

# **Memorandum of Agreement Between the New York State Department of Environmental Conservation and the New York City Office of Environmental Remediation**

## **I. Purpose**

On May 11, 2009 implementation of the New York City Brownfield and Community Revitalization Act vested the New York City (“NYC”) Mayor’s Office of Environmental Remediation (“OER”) with the authority to create and operate the NYC Local Brownfield Cleanup Program (“LBCP”).

Pursuant to New York State Environmental Conservation Law (“ECL”) 3-0301(2)(p), the New York State Department of Environmental Conservation (“NYSDEC”) is empowered to “delegate to municipal health or environmental departments or agencies or other appropriate governmental entities including the state soil and water conservation committee and the soil and water conservation districts, any of which shall meet such qualifications relating to adequate authority, expertise, staff, funding and other matters as may be prescribed, such functions of review, approval of plans, issuance of licenses, certificates or approvals required or authorized by this chapter as the commissioner may deem appropriate in order to expedite the review of matters within the jurisdiction of the department, to provide for better coordination among different levels of government or to enhance environmental protection, subject to conditions as he may establish.”

OER and NYSDEC (collectively; "the Government Entities") now enter into this Memorandum of Agreement ("MOA" or "Agreement") to facilitate OER’s implementation of brownfield cleanup and redevelopment in NYC . NYSDEC and OER seek to promote the cleanup of contaminated sites in NYC by working together to achieve cleanups that protect public health and the environment by making greater use of all available authorities, and selecting the optimum programmatic tools to increase the pace, effectiveness, efficiency, and quality of cleanups.

The revitalization of existing contaminated or potentially contaminated brownfield properties will provide a significant benefit to the environment, public health and the economy of affected local communities. The Government Entities enter into this Agreement to promote and facilitate the cleanup and appropriate reuse of such contaminated properties.

## **II. Applicability**

a. This Agreement is applicable to properties and persons for which eligibility is established under regulations promulgated by OER, authorized by NYC local law, and enrolled in the LBCP. This agreement only covers the topics expressly set forth herein.

b. This Agreement does not in any way grant or otherwise create any rights, obligations, responsibilities, expectations, or benefits for any person, and does not in any way affect either NYSDEC's or OER's authority under State or federal law.

### **III. General Provisions for the New York City Local Brownfield Cleanup Program**

a. OER shall, except as provided in III.b. below, observe the program elements of the NYS Brownfield Cleanup Program ("BCP") defined in 6 NYCRR 375-1 and 375-3, and shall:

- (1) provide oversight authorities or other mechanisms, and resources, adequate to ensure that a response action will protect human health and the environment; and be conducted in accordance with applicable Federal and State law;
- (2) provide remedy selection in accordance with regulations for the LBCP; 6 NYCRR 375-1 and 375-3, and NYSDEC standards and criteria; and guidance. Presumptive remedies will be consistent with *DER-15 Presumptive/Proven Remedial Technologies* (February 27, 2007) or as otherwise approved by NYSDEC;
- (3) ensure that cleanup levels are achieved as set forth in regulations for the LBCP, 6 NYCRR 375, and NYSDEC standards, criteria and guidance. Remedies shall not be inconsistent with the current, intended and reasonably anticipated use except as provided in 6 NYCRR 375;
- (4) review and approve every cleanup plan and report and require verification and certification or other similar documentation that the remedial work is complete;
- (5) ensure that use restrictions are recorded in the official records of the county in which the site is located and that such records will be available in an institutional control registry accessible to the public; and
- (6) ensure that petroleum releases and suspected inactive hazardous waste disposal sites identified by OER during operation of the LBCP are promptly reported to NYSDEC.

b. For petroleum releases managed by OER pursuant to this MOA and the Addendum hereto, OER shall ensure that the cleanup is performed in accordance with NYSDEC Petroleum Spill Guidance Manual and *DER-10 Technical Guidance for Site Investigation and Remediation* (May 3, 2010). The cleanup goal shall be pre-release. To the extent that such goal cannot be achieved, OER may consider applicable NYSDEC guidance to determine the appropriate cleanup levels. Further, it may employ use restrictions so long as they are recorded as provided in III.a. above.

c. OER will review public databases established by NYSDEC and United States Environmental Protection Agency to identify potential remedial programs on a property. In instances where the potential exists for DEC involvement at a property, OER agrees to coordinate with NYSDEC on eligibility determinations for the LBCP. OER will contact the designated NYSDEC representative and share information and data about the site. Such information will include historical property use reports, site characterization and remedial investigation reports and other pertinent environmental data. OER will provide such information as NYSDEC may request relative to the application under review. Coordination by OER will be performed in accordance with the terms and conditions for

oversight and coordination set forth in this Agreement and will continue throughout the duration of the project as required by this Agreement.

d. Coordinated Brownfield Sites: A coordinated brownfield site is real property in NYC for which this Agreement authorizes participation in the LBCP in accordance with the terms and conditions for oversight and coordination set forth in this Agreement. Coordination of these sites will start with communication by OER of an applicant's intent to enroll in the LBCP. OER and NYSDEC will designate project contacts to be used for all correspondence, transmittal of all data and information pertinent to the remedial program contemplated under the LBCP including work plans and reports, and establishment of a program for communications, including meetings as determined by the Government Entities. The remedial program for the site in the LBCP shall not be inconsistent with, interfere with, or otherwise impair remedial actions that may be developed or implemented by NYSDEC.

