

NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF ENVIRONMENTAL REMEDIATION

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**MUNICIPAL ASSISTANCE FOR  
ENVIRONMENTAL RESTORATION  
PROJECTS**

**PROCEDURES HANDBOOK**

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1996 CLEAN WATER / CLEAN AIR BOND ACT  
ENVIRONMENTAL RESTORATION PROJECTS-TITLE 5  
JULY 2004

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NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
1996 CLEAN WATER / CLEAN AIR BOND ACT  
ENVIRONMENTAL RESTORATION PROJECTS-TITLE 5

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## INTRODUCTION

This handbook describes the procedures municipalities must follow to secure State financial assistance provided under Title 5 of the Clean Water / Clean Air Bond Act of 1996, as amended by Chapter 1 of the laws of 2003. These procedures are consistent with those which will be required under the State Assistance Contract. This program is administered by the Department of Environmental Conservation (DEC). The DEC partners with the New York State Department of Health (DOH), who is responsible for determining that remediations performed under this program are protective of public health for the contemplated use of the property.

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## 1.0 PRE-APPLICATION INFORMATION

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### 1.1 Applicant Eligibility

#### Municipalities

An eligible applicant is a municipality, defined as:

- a County, City, Town, or Village,
- a school district, supervisory district, district corporation, or improvement district within a County, City, Town, or Village,
- a local public authority or local public benefit corporation,
- an Indian nation or tribe recognized by the State or the United States with a reservation wholly or partly within the boundaries of New York State, or
- any combination of these.

#### Community Based Organizations

A municipality may also be any of the above entities acting in partnership with a community based organization. A community based organization is one which meets the following criteria:

- is a not-for-profit corporation, exempt from taxation

- under section 501(c)(3) of the internal revenue code,
- has a stated mission of promoting the reuse of brownfield sites within a specified geographic area in which the community based organization is located,
- has 25% or more of its board of directors residing in the community of the specified area,
- represents a community with a demonstrated financial need, and
- has not caused or contributed to the release or threatened release of hazardous substances at the site.

### 1.2 Project Eligibility

A municipality is eligible for financial assistance for an Environmental Restoration Project (ERP) if it meets the following general eligibility criteria:

1. The municipality will own the property prior to approval of the State Assistance Contract (grant contract). If the municipality currently owns the property, proof of ownership must be submitted with the application;

NOTE: The municipality does not have to own the property at the time of application nor by the time that DEC approves the application. However, the municipality must have ownership, or temporary incidents of ownership, as discussed in Section 1.2 below, before execution of the State Assistance Contract.

2. The project's purpose is to investigate or remediate petroleum and/or hazardous substances (as defined by Environmental Conservation Law [ECL] 56-0101.11) located on the property. Hazardous substances include those defined in 6 NYCRR 597.1(a)(3);
3. The municipality has not generated, transported or disposed of, nor arranged for or caused the generation, transportation or disposal of, hazardous substances on the property; and has not undertaken, and will not undertake, any indemnification obligation respecting a party responsible under law

for the remediation of the property.

**NOTE:** For eligibility purposes, a municipality is not considered to be an arranger if the municipality has leased the property to another party that generated, transported or disposed of, or that arranged for or caused the generation, transportation or disposal of, hazardous substances on that property, and the municipality either did not know that such other party generated, transported or disposed of, or arranged for or caused the generation, transportation or disposal of, such hazardous substances, or so knew and took action to remediate, or cause the remediation of such hazardous substances. In addition, a municipality is not considered to be a generator, transporter, or arranger merely for having rendered care, assistance, or advice in the course of an incident creating a danger to public health or welfare or to the environment as a result of any release of a hazardous substance or the threat of same;

4. The property is not a Class 1 or 2 site listed on the New York State Registry of Inactive Hazardous Waste Disposal Sites at the time of application;
5. The project satisfies the criteria of ECL 56-0505. At a minimum, the applicant must demonstrate that the project is intended to result in a benefit to the environment and in either an economic benefit to the State or a public recreational use of the property. Projects located in a designated Brownfield Opportunity Area, pursuant to section 970-R of the General Municipal Law, are given higher priority.

The municipality must enter into a State Assistance Contract with the State in which, among other things, the municipality agrees to initiate field work within 12 months of the DEC's written approval of its application (or such other time period as the DEC may approve on a case-specific basis) and that it will complete the project in accordance with DEC-approved plans and schedule.

### **1.3 Temporary Ownership during Tax Lien Foreclosure**

A taxing district that commences foreclosure on a tax lien may qualify as a "temporary owner" of the property for the purposes of obtaining State funding for an ERP. After beginning a tax foreclosure proceeding, the taxing

authority must provide twenty days' notice to all parties having a right, title, interest in, or lien upon the parcel, after which it may move for an order granting temporary incidents of ownership. This order is solely for the purpose of entering the parcel, conducting an environmental investigation, and receiving State assistance. This order will act as a stay of the foreclosure action until the environmental investigation is complete, and a final investigation report is filed with the court. The report must be filed with the court within 30 days of DEC's approval of the final report, upon which the stay of foreclosure is lifted.

This temporary ownership does not cause the taxing district to be liable for the past, present, or future release of hazardous substances at the property, unless such release was caused by the district.

### **1.4 Pre-Application Meeting**

The DEC strongly encourages all applicants to schedule a pre-application meeting with DEC staff to review the benefits, requirements, and procedures for completing a project in the ERP. Holding pre-application meetings helps applications and technical work plans to be approved more quickly and efficiently. The municipality should contact the Hazardous Waste Remediation Engineer in their local DEC Regional Office to arrange a pre-application meeting.

### **1.5 Registration of Storage Tanks**

The municipality must register all known petroleum and chemical storage tanks on the property and, if out-of-service, properly close such tanks either before applying for State assistance under this program, or within the approved investigation project schedule. Municipalities must also agree to remove and properly dispose of hazardous substances within all containment vessels (such as drums, transformers, sumps, and pits) on the property, within the approved investigation project schedule. Costs associated with these registration, closure, and disposal activities are eligible for State assistance purposes if those costs are incurred on or after June 6, 1996.

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## 2.0 APPLICATION CONTENTS AND PROCEDURES

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Before applying for State assistance, a municipality should review the five project eligibility requirements in Section 1.1 to determine if its project is eligible for this program. The municipality should only apply for those eligible projects for which it has the financial resources to initiate field work within 12 months of the DEC's written approval of its application. A municipality must reapply for any project for which it has not initiated field work in that time frame unless the DEC approves otherwise. Any applications received by the DEC which are for ineligible projects will be denied.

### 2.1 Contents of a Complete Application

It is important that the municipality submit a complete application, since applications cannot be considered for funding until they are determined to be complete by the DEC. DEC must have sufficient information with the application to determine eligibility and whether there are sufficient funds available for the project.

1. Application Form The application form requires general information about the municipal applicant, allows for detailed information to be attached, and contains a certification which must be endorsed by the individual authorized to do so by the municipality and community based organization, if applicable.

2. Municipal Authorization The application must include a certified copy of the municipal authorization which designates by title (Mayor, Town Supervisor, etc.) the representative authorized to act on behalf of that municipality in all matters related to financial assistance. The authorization must empower the representative to make application, execute the State Assistance Contract, and otherwise act for the municipality in all State assistance-related matters. A sample form of the authorization is provided in Attachment 1. If the authorization is in the form of a resolution, it must be accompanied by a certification with an original signature. Except as provided in paragraph 3 below, costs associated with the preparation and submission of the application and its attachments are not eligible for State assistance purposes.

3. Project Description The application's description of the project must include the following components:

a. The purpose and scope of the project. This section identifies the investigative or remediation activities proposed at the property.

b. To the extent known, a description of the current and proposed future use of the property. This information will be used to assist in the determination of the project's economic benefit to the State, and any potential for public or recreational use of the property. The definition of the property's Contemplated Use must also be included in the State Assistance Contract to trigger the notification requirements if that use is changed.

NOTE: Approval of an application does not in any way indicate the DEC's approval or endorsement of that use nor will it influence any determination regarding final decisions for permits or approvals required for that use. Approval of the application does not obviate the need for any approvals or permits that might be required for that use.

c. The estimated project cost or budget must be included with the application. The estimated project cost will be used to determine if sufficient funds are available for the project.

d. The estimated schedule for the project.

e. A brief discussion of how the proposed project would satisfy the five criteria described in ECL 56-0505.

f. If the municipality is aware of other funding sources or potential funding sources for the project (e.g., lenders, private developers, the previous owner or operator), this should be included.

4. County Tax Map and USGS Quad Map The site location map must be a U.S. Geologic Service quadrangle map or equivalent. The property's tax map must indicate section, lot, and block numbers. If the site boundaries don't correspond to the metes and bounds of a tax map parcel, a metes and bounds description of the site must be provided.

5. Site's Environmental History and Existing Data To assist the DEC's review of the proposed scope of work and associated cost estimate, all available environmental data

should be included with the ERP application. This includes any Phase I Site Assessments or other available environmental reports. A narrative environmental history should also be included with the application that summarizes the previous owners and operators of the site, with emphasis on operations that may have caused the release of hazardous substances.

6. Proof of Ownership (if available) Proof of ownership is not required for the DEC to approve the application, but it must be provided before a State Assistance Contract can be executed. The DEC has prepared a standard format for the certification of ownership by the municipal attorney, which is provided in Attachment 2. Copies of the property deed should be forwarded along with this certification. In addition, the municipality must provide a metes and bounds survey which depicts the site. If such a survey is not available at the time of application, in some instances the survey may be completed as an element of the work plan, and provided to the DEC prior to project closeout. Municipalities should carefully determine the boundaries of the site submitted in the ERP application. The property that is subject to the State Assistance Contract must be thoroughly investigated and fully remediated before it can be sold, leased, or subdivided.

## 2.2 Remediation Applications and Requests for Amendment

Funds for the remediation phase of a project are requested in two ways. If the project is new to the ERP (i.e., does not have a State Assistance Contract), then the municipality must submit a complete application containing the items listed in section 2.1 above, and items 1 and 2 below. If the project received funding for the investigation phase, then remediation funds are requested as an amendment to the investigation-phase contract. In this case, the municipality should submit items 1 and 2 below, and comply with the requirements for contract amendments identified in Section 4.3.

1. Remediation Project Information To enable the DEC to prioritize applications for remediation funding, certain information is required to determine the degree of environmental and economic benefit associated with the project. The "Project Information" section of the application form should be completed by the municipality to provide this information. The prioritization criteria are:

- a. the benefit to the environment,

- b. the economic benefit to the State,
- c. the potential opportunity of the property to be used for public or recreational purposes,
- d. a property in a designated Brownfield Opportunity Area, and
- e. the availability of other funding sources to remediate the property.

Written requests to amend an existing State Assistance Contract to fund the remediation phase should provide this information by completing Table 1, which appears at the end of this document.

2. SEQRA Compliance For remediation project applications, compliance with the SEQRA is demonstrated by providing a negative declaration, or in the event an environmental impact statement was prepared, a Findings Statement, with the application. Since the issues involving the cleanup and redevelopment of ERPs are primarily local in nature, it is strongly recommended that the municipality assume lead agency status on an action and coordinate review of the action with all involved agencies (including DEC).

If the environmental assessment results in a negative declaration, SEQRA responsibilities end notwithstanding appropriate publication requirements. If a positive declaration is issued by the lead agency, then a Final Environmental Impact Statement and Findings Statement must be prepared before the action can go forward and before DEC can approve the application. SEQRA determinations (negative declaration or findings statement) must be submitted as part of a complete application.

