER at its discretion
- Party develops and submits a remedial action plan consistent with the requirements of the LBCP, NYSDEC Petroleum Spills Manual and NYSDEC guidance, including *DER-15 Presumptive/Proven Remedial Technologies* (February 27, 2007)
- OER provides a copy of the remedial action plan, investigation report and OER's recommendation for approval of proposed remedy.
- OER arranges for site specific project meetings with NYSDEC (as necessary).
- NYSDEC notifies OER whether the work plan is approved or rejected.
- OER notifies the Party of the NYSDEC's approval or rejection of the remedial action plan.
- OER submits all documents in an electronic format acceptable to the NYSDEC.
- OER, after notification by NYSDEC that a remedial action plan is approved, notifies NYSDEC of the start of field work.
- OER conducts field inspection and oversight for remedial activities.
- OER can institute permanent institutional and engineering controls to the extent that it is not feasible to obtain a pre-release cleanup. Note: NYSDEC will determine, during its review in conjunction with a closure request, whether the cleanup satisfies NYSDEC requirements.
- OER provides project updates to NYSDEC in an acceptable format.
- OER notifies DER of any site that does not complete the approved cleanup under OER oversight.

Remedial Action Report

- Party develops and submits a remedial action report consistent with the requirements of the LBCP, NYSDEC Petroleum Spill Guidance Manual and NYSDEC guidance.
- OER transmits the remedial action report to NYSDEC for review and approval with its recommendation to accept or reject the report. OER may elect to work with the Party on various drafts of the remedial action report before submitting a

version to the NYSDEC with an approval recommendation; in which event the drafts do not need to be shared with the NYSDEC.

- OER submits all documents in an electronic format acceptable to the NYSDEC.
- NYSDEC notifies OER if the report is approved or rejected.
- OER notifies the Party whether the report is approved or rejected.
- NYSDEC project manager will close the spill, if appropriate.

Section VI: Not Applicable since no provisions in Section VI (Implementation) of the MOA require additional detail.

Section VII: Not Applicable since no provisions in Section VII (Community Participation) of the MOA require additional detail.

Section VIII: Not Applicable since no provisions in Section VIII (Modification and Termination) of the MOA require additional detail.