Where such remedial program is subject to technical assistance by OER under this Agreement, coordination will follow the protocol established in Section V of this Agreement.

e. Communications

1. OER agrees to promptly communicate all suspected inactive hazardous waste disposal sites that it becomes aware of during the course of its administration of the LBCP pursuant to ECL 27-1303. Correspondence of a suspected inactive hazardous waste disposal site shall be sent to:

Regional Remediation Engineer  
NYSDEC  
Hunters Point Plaza  
47-40 21<sup>st</sup> Street  
Long Island City, NY 11101

and

Site Control Section  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233-7020

2. The communication shall include site address, tax block and lot(s), the reason for OER's belief that the site may be an inactive hazardous waste disposal site, and any additional data or information supportive of this belief.
3. The format for reporting this information will be established by the Government Entities. OER will include a summary of all properties for which

notification has been provided under this provision in an annual report to NYSDEC pursuant to ECL 27-1303. OER will not admit a property that OER suspects poses a significant threat to public health or the environment into the LBCP, and will promptly terminate all sites that NYSDEC has determined poses a significant threat to public health or the environment, as evidenced by classifying the property as a Class 2 property on the State Registry of Inactive Hazardous Waste Disposal Sites, that are identified after enrollment in the LBCP.

f. OER agrees to coordinate with NYSDEC as provided in Paragraph III.a of the Addendum to this Agreement to 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.

g. OER agrees to coordinate with NYSDEC as provided in Paragraph III.b of the Addendum to this Agreement relative to properties seeking enrollment in the LBCP with contamination from sources located off-site, or where such circumstances are believed by OER to.

h. For a coordinated brownfield site, OER agrees to coordinate with NYSDEC as provided in Paragraph III.c of the Addendum to this Agreement.

i. OER shall transmit all fact sheets and notices under the LBCP to NYSDEC. Such fact sheets and notices will, in addition to any site specific contacts designated pursuant to this Agreement, be sent to:

Regional Director  
NYSDEC  
Hunters Point Plaza  
47-40 21<sup>st</sup> Street  
Long Island City, NY 11101

#### **IV. Statement of Liability by New York State Department of Environmental Conservation for the properties that have completed the New York City Local Brownfield Cleanup Program**

a. Generally, NYSDEC agrees that a site is of no further interest and it does not plan or anticipate taking administrative or judicial enforcement action seeking to require a removal or remedial action under CERLCA, 42 U.S.C. §9601 et seq. or the ECL at a site addressed by this Agreement while (1) the site remains in compliance with the LBCP and the terms of any local brownfield cleanup agreement with OER , or (2) when a site investigation or remediation has been completed in accordance with the LBCP and if the site is the subject of a notice of completion.

Nothing herein limits NYSDEC's authority to take action where it deems appropriate.

## **V. Technical Assistance by OER on Petroleum Spills**

- a. OER may, subject to NYSDEC approval, provide technical assistance to NYSDEC in the oversight of petroleum spills on qualified local brownfield sites enrolled in the LBCP.
- b. NYSDEC will retain full authority, including making final closure determinations, over all petroleum spills.
- c. The procedures for OER technical assistance are set forth in Section V of the Addendum to this Agreement.

## **VI. Implementation**

### **a. Site Specific Implementation**

1. NYSDEC will meet periodically with OER for the purpose of program coordination and management and to review OER's implementation of the LBCP. Such meetings shall occur at least annually but may be held more frequently at the discretion of the NYSDEC.

2. OER will provide or make available to NYSDEC information regarding enrollees in the LBCP in a format acceptable to the NYSDEC.

### **b. LBCP Program-wide Implementation**

1. OER agrees to a periodic audit by NYSDEC of its implementation of the LBCP and this MOA, for the purpose of determining conformance with the terms of this Agreement.

2. OER shall provide NYSDEC with an annual report of the status of the LBCP. Such report shall be submitted to the Director of Environmental Remediation, 625 Broadway, Albany, NY 12202 on or before March 1 for the immediately preceding calendar year. The annual report shall contain the following elements:

- i. the number, names and types of sites that have executed an agreement with OER under the LBCP and the status of site remediation at those sites;
- ii. information on sites that received a notice of completion from OER in the previous calendar year; and
- iii. such other information as NYSDEC may require.

3. OER will make all remedial program documents available to NYSDEC, including the remedial investigation data and reports, remedial action work plans, and remedial action reports. The Government Entities shall in a timely manner keep each other informed of proposed modifications to its statutory or regulatory authority for the LBCP and BCP.

**VII. Community Participation (CP)**

OER agrees to abide by the CP requirements defined in the LBCP regulations.

**VIII. Modification and Termination**

- a. This Agreement will be in effect for two years following its execution.
  - 1. OER may request an extension of this Agreement within 3 months prior to the expiration of this Agreement.
  - 2. NYSDEC will not unreasonably withhold an extension.
  - 3. Terms of this Agreement can only be modified in writing, signed by both parties.
  - 4. This Agreement can be terminated upon 90 days notice by either party, or less than 90 days in the event of cause to dispense with the 90 day period.

DATED: \_\_\_\_\_, 2010

New York State Department of  
Environmental Conservation

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New York City Mayor's Office

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