## 2.3 Application Processing and Prioritization

Municipalities must submit four complete copies of the application as follows:

One application with original signatures and two copies to:

Chief, Site Control Section  
NYSDEC  
Division of Environmental Remediation  
625 Broadway, 11<sup>th</sup> Floor  
Albany, N. Y. 12233-7020

One copy to the Brownfields Regional Contact in the DEC Regional Office corresponding to the site

location.

In order for the DEC to make an eligibility determination, the application must be complete (see Section 2.1 for a description of a complete application). Applications for eligible projects will be processed as follows:

Step 1: Applications will be processed based on when they are received in the DEC's Albany office.

Step 2: Applications are reviewed for completeness as they are received. If the DEC determines the application is complete, Step 3a (investigation) or Step 3b (remediation) is followed. If the application is incomplete, the municipality is notified in writing of the deficiency and may reapply by submitting the additional information to the parties listed above. Once the additional information is submitted and the application is determined complete, Step 3a or 3b is followed.

Step 3a: Applications for Investigation  
Complete applications for investigations must satisfy the project eligibility criteria listed in Section 1.1. Projects satisfying those criteria will be reviewed on a first-come, first-served basis. If available funds for investigations are sufficient, then all complete applications that satisfy the criteria in section 1.1 will be approved and Steps 4 and 5 are followed. If available funds are insufficient, the investigation projects will be placed on the list of complete applications in chronological order, based on the date the DEC determined them complete, and they will be held until funding is again available. The municipality will be notified by the DEC in writing if this occurs.

Step 3b: Applications for Remediation and Remediation Amendment Requests  
Complete applications for remediation will be scored according to the Environmental Restoration Project prioritization criteria discussed in Section 2.2, item #1.

To be eligible, a project must meet a minimum priority ranking score (Refer to the priority ranking system score sheet in Attachment 5). If available funds are sufficient, all eligible

project applications will be approved. If available funds are insufficient, eligible projects will be ranked according to their priority ranking score. The DEC will approve applications in accordance with their rank. In the case of identical scores, approvals will be made in the order that the complete applications were received. Application approval will stop when funds are no longer available. Applications which were not approved due to insufficient funding will be reconsidered for funding during the next time period that funds again become available.

Step 4: The DEC will provide written notification of application approval/disapproval and any reasons for disapproval. NOTE: Approval of an application for investigation does not provide any assurance of approval or availability of funds for remediation. The DEC may also modify the amount of funding in the approved application based on the proposed scope of work and the DEC's experience in performing remedial programs.

Note that a complete application is one that contains enough information for the DEC to determine the project's eligibility. An approved application is one that is complete, and is for an eligible project that may be funded based on the funds available.

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### 3.0 USE OF A PROFESSIONAL CONSULTANT

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#### 3.1 Selection of Professional Consultant

Municipalities must follow the provisions of General Municipal Law in procuring their consultant. Note: the procurement of a professional consultant does not have to be completed by the time the application is submitted.

The applicant's authorized representative must submit:

1. a description of the process it used in procuring a consultant (how advertised, how many firms responded, how the firm was selected). If the procurement was not for the ERP, the description should provide the rationale for using the prior procurement for this project.

2. a statement that this procurement was done in compliance with General Municipal Law, section 104(b).

3. a description of the consultant's expertise in investigating and/or remediating environmental contamination. Note: if the consultant is on DEC's Qualified Remedial Consultants (QRC) List, no such description is necessary. That description must document that the firm employs a sufficient number of staff with experience of sufficient duration, diversity, and expertise to complete the proposed project. In general, minimal qualifications must consist of completion of three projects of similar type and scope by either the consulting firm or by the project manager for the ERP. For these three projects, the consultant must include a client contact and phone number.

NOTE: While the Remedial Investigation does not require a professional engineering firm to perform the work, the final Alternatives Analysis Report, remedial design, and construction oversight/final engineering certification report all require a New York State licensed professional engineer's stamp before the DEC will approve them.

Municipalities may use the same consultant for the investigation and remediation phases of the project, provided that the procurement for these phases was done in compliance with General Municipal Law.

The DEC can provide a sample Request for Proposals (RFP) document for municipalities to use in preparing their own RFPs.

### 3.2 Consultant Contract

Contract negotiation is a critical step in the use of consultants. Once a consultant has been selected, negotiations are initiated in an attempt to reach agreement on the following:

1. The scope of services to be performed
  - a. tasks to be performed
  - b. the level of effort per task
  - c. deliverables
  - d. review procedures
2. The method of contracting
  - a. cost plus fixed fee (preferred method)
  - b. fixed price (lump sum) is only an option for those contracts under \$25,000

3. The contract price
4. The contract terms and conditions
  - a. change in scope
  - b. termination rights
  - c. method of payment
  - d. amendment provisions

Attachment 4 identifies mandatory contract clauses which are based on Appendices A and B of the State Assistance Contract, and which must be incorporated in any contracts for which the municipality seeks reimbursement in this program. In addition, because the State Assistance Contract requires the municipality to submit electronic copies of all final work plans, reports, plans and specifications, this provision should be included in the municipality's consultant contract.

### 3.3 Costs of a Consultant Contract

DEC strongly recommends a cost-plus fixed fee method of reimbursement for investigation projects in the ERP program. The rationale is the scope and level of effort required are not precisely known prior to undertaking the project. Thus, a lump sum contract is not appropriate for an investigation project unless the project is relatively small. All costs, including the overhead rate, should be negotiated by the municipality. To assist municipalities, DEC has information available on costs which they have negotiated with consultants working on contaminated sites.

Generally, DEC will not participate in overhead and profit which are more than 180% of direct costs.

NOTE: Prior to receiving reimbursement for work done under the grant, the description of the procurement, a statement that it complies with the provisions of General Municipal Law, the municipal/consultant contract and executed subcontracts (see Section 10.3), and any necessary information to justify the reasonableness of costs must be submitted to DEC. At the time of execution of the State contract, DEC will provide the municipality with payment forms and procedures (see Section 10.5).

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## 4.0 STATE ASSISTANCE CONTRACT

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### 4.1 Elements of the State Assistance Contract

The standard State Assistance Contract is included in the Environmental Restoration Project Application Package, and is available on the DEC's web site. The municipality should review the terms of the standard contract as soon as possible to ensure that they are aware of their contractual requirements. State payment procedures are described in Section 8.4 and are specified in Schedule B of the contract.

Eligibility of project costs and the liability protection afforded in accordance with ECL 56-0509 (see section 9.0 for a summary of the liability limitation) begin on the date the DEC approves a municipality's application. Although the DEC will prepare a State Assistance Contract based on the estimated costs in the municipality's application, the final scope of work and grant amount will be modified after a project work plan and budget have been negotiated. These may differ from the specific items of work and grant amount requested in the application.

Since this is a reimbursement program, the State Assistance Contract amount is only an estimate of the eligible costs. Actual reimbursement will depend on the proper procurement and documentation of costs incurred. Therefore, the total contract amount should be viewed as a not-to-exceed number and not a guaranteed reimbursement amount.

For remediation applications only, the best available estimate of the cost to design and construct the DEC's selected remedy will provide the basis of the remediation project budget. This is typically the cost estimate listed in the Record of Decision for the site. If an engineer's estimate is proposed to be used for this purpose, the DEC must determine that the engineer's estimate provides a reasonable estimate and breakdown of the eligible and ineligible costs of the construction before a State Assistance Contract may be issued.

The State Assistance Contract will require the municipality to assist the DEC and/or the State in compelling responsible parties to contribute to the cost of the project at the property. This consists of providing the State with all information concerning responsible parties' contributions to the hazardous substances on the property.

Available information must first be provided at the start of the term of the State Assistance Contract, and additional information gathered during the Remedial Investigation (RI) must be reported in the RI Report.

If the field work for a project is not initiated within 12 months of the DEC's written approval of that project's application (or such other time period as the DEC may approve on a case-specific basis), the municipality will be notified in writing of its failure to implement the project, the project will be removed from the approved list, and the municipality must reapply for that project beginning with Step 1. The DEC will reallocate those monies for other complete applications.

Costs incurred before the DEC approves the application for State assistance for the investigation of the property are not eligible for financial assistance, except for costs associated with tank registration, closure and disposal, as provided in Section 1.4 above.

The State Assistance Contract requires the municipality to provide the DEC with electronic copies of all final work plans, reports, plans and specifications, and other submittals.

### 4.2 State Assistance Contract Process

Upon approval of the application, the DEC will forward a State Assistance Contract (SAC) to the municipality based on the estimated cost of the project. If, as a result of subsequent work plan negotiations or conduct of the investigation, the estimated budget exceeds the original application amount, the municipality must request in writing a contract amendment to increase the budget amount. A contract amendment is also used to provide funds for the remediation phase of a project once the investigation is complete, provided that sufficient funds are available.

The DEC will forward six copies of the State Assistance Contract for signature and notarization by the municipality and return to the DEC's project manager. The municipality's authorized representative should sign copies of both the contract and the Rider to Appendix B before returning the six contracts to the DEC. The contract is routed through the DEC, and the NYS Department of Law before being executed by the Office of State Comptroller. A fully executed copy of the contract will be forwarded to the municipality by the DEC.

### 4.3 State Assistance Contract Amendments

When a municipality identifies changes in project scope which requires that additional costs be incurred to complete a project, it may apply for an amendment to its State Assistance Contract. This includes projects for which the investigation phase is complete and additional funds are necessary for remediation. The municipality must request the increase in project scope and cost in writing and provide justification for the increase. Application for amendments to increase the project's scope will be approved based on the justification provided and the availability of funds as described in Section 2.3.

A revised scope of work or amendment to the scope of work and a revised budget must be submitted with a request for an amendment. The municipality must submit written justification to the DEC explaining the reasons for the amendment. Requests for remediation funds must also contain the information listed in Table 1 at the end of this document. If the change in scope includes a request for an extension of time, then a revised project schedule must be included with appropriate justification.

All requests for an increase in the contract amount must include 1) a revised cost per task estimate; 2) proposed municipal/consultant contract revisions; and 3) any proposed rebudgeting of other tasks.

Contract amendments are executed in a similar manner as SACs. The DEC will forward six copies of the amendment for signature and notarization by the municipality and return to the DEC's project manager.

### 4.4 No-cost Time Extensions

A contract amendment may also be necessary if the term of the SAC is scheduled to expire prior to completion of the project. In this case, a request for a no-cost time extension should be submitted by the individual authorized as the project contact in the municipal resolution. This letter should contain a brief explanation for the extension and the desired new completion date.

The No-cost Time Extension is a simplified contract amendment that is processed in the same manner as the SAC and SAC amendment. The DEC will forward six copies of the amendment for signature and notarization by the municipality and return to the DEC's project manager.

### 4.5 Affirmative Action Program

In accordance with New York State Executive Law, Article 15-A State assistance recipients are to implement a comprehensive affirmative action program. The recipient of State assistance must submit an Affirmative Action (AA) Work Plan. The AA Work Plan should be submitted once the Remedial Investigation/Alternatives Analysis(SI/AA) Work Plan is finalized. The AA Work Plan will establish two contracting goals, one for the participation of minority business enterprises, and one for the participation of women business enterprises; along with two equal employment opportunity goals, one for minorities, and one for women in the workforce of contractors or consultants participating on the project. The applicant for State assistance is to designate an AA Representative who will be responsible for the administration of the approved affirmative action program and for documenting the recipient's and contractor's/consultant's efforts to comply with the approved AA Work Plan.

The AA Work Plan also contains a brief project description that outlines the proposed contracts and the associated costs of each contract making up a project. The Affirmative Action Policy Statement is a brief statement which commits the applicant to carry out the intent of New York State Executive Law, Article 15-A. AA Work Plan forms and sample forms are available from the DEC. DEC's Bureau of Procurement Services - Minority/Women's Business Enterprise (M/WBE) Office is responsible for the review and the approval of the AA Work Plan and will monitor compliance with the approved Work Plan throughout the life of the project. In approving the AA Work Plan, the M/WBE Office will take into consideration such factors as: the dollar value of the contracts associated with the project; the size, scope and duration of the contracts; the geographical location of the project; the type(s) of work to be performed; the experience with similar projects in the same geographical area; the availability of New York State certified M/WBE's and the availability of minorities and women for the workforce.

The Bureau of Procurement Services-M/WBE Office will establish both M/WBE and Equal Employment Opportunity (EEO) program goals and the recipient of the State assistance will be responsible for implementing the approved affirmative action program. The recipient of State assistance will be responsible for monitoring

compliance with the approved affirmative action program on individual contracts throughout the life of the project to ensure that the project goals specified in the approved AA Work Plan are met.

The M/WBE Office will monitor the State assistance recipient's progress in meeting the established goals throughout the project duration and will provide the necessary technical assistance to ensure the success of the program. The State assistance recipient's failure to obtain the stipulated goal percentages, or to demonstrate documented good faith efforts to do so, may lead to the withholding of progress payments until effective remedial steps have been implemented or other sanctions as provided for by New York State Executive Law, Article 15-A.

The DEC's Office of Minority and Women's Business Programs should be contacted at (518) 402-9311 for more information on the M/WBE-EEO program requirements.

#### **4.6 Utilization of Minority and Women's Business**

Contract documents (as well as engineering documents) must require the contractor to make good faith efforts to subcontract certain percentages of the total contract value to New York State certified MBE and WBE firms, unless a waiver is granted. DEC's Office of Minority and Women's Business Programs will determine appropriate percentages at the time a municipality applies for State assistance under the ERP Program. These percentages will be specified in the State Assistance Contract. The contractor's failure to obtain the stipulated percentages, or to demonstrate documented good faith efforts to do so, may lead to the withholding of payments or the imposition of other sanctions as provided for by New York State Executive Law, Article 15-A.

The following procedures should assist in the implementation of a successful affirmative action program:

##### **1. Contract Provisions**

The recipient of the State assistance must develop affirmative action provisions to be included in all contract bid announcements and contract documents associated with the referenced project.

##### **2. M/WBE Program Goals**

AA Program goals are placed on the amount of the State assistance provided. Goal amounts are calculated as a percentage of the State assistance and not as a percentage of the total project amount.

The State places affirmative action program goals on the State Assistance Contract and the community which is the recipient of the State Assistance Contract should place affirmative action program goals on contracts which they award.

##### **3. Solicitations**

The recipient of State assistance must include New York State certified M/WBE's in all solicitations for supplies, materials, services and contracts associated with the referenced project.

The recipient of State assistance must undertake other actions which assure the meaningful participation of New York State certified minority business enterprises (MBEs) and women's business enterprises (WBEs) on all contracts associated with the ERP program, as well as to assure the meaningful participation of minorities and women in the labor force associated with that State Assistance Program. The recipient should:

- a. Divide total requirements, when economically feasible, into small task or quantities to permit maximum participation by minority and women's business enterprise M/WBEs
- b. Establish delivery schedules, when the requirements of the work permits, which will encourage participation of M/WBEs;
- c. Attempt to ensure that plans, specification requests for proposals and other documentation used to secure proposals for the performance of work or supply of materials will be made available in sufficient time for review by prospective M/WBEs
- d. Encourage, where economically and technically feasible, the formation of joint ventures, partnerships or other arrangements among contractors to enhance participation by M/WBEs;
- e. Make efforts to ensure that progress payments to M/WBEs are made on a timely basis and with such

frequency that undue financial hardship is avoided or appropriate alternatives developed to encourage M/WBE participation;

- f. Place timely advertisement in appropriate general circulation, trade and minority and women oriented publications;
- g. Make written solicitation in a timely fashion of M/WBEs listed in the directory of Minority and Women-owned business enterprise available from:

Empire State Development Corp.  
Minority & Women's Business Develop. Div.  
One Commerce Plaza  
Albany, New York 12245  
Telephone: (518) 473-0582  
Fax: (518) 473-0665

and

Empire State Development Corp.  
633 Third Avenue  
New York, NY 10017  
Telephone: (212) 803-2414  
Fax: (212) 803-3223  
Internet: [www.empire.state.ny.us/est.htm](http://www.empire.state.ny.us/est.htm)

- h. Utilize to the fullest extent possible the resources of the New York State Department of Environmental Conservation's Bureau of Procurement Services - M/WBE Office, (518)402-9311.

4. Participation of M/WBE's on Contracts - \$10,000 or Less

In order to facilitate M/WBE participation on State assisted contracts, the procurement of services of \$10,000 or less may be made on the basis of a single solicited proposal if the price is reasonable. As a general rule, reasonableness of price is determined in the following ways:

- a. By comparing the solicited price with the price for the same or similar services within the last six months;
- b. By comparing the price with those of other prospective contractors; or

- c. By comparing the solicited price to prices listed in publications such as the "Means Build Construction Cost Data" catalog.

Finally, the recipient of State assistance may establish reasonableness by reviewing the type of work that was previously accepted by the DEC at a similar cost, or, if the supplier can justify the price of the product by the current market value of the same product.

5. Qualifying Paperwork

To verify actual M/WBE participation, the following documentation is to be collected from the various contractors and consultants utilized on the project. This documentation should include, at a minimum, the following:

- a. Copies of legally signed and executed M/WBE contracts or subcontracts representative of the M/WBE goal amounts,
- b. Purchase orders are utilized, copies of legally signed and executed purchase orders accompanied by copies of both sides of legally signed and canceled checks.
- c. Copies of documents which reflect the actions of the State assistance recipient in support of the affirmative action program.

6. Reports

The State assistance recipient is to provide the Bureau of Procurement Services-M/WBE Office with accomplishment reports on a quarterly basis. Quarterly reports should include a summary of M/WBE activities and a review of progress being made towards achieving the established M/WBE-EEO objectives. Quarterly reports are to be submitted to the M/WBE Office within ten (10) business days of the close of each State fiscal year quarter (January 15, April 15, July 15 and October 15).

7. Work Completed Prior to Program Application

The recipient of State assistance should summarize the following information for work which had been completed prior to program application and which is

not presently available for M/WBE-EEO program activities. The prorated dollar amount(s) of this type of work will be excluded from the amount of the State Assistance Contract upon which affirmative action program goals are calculated. The required information is as follows:

- a. Prime contracts - name of prime contractor/consultant, contract description, contract amount and dates
- b. Subcontracts - name of subcontractor(s)/subconsultant(s), subcontract description, subcontract amount and dates
- c. M/WBE identification - make note of any New York State certified M/WBE's utilized as contractors or subcontractors. If this information is not known, the Bureau of Procurement Services-M/WBE Unit will review the State Directory and provide appropriate credit to the Affirmative Action Program of the recipient of the State assistance.

9. Force Account Work

For those State assistance recipients utilizing force account services (services or activities associated with the assisted project which have been completed by the recipient's own workforces), the qualified value of the force account work will reduce the State assistance amount used to calculate affirmative action program goals. In effect, the dollar value of the affirmative action goals will be reduced due to a reduction in the amount of the State assistance used in the calculation.

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**5.0 TECHNICAL REQUIREMENTS:  
INVESTIGATION PHASE**

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Detailed guidance for developing a Remedial Investigation/Alternatives Analysis (RI/AA) Work Plan and conducting the RI/AA may be found in the Division of Environmental Remediation's Technical Guide (DER Tech Guide), which is available on the DEC web site. The RI/AA may utilize a phased approach, in which alternatives are identified during the early stages of the RI, and data is collected to support the detailed evaluation.

The DOH is involved in the review of technical documents submitted during the investigation phase, including work plans, reports, fact sheets and decision documents. Copies of documents prepared by the municipality should be sent to the DOH project manager at the same time they are sent to the DEC project manager.

The goals of the Remedial Investigation include, but are not limited to the following:

- Defining the nature and extent of contamination, both on-site and off-site;
- Identifying contaminant source areas;
- Producing data of sufficient quantity and quality for remedial decision-making;
- Evaluating a sufficient range of remediation alternatives to enable the preparation of a PRAP and ROD

**5.1 Remedial Investigation/Alternatives Analysis Work Plan**

The RI/AA Work Plan will be a detailed description of the approach for completing the RI/AA. The work plan must be consistent with all applicable law, specifically the requirements of New York State Environmental Conservation Law. DEC must approve the RI/AA Work Plan prior to the start of any work in order for the costs to be eligible for reimbursement.

The DEC strongly recommends that a scoping meeting be held, along with a site visit, prior to the development of a draft RI/AA Work Plan. The environmental history and existing environmental data provided with the application should be evaluated, in conjunction with possible remedial alternatives and the contemplated use of the site, to assist in the development of a sampling strategy. This should be discussed with the DEC and DOH before a detailed work plan is developed.

The work plan should include, but not be limited to:

1. A plan of work which describes in detail the steps which will be taken to characterize the property and off-site impacts of the property. The goal of the RI Work Plan is to generate sufficient information to:
  - Identify and characterize the sources of contamination,

- Describe the amount, concentration, persistence, mobility, state (e.g., solid, liquid), and other significant characteristics of the contamination present, both on-site and off-site,
  - the extent to which natural or manmade barriers currently contain the contamination,
  - Define the extent to which the contaminants have migrated or are expected to migrate and whether future migration may pose a threat to human health or the environment,
  - Perform an exposure assessment to identify all potential routes of exposure, populations and environmental receptors at risk,
  - Define hydrogeological factors (e.g., soil permeability, depth to saturated zone, hydrologic gradients, proximity to a drinking water aquifer, flood plain, or wetland),
  - Describe groundwater characteristics and current and potential groundwater use,
  - Identify private wells and public water supply wells in the area and include an appropriate sampling plan for them,
  - Identify surface water classifications and existing use designations,
  - Describe the property's contribution to an air, land, water, biota, or food chain contamination problem,
  - Determine the extent to which contamination levels pose an unacceptable risk to public health and/or the environment,
  - Discuss other appropriate factors;
2. A section describing the site-specific field sampling plan and a section describing the Quality Assurance/Quality Control (QA/QC) procedures to be used during the RI/AA. The QA/QC procedures must detail how the data acquired during the project will be determined usable with respect to QA/QC and Data Quality Objectives requirements;
  3. A Health and Safety Plan, including a Community

Health and Safety Plan, which must be submitted prior to any field activity;

4. A Citizen Participation (CP) plan that outlines how the applicant will comply with the Division of Environmental Remediation's CP Program. See Section 6.0, Citizen Participation, for more details.

## 5.2 Remedial Investigation

The Remedial Investigation will provide sufficient information to:

1. Fulfill the work plan objectives;
2. Make a preliminary identification of potential remedial alternatives;
3. Further define the study area of the RI/AA;
4. Identify probable Standards, Criteria, and Guidance (SCG) and determine the extent to which they have been exceeded or contravened;
5. Perform a Health and Environmental Exposure Assessment, and if necessary, a Risk Assessment.

### 5.2.1 Remedial Investigation Reporting

The Draft Remedial Investigation Report may be an independent document, or may be combined with the Draft Alternatives Analysis Report. A suggested format for the RI Report is provided in Attachment 3. Copies of the Draft RI Report should be forwarded to both the DEC and DOH project managers for review and comment.

When the final RI Report is approved, the municipality should forward an electronic version of the approved report in Adobe Acrobat format, or other format acceptable to the DEC.

## 5.3 Interim Remedial Measures

If a source of contamination or exposure pathway is found during the Remedial Investigation, the municipality should consider performing an Interim Remedial Measure (IRM). IRMs are also a pro-active way of demonstrating visible progress at an ERP site, which builds momentum toward the re-development of the site.

The demolition of structures and/or asbestos abatement are eligible as IRMs, provided that the cost of IRMs that address hazardous substances (e.g. soil or tank removal) are greater than 10% of the cost of the demolition/asbestos abatement. Unless building demolition is necessary to address a safety concern, a demolition IRM must be performed in conjunction with a hazardous substance IRM.

In determining whether to perform an IRM through the consultant or through a public bidding process, the municipality must comply with General Municipal Law and their internal finance policies. To fund the IRM under the State Assistance Contract, an amendment may be necessary, as described in Section 4.3.

The DER Technical Guide and DER's Technical, Administrative Guidance Memorandum (TAGM) 4048 should be consulted for more detail concerning the implementation of IRMs, particularly the citizen participation requirements.

#### 5.4 Development and Analysis of Alternatives

This phase may begin concurrently with or shortly after commencement of the Remedial Investigation. Alternatives may be considered in an iterative fashion; RI data will be used to develop and screen alternatives, and alternatives under consideration will guide additional work to characterize the property as necessary.

The applicant will develop potential remedial action alternatives that may be used to clean up the property and to mitigate any off-site impacts from the property by:

1. Identifying potential general response actions;
2. Evaluating general response actions for effectiveness, reliability, implementability and cost;
3. Assembling suitable general response actions into alternative remedial actions.

General response actions, including treatment, containment, excavation, extraction, disposal and institutional actions must be initially defined during the development of alternatives. An initial determination of areas or volumes of each medium of interest is also made to which the general response actions might be applied.

If existing property and/or treatment data is insufficient to

adequately evaluate alternatives, further investigation may be required at this stage.

A detailed evaluation will be conducted on the alternatives. That evaluation will take due consideration of the factors identified in 6NYCRR375-1.10(c)(1-7, inclusive). The following evaluation criteria have been developed to address the technical and policy considerations that are important for selecting among remedial alternatives:

1. Overall protection of human health and the environment
  - a. Exposure to human health and the environment after the remediation.
  - b. Residual public health risks after the remediation.
  - c. Residual environmental risks after the remediation.
2. Compliance with Standards, Criteria, and Guidance (SCG)
3. Short-term effectiveness
  - a. Protection of community during remedial actions.
  - b. Environmental impacts.
  - c. Time to implement the remedy.
4. Long-term effectiveness and permanence.
  - a. Lifetime of remedial actions.
  - b. Residual risks.
  - c. Adequacy and reliability of controls.
5. Reduction of toxicity, mobility and volume.
  - a. Volume of hazardous substances reduced.
  - b. Reduction in mobility of hazardous substances.
  - c. Irreversibility of the destruction or treatment.
6. Feasibility
  - a. Suitable to site conditions.
  - b. Consideration of implementability.
  - c. Availability of Services and Materials.
  - d. Consideration of cost-effectiveness.
7. Community acceptance.

The alternatives are analyzed against the first six criteria and then compared against one another to determine the most cost effective, protective remedy. The seventh

criterion is evaluated by the DEC once the public comment period has concluded.

## **5.5 Alternatives Analysis Report and Proposed Remedial Action Plan**

At the completion of this phase, the municipality will prepare the AA Report (or combined RI/AA Report) for DEC review. A suggested format for the AA Report is provided in Attachment 3. The final Alternatives Analysis Report requires the stamp and signature of a currently-registered New York State licensed professional engineer before it can be approved by the DEC. When the final AA Report is approved, the municipality should forward an electronic version of the approved report in Adobe Acrobat format, or other format acceptable to the DEC.

Based on the findings of the RI/AA Report, the DEC will prepare a Proposed Remedial Action Plan (PRAP) which outlines the proposed remedy for the property. A summary of Remedial Goals and whether they will be attained by a specific alternative will be presented in the RI/AA Report and PRAP. Once the RI/AA Report and PRAP are ready for public release, the municipality must notify the public, and assist the DEC in conducting a public meeting, and in providing a 45-day comment period to receive written comments on the proposed plan. This citizen participation process is described in Section 6.1.1(1)(h)(ii) below.

## **5.6 Record of Decision**

After the 45 day comment period, public comments will be addressed by the DEC through a Responsiveness Summary (RS). The municipality will assist the DEC in the preparation of the RS. The DEC will determine the need to modify the Proposed Remedial Action Plan or the need for a public hearing if substantive issues about the remedy have been raised by the affected community. All issues raised and responded to in the Responsiveness Summary will be considered by the DEC in formulating its Record of Decision (ROD).

Once the DEC finalizes the Record of Decision, the municipality will be notified in writing by the DEC that it may proceed with the implementation of the remedy and that it has satisfactorily completed the investigation project. The public will also be notified of the availability of the ROD.

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## **6.0 CITIZEN PARTICIPATION**

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### **6.1 Purpose of Citizen Participation**

A major goal of citizen participation is to foster communication and trust between the public and government agencies in the effort to restore and maintain the environment and protect public health. Citizen participation also provides opportunities to gather the public's knowledge and information. This input is needed to make informed decisions about the property's investigation, the RI/AA Report and the property's proposed remedial action plan.

Effective public input will help the municipality and the DEC develop and implement a plan for Remedial Investigation which is environmentally sound, enjoys wide public acceptance and has high probability of timely implementation.

### **6.2 Citizen Participation Plan**

A Citizen Participation (CP) plan, or public participation plan as stated in ECL 56-0505.2, is a component of the RI/AA work plan. Therefore, the municipality must submit, and DEC must approve, a CP plan for the Environmental Restoration Project before the municipality initiates the RI fieldwork.

The CP plan serves as an important tool to manage the project's CP program. The document identifies, at a minimum, the CP activities required to be conducted and their time frames within an ERP remedial program. The CP plan also provides a context in which the CP activities will be performed, based on the important aspects of the project and the community in which it is proposed. A template for the ERP CP Plan is available on the Department's web site.

1. The CP plan will include, at a minimum, the following elements:

- a. Property information and background summary;
- b. Project description, including a brief description of the objectives of the investigation program;
- c. Schedule of the investigation program,

including a listing of the key (major) decision points;

d. Identification of a local document repository. The repository will help to ensure that pertinent documents and other project information are readily available to the public. All final work plans, reports, plans and specifications, or other documents relating to the project should be placed in the repository. Any documents that may be discussed at an availability session or public meeting should be placed in the document repository at least 15 days before the meeting. Documents must be available to the public after normal working hours, and the public must be made aware of their availability. The appropriate DEC regional office also will serve as a document repository for the project;

e. Identification and contact list of affected and interested parties, including:

- i. owners of properties which are adjacent to the property, at a minimum,
- ii. Representatives of all organizations and groups with potential interest in activities at the property,
- iii. local news media from which the community typically obtains information,
- iv. people who may have information about the property who can assist in the development of the investigation program, and
- v. local government officials;

This project contact list should be periodically updated and submitted for DEC review along with draft fact sheets, prior to each mailing.

f. Identification of municipal, DEC, and DOH contacts, including the project managers and citizen participation contacts at the municipality, and in the DEC central and regional offices;

g. Identification of significant issues of interest to the public about the property and the investigation program, and the information needs of the community, the municipality and DEC. This information will help the municipality and the DEC to effectively implement CP requirements and to identify additional CP activities, if any, that should be conducted; and

h. Description of specific citizen participation activities for each major element of the investigation program. The CP activities will create opportunities for early, inclusive participation before the selection of a preferred course of remedial action. The CP activities will include communication with the public at critical decision points in the investigation program. The following are required CP activities for all projects:

- i. announce through a mailing to the project's contact list and through local news media the availability of the RI/AA work plan which provides a brief analysis of the proposed investigation field work;
- ii. announce through a mailing to the project's contact list and through local news media the availability of the PRAP, a brief summary of the proposed cleanup, the date, time and location of the public meeting, and a 45 day period for submission of written comments;
- iii. provide a 45 day public comment period before the final remedy is selected to obtain the public's views of the PRAP;
- iv. assist the DEC in conducting a public meeting on the PRAP;
- v. prepare a Responsiveness Summary which addresses public comments about the PRAP;
- vi. notify the public of the availability of the Record of Decision (ROD) when it is finalized.
- vii. announce through a mailing to the project's contact list and through local news media the completion of the remedial design and the projected start of remedial construction.

Prior to each mailing to the contact list, the DEC should be given an opportunity to review and comment on announcements and fact sheets. Templates for some of these announcements are available through the DEC project manager, upon request.

2. Flexibility is needed to develop and implement an appropriate citizen participation program. Some projects may be complex, or create particularly important issues and information needs for the public, municipality and DEC. For these projects, additional, optional citizen participation activities may need to be considered at the

following stages of the ERP remedial program:

1. During the development of the RI/AA Work Plan, before the start of field work;
  - b. If any Interim Remedial Measures (IRMs) are performed;
  - c. When the ROD is signed.
  - d. Upon completion of construction.
5. Periodically during operation, maintenance and monitoring.

Additional CP activities may include fact sheets, public notices, public availability sessions, and public meetings. Public meetings and availability sessions should be announced through a mailing to the project's contact list and through local news media at least 15 days in advance.

3. In cases where a municipality conducts an investigation project, but does not proceed with the remediation of the property, the following CP activities are required to ensure timely disclosure of the investigation results to the public:

- a. Issue a public notice of the availability of the Remedial Investigation results to the public contact list,
- b. Provide an opportunity for the submittal of written comments,
- c. File a notice of the results of the investigation with the county clerk or register.

4. The CP plan should establish provisions for technical assistance if so requested by members of the affected community. Such assistance may include additional time spent by the municipality's consultant with the affected community, as well as assistance provided by DEC project staff who shall be readily available to the public.

5. Applicants will provide the DEC Project Manager with all citizen participation related documents in draft form prior to their finalization and utilization. Moreover, the CP plan should be reviewed and, if appropriate, revised and updated during the project to reflect a better understanding of public interest or changes in the technical aspects of the project or the project schedule.

6. Some municipalities may subject Environmental Restoration Projects to local land use review procedures. These review procedures may include equivalent provisions for citizen participation. The municipality may wish to demonstrate in its draft CP plan submission the extent to which the CP provisions of its land use review procedures satisfy or exceed the DEC's CP requirements.

7. Additional written guidance is available from the DEC to assist the municipality to prepare and implement its CP plan for Environmental Restoration Projects.

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## **7.0 TECHNICAL REQUIREMENTS: REMEDICATION PHASE**

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The remediation phase of an ERP project includes the detailed design and construction of the remedy conceptualized in the Record of Decision. Additional sampling may be necessary in the design phase to resolve any uncertainties remaining from the investigation phase, and to establish design parameters for the detailed design. Examples include additional soil sampling to determine the precise limits of excavation areas and pilot testing of treatment technologies to determine full-scale design parameters.

If the municipality's initial consultant contract does not provide for design and construction oversight services, a competitive selection process must be performed, as described in Section 3.1 above. Because the remedial design and construction oversight/final engineering certification report require a New York State licensed professional engineer's stamp, it is essential to select a remediation phase consultant that can provide professional engineering services.

Additional guidance on conducting the Remedial Design may be found in the DER Tech Guide.

### **7.1 Remedial Design Work Plan**

The Remedial Design (RD) Work Plan establishes the documents that will be prepared as part of the design, and provides a schedule for their submittal. Depending on the complexity of the remedy, possible design submittals include:

- Sampling work plans and reports

- Pilot study work plans and reports;
- 30% design report and/or 50% preliminary design, as appropriate;
- 95% plans and specifications;
- Final plans and specifications;
- Engineer's cost estimate;
- Institutional control documents.

These documents may be combined to streamline the design process. For example, sampling and pilot study work plans can be included in the RD Work Plan, and their results can be reported in the 30% design report. Simple soil removal and capping designs may require only 95% and final plans and specifications.

## 7.2 Design Report

The Remedial Design Report shall be in accordance with the proper application of scientific and engineering principles to eliminate or mitigate the threat a contaminated property presents to public health and the environment in accordance with the ROD and shall include, but not be limited to, the following:

1. A description of the means of implementing the remedy selected in the ROD and the quality control and quality assurance procedures and protocols to be applied to construction, to include but not be limited to:
  - a. management/treatment/disposal of hazardous wastes, hazardous constituents or toxic degradation products, and any soil or other materials contaminated thereby,
  - b. collection, treatment, and management of contaminated groundwater, leachate and air,
  - c. the physical security and posting of the property,
  - d. the health and safety of persons living and/or working at or in the vicinity of the areas being remediated,
  - e. quality control and quality assurance procedures and protocols to be applied to the remedy's construction operations,
  - f. integrated air monitoring on site during implementation of the remedy;

2. Unless a combined design/construction contract is approved by the DEC, bidding and contract documents for the construction of the elements of the remedy, including plans and specifications prepared and stamped by a licensed professional engineer registered in the State of New York, which shall satisfy all applicable State and federal laws, rules and regulations, and local codes;

3. A time schedule consistent with requirements of the work plan for construction of the elements of the remedy;

4. The parameters, conditions, procedures and protocols to determine the effectiveness of the remedy, including (if necessary) a schedule for periodic sampling of existing and planned groundwater monitoring wells on site and off site;

5. A description of any necessary maintenance and monitoring activities, procedures and protocols to be undertaken during the period commencing upon completion of the construction of the elements of the remedy, including a provision for submission to the DEC of periodic operation, maintenance and monitoring reports if required;

6. An identification of all necessary easements and/or permits.

## 7.3 Project Specifications

Unless a combined design/construction contract is approved by the DEC, the end product of the detailed Remedial Design is a set of plans, specifications, and detailed construction cost estimates which are suitable for bidding and construction. The plans, specifications and estimates must be as complete and accurate as possible. They must be approved by DEC prior to advertisement for bid.

The provisions of applicable State laws must be satisfied when advertising for construction public works projects. To assist municipalities in satisfying most of these requirements, DEC will furnish requirements which must be included in every construction contract. Key elements of these requirements to be included in the contract documents are highlighted below. Note that the responsibility for complying with all applicable federal and State laws and regulations remains with the municipality.

### **7.3.1 Construction Contract Documents**

The bidding and contract documents shall contain at a minimum the following five items:

1. a statement of work, including drawings and specifications, and a required time-for-completion schedule;
2. the terms and conditions of the construction contracts;
3. an explanation of method of bidding, method of evaluating bid prices, the basis upon which award of the contract will be made and the procedures for payment for completed components of the awarded contract;
4. a statement indicating that the project is partially funded with State money but that the State is not a party to the awarded contract; and
5. Applicable clauses from Appendices A and B of the State Assistance Contract (See Attachment 4).

### **7.3.2 Prevailing Wage Rates**

All public works Construction Contracts are subject to the provisions of the State Labor Law. This law requires that construction contractors pay employees prevailing wage rates as established by the State Department of Labor. Rates are specified in wage decisions issued by the State Department of Labor for specific projects. They reflect prevailing wages paid to workers in various crafts in a given locality. Wage decisions and any modifications must be included in the contract documents issued for bidding. Prevailing wage rates may be found at the Department of Labor's web site:

[http://www.labor.state.ny.us/business\\_ny/employer\\_responsibilities/prevwage/countylistgeneral.htm](http://www.labor.state.ny.us/business_ny/employer_responsibilities/prevwage/countylistgeneral.htm)

### **7.3.3 Bonding/Insurance**

Construction contracts must include the following minimum bonding and insurance requirements as a part of the specifications:

1. bid, performance, and payment bonds as required by applicable law; and

2. worker's compensation, comprehensive general liability, owners's protective liability, contractual liability, comprehensive automobile liability, fire/vandalism extended coverage, and pollution liability insurance. In addition, flood insurance and "all risk" insurance may be required (case by case). The minimum amount of liability insurance required is \$1,000,000 each occurrence and \$2,000,000 aggregate.

### **7.3.4 Technical Provision of Specifications**

Among other things, the following items must be addressed in the plans and specifications for the project.

**Construction Schedules:** Project schedules are required for all projects. The scheduling technique should fit the project and must be used to insure that construction proceeds in an orderly manner without costly delays. The schedule is a tool for effective construction management if it is maintained and updated on a regular basis. Many construction claims rise due to scheduling failures. Failure to adhere to the schedule could cause the municipality to jeopardize payment under the terms of the State Assistance Contract.

**Safety Precautions:** Occupational Safety and Health Act (OSHA) and applicable State and local requirements must be followed. A health and safety plan describing the minimum acceptable goals for protection must be included in the bid specifications. A Community Air Monitoring Plan must also be included. The successful bidder is required to provide a detailed plan that is certified by a Certified Industrial Hygienist or equivalent.

**Mitigative Measures:** Mitigative measures required by the environmental assessment must be implemented. Examples include: soil erosion control, hours of operation, backfilling and seeding, structural design for buildings in a floodplain, etc.

**Reliability and Flexibility:** The proposed facilities are to be reliable and provide for flexibility in operation. This may involve standby power, ample pumping capacity to assure continuous operation, etc.

**Component Identification:** Equipment, piping, switches, instruments, etc., must be clearly marked for ease of identification.

Water Supply: Public and private water supplies must be protected.

Chemical Storage: Chemicals must be properly stored in a curbed area large enough to hold the entire volume if an accidental spill occurs. Also, adequate safety protection gear must be provided for on-site personnel.

Ventilation: Adequate ventilation must be provided in all areas where necessary.

Laboratory Facilities: Laboratory facilities must be available to provide sufficient information to control the operational efficiency of treatment facilities. Additionally, facilities must be adequate to conduct sampling and testing as required.

Emergency Alarms: Adequate alarms must be provided to warn personnel and nearby citizens of failures or dangers, including automatic shutdowns.

Operation and Maintenance: In selecting equipment and components, the consultant should give careful consideration to those which can be operated and maintained with the least effort and greatest reliability.

#### **7.4 Operation, Maintenance and Monitoring Plan**

An Operation, Maintenance and Monitoring (OM&M) Plan may be required. The draft OM&M Plan should list the actions needed to ready the property and personnel for operation, maintenance and monitoring when construction is complete. It should include staffing and training requirements, maintenance and monitoring procedures, reports, laboratory testing, etc. In short, the OM&M Plan must detail the "who, when, and where" of facility operation, maintenance and monitoring. It is finalized during construction as additional details are determined.

The final OM&M Manual is especially important since it provides personnel with detailed instructions for assuring efficient operation and proper maintenance of all facility components as well as monitoring of the remedy. This manual should discuss how to maintain the property to meet State requirements. A draft OM&M Plan and Manual are suggested as part of the project design. Discoveries and modifications made during construction may change the OM&M Plan and Manual. The final Operation,

Maintenance and Monitoring Plan and Manual is required just prior to the completion of construction. More detail concerning the OM&M Plan may be found in the DER's Technical Guide.

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### **8.0 CONSTRUCTION, BIDDING & INSPECTION**

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#### **8.1 Advertising for Bids**

The municipality must comply with all applicable laws governing municipal contracting. DEC will authorize advertisement for bids only after the municipality has obtained all necessary easements and permits (the municipality is not be exempt from all permits, only those State permits for the remediation project itself). Municipalities must not advertise for bids or start force account work until DEC issues written authorization. Upon authorization, municipalities must publish notice of the proposed project in the local and regional newspaper or newspapers, and in publications with statewide circulation to get the best possible response. The advertisement must indicate where to obtain copies of the bidding documents, including the plans and specifications. A pre-bid meeting must be held by the municipality and its engineer to allow the bidders to inspect the property and ask questions about the property and the bidding procedures. At least 30 days must be allowed for receipt of bids. All addenda issued after DEC approval of the plans and specifications must be submitted promptly to DEC for approval.

#### **8.2 Receipt and Review of Bids**

Bids must be received sealed and opened publicly. In reviewing them, the municipality must insure that all legal requirements are met before preparing a recommendation for award. Bid documents shall be forwarded to DEC in time for approval. DO NOT award Construction Contracts until DEC issues approval to do so. To obtain DEC approval, the following documents must be submitted to DEC promptly after bids are opened:

1. A bid tabulation of all bids received including the engineer's pre-bid estimate, certified by a registered New York State Professional Engineer.
2. A copy of the apparent low bid
3. evidence of intent of surety to issue necessary

performance and labor and material bonds and evidence of intent to obtain the required insurance for the apparent low bidder.

4. A statement from the authorized municipal official indicating the names of the bidders to whom contracts are to be awarded, the amount of the contracts and discussion of bid and recommendation for award.
5. Proof of advertising indicating the circulation of the publication and time allowed for preparation and receipt of bids;
6. A copy of each addendum issued during the bidding period and acknowledgment of receipt by all the bidders;
7. Signed copies of the certification by the apparent low bidder regarding compliance with non-collusive bidding requirements;
8. An explanation and evaluation of any substantial variance from the pre-bid estimate; and
9. Other documents required to conform with applicable State and local laws and ordinances.

In reviewing the bids, municipalities must comply with law applicable to municipal contracting and recommend award of Construction Contracts to the lowest responsive, responsible bidder. If award to other than the lowest bidder is recommended, the municipality must provide DEC with a full explanation, including a legal opinion, for review. DO NOT award Construction Contracts until DEC issues written authorization to do so.

Rejection of all bids and re-advertisement of the project may be done only for good cause.

### **8.3 Protests**

The bidding and award process may result in protests from unsuccessful bidders, equipment suppliers or others. It is the municipality's responsibility to resolve protests. Municipalities must immediately advise DEC of each protest and how it is resolved.

### **8.4 Award of Construction Contracts**

After DEC reviews and approves the bid information, it will authorize the award of the Construction Contracts.

Municipalities must inform DEC of the date of the Construction Contract award and the notice to proceed.

### **8.5 Pre-Construction Conference**

At the time of the award, the municipality must hold a pre-construction conference with the engineer in charge of on-site engineering and inspection, the construction contractor and DEC. The primary objective of this conference is to discuss the responsibilities of each party in the project and to clarify any questions. Discussion may include: posting and payment of prevailing wages, record keeping, remaining citizen concerns, requirements and facilities for on-site inspections by DEC, processing of invoices and payment requests, required approvals of change orders, etc. At this pre-construction conference, "critical construction activities" must be defined and agreed upon by the on-site engineering and inspection engineer and the DEC representative. The critical construction activities must be documented to the DEC by the municipality 10 days prior to the start of construction field work.

### **8.6 Change Orders**

A change order is required to modify the Construction Contract after work has begun. It may result in a cost and/or time increase or decrease.

Change orders are used to correct errors in the plans and specifications, provide for unforeseen property conditions, or for construction emergencies. A construction emergency is damage to or a malfunction in buildings or property of the municipality caused by an unanticipated and sudden occurrence which involves a pressing necessity for immediate repair, reconstruction or maintenance in order to protect the property of the municipality, or the life, health or safety of any person. The municipality's on-site representative must approve all changes before their incorporation in the work. All change orders must be submitted to DEC within 30 days of such occurrence.

The resolution of cost changes should be diligently pursued. Unresolved changes are a primary source of expensive claims. Expenses associated with resolution of claims are not eligible for State Assistance.

Prior DEC approval of minor emergency change orders is not required. Project changes which will substantially alter the design or scope of the project, or the location, size,

capacity or quantity of any major component, or which will require funds in addition to those provided by contingency State funds, are not minor. These must receive formal approval from DEC before being executed. Approved change orders resulting in construction cost increases are ordinarily paid out of the contingency allowance of the project.

Change orders must be justified and not used to circumvent bidding requirements. The increased cost resulting from a change order must be reasonable and not caused by the owner, consultant, or the contractor. When appropriate, the municipality must negotiate with the construction contractor to insure that the price is reasonable. For construction emergency change orders, the municipality shall prepare and maintain a written record of each transaction entered into setting forth; a) the nature of such emergency, b) the effect thereof on public property or on life, health or safety of any person, c) a detailed description of the work to be performed and the cost of such work, d) engineering evaluation showing the need for immediate action, and e) the notice of construction emergency from the municipality to the DEC requesting such work. To receive financial assistance, the municipality must present documentation substantiating that the change order is appropriate and its cost is reasonable.

## **8.7 On-Site Inspection**

The municipality must provide adequate on-site engineering and full-time (100%) inspection under the direction of a professional engineer licensed to practice in New York State. The municipality must submit a certification by an engineer licensed to practice by the State of New York that the remedy was completed in accordance with the approved Remedial Design and the contract documents.

In addition to the on-site engineering and inspection by the municipality's engineer, DEC may have on-site representation at any time to determine that the project is being managed properly, is on schedule, and is being constructed in accordance with the terms of the State Assistance Contract, the Record of Decision, and the Remedial Design. The municipality is responsible for providing a project schedule to the DEC. Failure to provide such a schedule may be cause for construction costs to be disallowed for financial assistance.

DEC will make formal on-site project inspections during construction (interim) and at the completion of construction (final). The frequency and duration of interim inspections will depend upon the size and complexity of the project.

### **8.7.1 Interim Inspections**

At each interim inspection, the State inspector will check for the following and other items as appropriate:

1. that the municipality's engineer is providing competent and adequate on-site engineering and inspection, and maintaining an appropriate inspector's log;
2. that approved plans, specifications and change orders are available at the project property;
3. that construction conforms to approved plans, specifications and change orders, and is on schedule;
4. agreement between the engineer's estimate of work-in-place and actual observed construction;
5. that reasonable tests of materials and equipment are being conducted and noted in logs or reports;
6. proper protection and storage of equipment delivered to the property;
7. prominent display of a wage rate decision that agrees with contract documents;
8. that project accounting records are up-to-date, in conformance with record keeping requirements, and are supported by appropriate documentation;
9. that safety provisions to protect the community are being followed in accordance with the Health and Safety Plan;
10. any special construction techniques or practices are being followed properly;
11. provision is made for waste disposal during construction;
12. that a procedure is in effect to notify the authorized representative of any deficiencies in design or

construction; and

13. signs indicating that portions of the project were assisted by the State under the Clean Water / Clean Air Bond Act of 1996.

### 8.7.2 Final Inspections

In addition to the items noted above, the following must be certified by the municipality's engineer and DEC reserves the right to inspect that:

1. the project is complete, operating and, in projects with a treatment plant, are meeting the required effluent limitations;
2. the construction conforms to approved plans, specifications and change orders;
3. all equipment is operational and performing satisfactorily;
4. the operation and maintenance staff has been hired, trained in the start-up and operational procedures, and are capable of properly operating the facility;
5. the OM&M Manual is accessible at the property and its procedures are being followed; and
6. the accounting records are up-to-date and available for audit in conformance with record keeping requirements and supported by appropriate documentation.

Deficiencies noted during the inspections must be corrected. Delay in correcting deficiencies may delay State payments.

### 8.8 Claims

Claims are written documents submitted by the contractor for payment of additional costs or time. Claims which are settled without extensive litigation or arbitration are handled as routine change orders. Unsettled claims, however, can lead to costly litigation or arbitration costs. Timely, well documented construction records and effective use of the project schedule will minimize claims and will strengthen the municipality's position during any arbitration and litigation. Costs associated with litigation, arbitration or other settlement of claims are not eligible for

State financial assistance. Construction or engineering costs included in a claim settlement may be eligible for State assistance if funds are available, and if they would have been eligible for State financial assistance as a normal change order.

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## 9.0 LIABILITY LIMITATION

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### 9.1 Liability Limitation

The municipality will have the liability limitation benefits identified in ECL 56-0509 beginning the date of the DEC's approval of the application for State assistance, provided that the municipality fully complies with the terms of the State Assistance Contract, including completion of the project. However, the property cannot be used for any new purpose until the remediation of the property is completed to the DEC's satisfaction. The municipality should refer to ECL 56-0509 to determine the extent of the liability limitation.

If the municipality, or a municipal successor in title to the property, wishes to subdivide the property into separate parcels before the property's remediation is complete, it may do so after submitting a complete application for State assistance to remediate the property. However, a contaminated parcel of the subdivided property cannot be used until the DEC-determined remedial objectives for that parcel are met to the DEC's satisfaction within such time period as the DEC may require; and the municipality must undertake that remediation if State assistance to do so is provided under the remediation State assistance contract.

A non-municipal successor in title to the property who wishes to subdivide the property into separate parcels before the property's remediation is complete must first enter into a legally binding agreement with the DEC prior to subdivision, to remediate all such parcels and remediate each parcel in need of remediation before that parcel may be used.

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## 10.0 OTHER PROGRAM ELEMENTS

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### 10.1 Eligible and Ineligible Costs

A municipality may seek reimbursement for up to 90% of the approved project cost for investigating and remediating on-site contamination, and up to 100% of the approved cost of investigating and remediating off-site contamination. Off-site is defined as being outside the boundaries of the real property subject to the Environmental Restoration Project.

#### 10.1.1 Demonstration of Eligible Costs

To be reimbursed for a cost the municipality must demonstrate to the State's satisfaction that:

1. It is a reasonable cost incurred under contract or force account (see Sections 10.3 and 10.4) pre-approved by the DEC, for investigation, remediation, engineering, or legal services. The municipality may contract with a third party (accounting firm or other similar service company) to act as project administrator and manage the record keeping, cost accounting, and cost control reports. The reasonable costs as determined by the DEC, associated with such third party contracts will be an eligible cost. Legal services are eligible only to the extent that they are necessary for project implementation however, reimbursement will be limited to a maximum of 5% of the State Assistance Contract amount. Detailed documentation must support costs claimed for legal services.
2. It is necessary and not an expense of municipal administration. Costs incurred when applying for State assistance, including costs associated with the preparation of the application and selection of consultants/contractors, are not eligible for State assistance purposes.
3. The costs are authorized and consistent with applicable State and local laws and regulations.
4. The costs may not be included in the costs which may be allocated to any other federally or State financed program.
5. The costs are for work required under terms of the State Assistance Contract executed by the municipality. Only costs incurred after State approval of an investigation

application for State assistance are eligible for financial assistance (except as provided in section 2.2, paragraph 3).

6. It is a cost incurred because of reasonable additional time provided by the municipality's consultant to provide technical assistance to members of the affected community. Any costs to provide technical assistance must be incurred under contract with the municipality and be approved in advance by the DEC to be considered eligible.

#### 10.1.2 Reduced Maximum Reimbursement Rate

The following costs are eligible for a maximum reimbursement rate of 50 percent under the ERP Program:

1. Costs for demolition of structures (however, if contamination of the demolition debris requires that it be disposed of in a RCRA "C" landfill, the reimbursement rate would be up to 90 percent). NOTE: if the scope of the Environmental Restoration Project is almost exclusively demolition of structures, none of the cost is eligible.
2. Costs for asbestos abatement projects that consist of any measure designed to reduce exposure to, remove, or eliminate asbestos or asbestos-containing material inside a structure (however, if that material must be disposed in a RCRA "C" landfill or is outside a structure, the reimbursement rate would be up to 90 percent). If the scope of the Environmental Restoration Project is almost exclusively indoor asbestos abatement, none of the cost is eligible.

#### 10.1.3 Ineligible Costs

Costs associated with the following are not eligible:

1. Costs for lead abatement projects consisting of measures designed to reduce exposure to lead-contaminated dust or paint, including any treatment, disposal, or testing associated with such measures are not eligible (NOTE: costs associated with remediation of lead in or on environmental media [soil, water, air] are eligible).
2. If the scope of the Environmental Restoration Project is almost exclusively indoor asbestos abatement and/or demolition of structures, none of the cost is eligible.
3. Costs for the redevelopment of the property which

are not necessary to remediate the property are not eligible.

4. Costs incurred prior to State approval of the investigation application are not eligible except as provided in Section 1.4.

5. Costs for Operation, Maintenance and Monitoring (OM&M) of a remedy or IRM constructed in the ERP.

## 10.2 Other Funding Sources

1. Federal Grants The municipality may use any federal funding, and other State funds, such as legislative member items, to fund their share of a project. These funds would not reduce the amount of State assistance provided under the ERP.

2. Responsible Party Funds Any funding from Responsible Parties, including insurance payments, is divided between the municipality and the State in proportion to the percentage of State assistance applied to the project as a whole. This proportion may be a mixture of 90% funding for on-site remediation, 100% funding for off-site remediation, and 50% funding for building demolition.

3. Proceeds from Property Sale or Lease Proceeds from the sale or lease of a property are distributed in the following sequence:

- The municipality retains the amount it has spent for acquisition of the property (including back taxes owed) and its share of the Environmental Restoration Project.
- The State is reimbursed for funds it has provided under the State Assistance Contract
- The municipality keeps the remainder.

## 10.3 Subcontracted Work

Portions of investigative work may be subcontracted based on unit price bids/quotes or, for professional services, to subconsultants.

All subcontracts valued at over five thousand dollars (\$5,000) must be submitted to the DEC. For services which are not biddable, or for which the low bid is not selected, a justification must be provided to the DEC prior to the start of the subcontracted work. A copy of all subcontracts must be submitted to DEC when they are

executed. A statement from the prime consultant must be submitted which states that the procedures below were followed or which provides justification for any exceptions. No reimbursements for subcontracted work will be made without submission of this information.

The prime consultant or contractor must solicit bids/quotes for subcontracted work. DEC will require the following:

1. Unit price subcontracts over \$10,000 require five responsive bids/quotes for justification with at least three (3) in writing for each subcontract.

2. Subcontracts estimated to be between \$5,000 and \$10,000 require three (3) written responsive quotes for each subcontract.

3. For subcontracts less than \$5,000, written quotes are not required but the cost must be evaluated for reasonableness, i.e., comparison to a previous engineering estimate, lowest of three (3) phone quotes, or comparison to similar recent subcontracted work.

4. Subconsultant contracts under \$25,000 may be unit price or fixed price (lump sum) provided the scope of work can be well defined and three (3) written, responsive quotes are obtained. Subconsultant contracts which are over \$25,000 must or under \$25,000 may be cost plus fixed fee type contracts.

5. Subcontracts should include the following:

a. By reference or by attachment and incorporation, all applicable requirements of the prime contract should be made a part of the subcontract. The subcontract should state that all applicable federal and State laws apply.

b. If the subcontract is for unit price work (well driller, laboratory analysis), a unit price list should be included as an attachment to the subcontract.

6. Each subcontract must include:

a. signatories to the agreement (both the prime and sub must sign);

b. a specified dollar amount;

c. a detailed scope of work with the property and

project identified; and

d. a time frame for performance.

7. The subcontract cannot be a cost-plus-percentage-of-cost or a percentage-of-construction-cost type of agreement.

#### **10.4 Force Account Work**

Municipal employees sometimes perform activities related to planning, design or construction of a project. As stated previously, general municipal administrative costs are not eligible and, therefore, must not be included in a force account proposal. In cases where the municipality desires to use municipal forces, it must obtain prior written approval from DEC. Municipalities must submit a force account proposal in writing to DEC which demonstrates that:

1. municipal employees have the necessary skills and experience, including all OSHA required health and safety training, to safely and effectively accomplish the work; and
2. using municipal employees is at least as economical as using contractors; or
3. emergency conditions require the use of municipal employees.

DEC will review and approve or disapprove the force account proposal in writing. If approved, the municipality will be notified in writing of the eligible force account costs and record keeping requirements. Comprehensive personal service accounting records are required to verify force account costs. Failure to keep complete records may result in those costs being disallowed for payment.

Force account work performed without prior DEC approval will not be eligible for State financial assistance.

#### **10.5 Payments**

Requests for payment must be submitted in accordance with the payment schedule (Schedule B) contained in the State Assistance Contract. The normal frequency of payment requests will be on a quarterly basis (every three months). If the municipality can, in the DEC's opinion, demonstrate specific financial need, more frequent

payments may be scheduled.

Payment requests should be submitted based on eligible project costs incurred. All claims for State payment must be on a State of New York Standard Voucher signed by the municipality's authorized representative. They must be accompanied by documentation substantiating the eligibility of costs claimed.

DEC will furnish payment procedures and forms to the municipality with its copy of the executed State Assistance Contract. Instructions for project close-out will be furnished when the project approaches completion.

#### **10.6 Audits**

The municipality shall maintain all books, documents, papers, and other evidence directly pertinent to the performance of work under the State Assistance Contract in accordance with generally acceptable accounting principles and practices consistently applied. The DEC, the State Comptroller, the State Attorney General and the State Department of Labor or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying for a period of six years after final payment for the project.

All contracts associated with the performance of work under this State Assistance Contract must include the above provisions. Costs are subject to audit by the State Comptroller.

**Table 1: Information Required for Remediation-Phase Amendments**

<b>Project Information</b>	
1. HAS THE DEC ISSUED A RECORD OF DECISION FOR THE SITE UNDER THE ERP?	<input type="checkbox"/> YES <input type="checkbox"/> NO
2. HAS GROUNDWATER OR A SURFACE WATER BODY BEEN CONTAMINATED ABOVE STANDARDS? IF YES, CHECK ALL THAT APPLY:	<input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/> A. THE INFLUENT TO A PUBLIC OR PRIVATE WATER SUPPLY HAS BEEN CONTAMINATED OR THREATENED.	
<input type="checkbox"/> B. A CLASS A OR AA SURFACE WATER BODY OR A PRIMARY OR PRINCIPAL AQUIFER HAS BEEN CONTAMINATED WITHOUT AFFECTING AN EXISTING WATER SUPPLY.	
<input type="checkbox"/> C. GROUNDWATER HAS BEEN CONTAMINATED ABOVE STANDARDS OR A SURFACE WATER HAS BEEN IMPACTED.	
3. HAVE ENDANGERED, THREATENED OR RARE SPECIES, STATE PROTECTED STREAMS, OR STATE REGULATED WETLANDS BEEN IMPACTED BY RELEASES FROM THE SITE?	<input type="checkbox"/> YES <input type="checkbox"/> NO
4. ARE CONTAMINANTS PRESENT IN SOILS/WASTE AT LEVELS THAT EXCEED DEC DIVISION OF ENVIRONMENTAL REMEDIATION GUIDANCE VALUES?	<input type="checkbox"/> YES <input type="checkbox"/> NO
5. IS THE SITE LOCATED IN A DESIGNATED EMPIRE ZONE?	<input type="checkbox"/> YES <input type="checkbox"/> NO
6. IS THE SITE LOCATED IN A DESIGNATED EN-ZONE PURSUANT TO TL § 21 (b)(6)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
7. HAS ALL OR PART OF THE SITE BEEN IDLE OR ABANDONED FOR MORE THAN ONE YEAR?	<input type="checkbox"/> YES <input type="checkbox"/> NO
7. HAS THE APPLICANT SIGNED AN AGREEMENT WITH A PRIVATE PARTY TO REUSE THE SITE ONCE IT IS RESTORED?	<input type="checkbox"/> YES <input type="checkbox"/> NO
8. HAS THE APPLICANT COMMITTED TO A NEW PUBLIC OR RECREATIONAL USE?	<input type="checkbox"/> YES <input type="checkbox"/> NO
9. HAS THE APPLICANT COMPLIED WITH THE STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) REGARDING THIS ACTION? IF YES, INCLUDE THE DETERMINATION (NEGATIVE DECLARATION OR FINDINGS STATEMENT) IN THE ATTACHED PROJECT DESCRIPTION AND IDENTIFY ALL INVOLVED AGENCIES IN THE COORDINATED REVIEW.	<input type="checkbox"/> YES <input type="checkbox"/> NO
10. IS THE APPLICANT AWARE OF OTHER FUNDING SOURCES FOR REMEDIATING THE SITE? IF YES, PROVIDE SOURCES(S) AND DOLLAR AMOUNT IN THE ATTACHED PROJECT DESCRIPTION.	<input type="checkbox"/> YES <input type="checkbox"/> NO

**Attachment 1: Municipal Resolution Format**

Resolution (or other authorizing document) authorizing the items listed below pursuant to the Clean Water / Clean Air Bond Act of 1996.

WHEREAS,

\_\_\_\_\_  
(Legal Name of Municipality)

herein called the "Municipality", after thorough consideration of the various aspects of the problem and study of available data, has hereby determined that certain work, as described in its application and attachments, herein called the "Project", is desirable, is in the public interest, and is required in order to implement the Project; and

WHEREAS, Article 56 of the Environmental Conservation Law authorizes State assistance to municipalities for environmental restoration projects by means of a contract and the Municipality deems it to be in the public interest and benefit under this law to enter into a contract therewith;

NOW, THEREFORE, BE IT RESOLVED BY

\_\_\_\_\_  
(Municipal Authority)

1. That

\_\_\_\_\_  
(Title of Designated Authorized Representative)

is the representative authorized to act in behalf of the Municipality's in all matters related to State assistance under ECL Article 56, Title 5. The representative is also authorized to make application, execute the State Assistance Contract, submit Project documentation, and otherwise act for the Municipality's governing body in all matters related to the Project and to State assistance;

2. That the Municipality agrees that it will fund its portion of the cost of the Project and that funds will be available to initiate the Project's field work within twelve (12) months of written approval of its application by the Department of Environmental Conservation;

3. That one (1) certified copy of this Authorization be prepared and sent to the Albany office of the New York State Department of Environmental Conservation together with the Application for State Assistance;

4. That this Authorization take effect immediately.

CERTIFICATE OF RECORDING OFFICER

(If authorization is in the form of a municipal resolution)

That the attached Resolution is a true and correct copy of the Resolution, as regularly adopted at a legally convened meeting of the

\_\_\_\_\_  
(Name of Governing Body of Applicant)

duly held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_; and further that such Resolution has been fully recorded in the

\_\_\_\_\_ in my office.  
(Title of Record Book)

In witness thereof, I have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of Recording Officer

If the Applicant has an Official Seal, Impress here.

\_\_\_\_\_  
Title of Recording Officer

## Attachment 2: Certification of Ownership

To document ownership, the DEC has developed a generic Proof of Ownership letter to be completed by the municipal attorney:

*I {attorney name}, being an attorney duly admitted to the practice of law in the State of New York, affirm under the penalties of perjury the following:*

*1. That I am the attorney for {municipality name}, the Municipality which is the applicant for State Assistance pursuant to Title 5 of Article 56 of the Environmental Conservation Law to undertake an Environmental Restoration Project known as the "{project name}" Project;*

*2. That the Property located at {street address/post office / New York / zip code / county}, the subject of the Project and is more particularly described as, {description};*

*3. That I hereby certify to the Commissioner of Environmental Conservation that I have examined or caused to be examined the title to the Property, and that I have approved the same, and that as of the date of this affirmation a good and marketable title thereto in fee is vested in and may be conveyed by {municipality name};*

*4. That annexed hereto is/are a certified copy/copies of the deed/deeds whereby such title to the Property was conveyed to {municipality name}, and that I hereby certify to the Commissioner of Environmental Conservation that the property title, conveyed by said deed/deeds, is identical to the Property which is the subject of the Project; and,*

*5. That I make this affirmation to be attached as an exhibit and incorporated by reference into such application.*

Dated: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
{attorney signature}

## Attachment 3: Suggested RI and AA Report Format

### SUGGESTED RI REPORT FORMAT

#### Executive Summary

#### 1. Introduction

##### 1.1 Purpose of Report

##### 1.2 Site Background

1.2.1 Site Description

1.2.2 Site History

1.2.3 Previous Investigations

##### 1.3 Report Organization

#### 2. Study Area Investigation

2.1 Includes field activities associated with site characterization. These may include physical and chemical monitoring of some, but not necessarily all, of the following:

2.1.1 Surface Features (topographic mapping, etc.), natural and manmade features

2.1.2 Contaminant Source Investigations

2.1.3 Meteorological Investigations

2.1.4 Surface-Water and Sediment Investigations

2.1.5 Geological Investigations

2.1.6 Soil and Vadose Zone Investigations

2.1.7 Groundwater Investigations

2.1.8 Human Population Surveys

2.1.9 Ecological Investigations

2.2 If technical correspondence documenting field activities were prepared, they may be included in an appendix and summarized in this report chapter.

#### 3. Physical Characteristics of the Study Area

3.1 Includes results of field activities to determine physical characteristics. These may include some, but not necessarily all, of the following:

3.1.1 Surface Features

3.1.2 Meteorology

3.1.3 Surface Water Hydrology

3.1.4 Geology

3.1.5 Soils

3.1.6 Hydrogeology

3.1.7 Demography and Land Use

3.1.8 Ecology

#### 4. Nature and Extent of Contamination

4.1 Presents the results of site characterization, both natural chemical components and contaminants in some, but not necessarily all, of the following media:

4.1.1 Sources (lagoons, sludges, tanks, etc.)

4.1.2 Soils

4.1.3 Vadose Zone and Soil Gas

4.1.4 Groundwater

4.1.5 Surface Water and Sediments

4.1.6 Air

5. Contaminant Fate and Transport

5.1 Potential Routes of Migration (i.e., air, groundwater, etc.)

5.2 Contaminant Persistence

5.2.1 If they are applicable (i.e., for organic contaminants), describe estimated persistence in the study area environment and physical, chemical, and/or biological factors of importance for the media of interest.

5.3 Contaminant Migration

5.3.1 Discuss factors affecting contaminant migration for the media of importance (e.g., sorption onto soils, solubility in water, movement of groundwater, etc.)

5.3.2 Discuss modeling methods and results, if applicable.

6. Exposure Assessment

6.1 Qualitative Public Exposure Assessment

6.2 Environmental Exposure Assessment

6.3 Quantitative Risk Assessment (if necessary)

7. Summary and Conclusions

7.1 Summary

7.1.1 Nature and Extent of Contamination

7.1.2 Fate and Transport

7.1.3 Risk Assessment (if appropriate)

7.2 Conclusions

7.2.1 Data Limitations and Recommendations for Future Work

7.2.2 Recommended Remedial Action Objectives

Appendices

A. Technical Correspondence on Field Activities (if applicable)

B. Analytical Data and QA/QC Evaluation Results

C. Risk Assessment Methods (if appropriate)

## SUGGESTED AA REPORT FORMAT

### Executive Summary

#### 1. Introduction

##### 1.1 Purpose and Organization of Report

##### 1.1 Background Information (Summarized from RI Report)

- 1.2.1 Site Description
- 1.2.2 Site History
- 1.2.3 Nature and Extent of Contamination
- 1.2.4 Contaminant Fate and Transport
- 1.2.5 Baseline Risk Assessment (if appropriate)

#### 2. Identification and Development of Alternatives

##### 2.1 Introduction

##### 2.2 Remedial Action Objectives -

Presents the development of remedial action objectives for each medium of interest (i.e., groundwater, soil, surface water, air, etc.) For each medium, the following should be discussed:

- Contaminants of interest
- Development of remediation goals

##### 2.3 General Response Actions -

For each medium of interest, describes the estimation of areas or volumes to which treatment, containment, or exposure reduction technologies may be applied.

##### 2.4 Development of Alternatives -

Describes rationale for combination of general response actions into alternatives. Note: This discussion may be by medium or for the property as a whole.

#### 3. Detailed Analysis of Alternatives

##### 3.1 Introduction

##### 3.2 Individual Analysis of Alternatives

##### 3.2.1 Alternative 1

##### 3.2.1.1 Description

##### 3.2.1.2 Assessment

##### 3.2.2 Alternative 2

##### 3.2.2.1 Description

##### 3.2.2.2 Assessment

##### 3.2.3 Alternative 3

##### 3.3 Comparative Analysis

### Bibliography

### Appendices

## Attachment 4

### Mandatory Contract Clauses

The following are mandatory contract provisions to be included in all Municipal/Consultant-Construction-Service contracts for work performed as part of an eligible Environmental Restoration Project (ERP). Any changes to these provisions by the municipality should be approved by the New York State Department of Environmental Conservation (NYSDEC) prior to execution of the contract. Failure to comply with these requirements may jeopardize the eligibility of your ERP.

#### Mandatory Provisions

##### NON-DISCRIMINATION REQUIREMENTS

1. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.

To the extent that such work is to be provided pursuant to the contract, the following paragraph is required:

Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: a) discriminate in hiring or promotion of any individual who is qualified and available to perform the work; or b) discriminate against or intimidate any employee hired for the performance of work under this contract.

##### WAGE AND HOUR PROVISIONS

2. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

##### RECORD-KEEPING REQUIREMENT

3. The Contractor shall maintain all books, documents, papers, and other evidence directly pertinent to the performance of work under this Contract in accordance with generally acceptable accounting principles and practices consistently applied, and 40 CFR Part 30 in effect during the term of this Contract. The Municipality, the Department of Environmental Conservation, the State Comptroller, the State Attorney General, the State Department of Labor, and, in the event of federal funding, the USEPA, the Comptroller General of the United States, the United States Department of Labor or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying for a period of six years following final payment or the termination of this Contract whichever is later, and any extensions thereto. These books, records, documents and other evidence shall be accessible within the State of New York to the agencies identified above for the time period stated above. "Termination of this contract," as used in this clause, shall mean the later of completion of the work of the contract or the end date of the term stated in the contract.

## CONFLICT OF INTEREST

4. To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Municipality.

An organizational conflict of interest exists when the nature of the work to be performed under this Contract may, without some restriction on future activities, either result in an unfair competitive advantage to the Contractor or impair the Contractor's objectivity in performing the work for the Municipality.

The Contractor agrees that if an actual, apparent or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Municipality and the State Department of Environmental Conservation. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Municipality, to avoid, mitigate, or minimize the actual or potential conflict.

Remedies - The Municipality may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor was aware of a potential conflict of interest prior to award, or discovered an actual or potential conflict after award and did not disclose or misrepresent relevant information to the Municipality, the Municipality may terminate the contract, or pursue such other remedies as may be permitted by law or this contract. The terms of other applicable contract provisions regarding termination shall apply to termination by the Municipality pursuant to this clause.

The Contractor further agrees to insert in any subcontract hereunder, provisions which shall conform to the language of this clause.

- (a) In addition to the requirements of the above clauses with respect to "Organizational Conflicts of Interest," the following provision with regard to employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

The Contractor agrees to notify the Department and the Municipality immediately of any actual, apparent or potential personal conflict of interest with regard to any employee, subcontractor employee, or consultant working on or having access to information regarding this contract, as soon as the Contractor becomes aware of such conflict. A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Municipality will notify the Contractor of the appropriate action to be taken.

- (b) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.
- (c) The Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, have been reported to the Department and the Municipality. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by the Municipality. Along with the annual certification, the Contractor shall also submit an update of any changes in the conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.
- (d) The Contractor recognizes that employees in performing this contract may have access to data, either provided by the Department or the Municipality or first generated during contract performance, of a sensitive nature which

should not be released without Department/Municipality approval. Therefore, the Contractor agrees to obtain confidentiality agreements from all such employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees that the employee will not disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York State Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Municipality. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the contractor must provide immediate advance notification to the Municipality/Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

- (e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Municipality.

If this is a contract for work related to action at an inactive hazardous waste site, the following paragraph shall apply:

- (f) Due to the scope and nature of this contract, the Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.
  - (1) The Contractor will be ineligible to enter into a contract for remedial action projects for which the Contractor has developed the statement of work or the solicitation package.
  - (2) The Contractor, during the life of the work assignment and for a period of five (5) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party with respect to any work relating to remedial activities or work pertaining to a site where the Contractor previously performed work for the Department and/or Municipality under this contract without the prior written approval of the Department.
  - (3) The Contractor agrees in advance that if any bids/proposals are submitted for any work for a third party that would require written approval of the Municipality/Department prior to entering into a contract because of the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Municipality/Department to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

#### AFFIRMATIVE ACTION

- 5. (a) The Contractor agrees to be bound by the provisions of New York State Executive Law Article 15-A, Sections 312, 313 and 316 and the regulations promulgated thereunder.

As provided thereunder, the Contractor is required to make good faith efforts to solicit the meaningful participation of minority and women owned business enterprises identified in the Directory of Certified Businesses provided by the New York State Department of Economic Development's Division of Minority and Women's Business Development.

- (b) The Contractor agrees to include the requirements set forth in paragraph (a) above and paragraphs (c), (d), and

(e) and (f) below in every subcontract in such a manner that the provisions will be binding upon each subcontractor as to work in connection with such contract. For the purpose of this paragraph, a "subcontract" shall mean an agreement providing for a total expenditure in excess of \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon in which a portion of Contractor's obligation under a State contract is undertaken or assumed.

- (c) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For purposes of this article, affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
- (d) At the request of the contracting agency, the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.
- (e) The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- (f) The Contractor also agrees to incorporate into any contract with subcontractors, contractual provisions applicable to record keeping, reporting, notice requirements and actions determined to be necessary by the Department to implement the requirements of the Minority/Women Business Enterprise - Equal Employment (M/WBE-EEO) utilization plan, and of Executive Law Article 15-A, regulations promulgated thereunder, and other applicable law and regulations.

ATTACHMENT 5  
REMEDIATION PROJECT PRIORITIZATION

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
1996 CLEAN WATER/CLEAN AIR BOND ACT  
ENVIRONMENTAL RESTORATION PROJECTS - TITLE 5

I. Eligibility

Applications are reviewed for completeness and eligibility (see sections 1.1 and 1.2 in the Environmental Restoration Projects Procedures Handbook). The following system will be used to prioritize applications **for remediation projects only**.

II. Environmental Restoration Projects Priority Ranking System

- |   |              |
|---|--------------|
| A. Benefit to the Environment (total possible = 50)   | <u>SCORE</u> |
| 1 Choose a, b or c  | _____ points |
| a) The influent to a public or private water supply has been contaminated or threatened. (20 points)  |              |
| b) A class A or AA surface water body, primary or principal aquifer has been contaminated without affecting an existing water supply (15 points)                              |              |
| c) Groundwater has been contaminated above standards or a surface water body has been impacted (8 points)   |              |
| 2 A health advisory has been issued by the NYS Department of Health due to releases of site contaminants. (15 points)   | _____ points |
| 3 Endangered, threatened or rare species, State protected streams or State regulated wetlands have been impacted by releases from the site. (10 points)                       | _____ points |
| 4 Site contaminants are present in soils/waste at levels that exceed DEC Division of Environmental Remediation guidance values. (DHWR TAGM 4046 and STARS Memo #1) (5 points) | _____ points |
| B. Economic Benefit to the State (total possible = 50)  |              |
| 1 Property is in a designated economic development zone or zone equivalent area. (20 points)  | _____ points |
| 2 Municipality has a signed agreement with a private party to reuse the property once it is restored. (20 points)   | _____ points |
| 3 All or part of the property has been idle/abandoned for at least one year. Percent of total property that applies _____ %. (% as decimal x 10 = points)                     | _____ points |

C. Potential Opportunity for Public or Recreational Use (total possible = 50)

- 1 Municipality has legally committed to a specific **new** public or recreational use of all or part of the property. Percent of total property area that will be allocated for new public or recreational use \_\_\_\_\_. (% as decimal x 50 = \_\_\_\_\_ points)
- 2 Municipality will **continue current** public or recreational use of all or part of the property. Percent of total property area that will continue that current use \_\_\_\_\_. (% as decimal x 10 = \_\_\_\_\_ points)

D. Opportunity for Other Funding Sources (total possible = 15)

Other funding sources are available. If yes, complete 1 below.

Yes  No

- 1 Percent of the total estimated project cost for which other funding is available \_\_\_\_\_. (% as decimal x 15 = \_\_\_\_\_ points)

FINAL SCORE = A + B + C - D

III. Application Approval

Remediation projects must meet a minimum score of 15 points to be eligible for funding. Applications for projects that meet the minimum score are approved in order of their priority ranking score. In the case of identical scores, approvals will be made in the order that the complete applications were received. Approval will stop when funds are no longer available.