MEMORANDUM OF UNDERSTANDING

BETWEEN

THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

AND THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION

THIS Memorandum of Understanding (No. AM09739) is by and between the New York State Department of Environmental Conservation, hereinafter referred to as DEC, and the New York State Department of Transportation, hereinafter referred to as DOT.

DEC and DOT hereby agree that the application of this MOU, as stated herein is a statement of intent and is subject to the consistency of this MOU with applicable State and Federal requirements for the execution of contracts, for such purposes by DOT, acting on behalf of the State of New York. This MOU is nullified to the extent that it is found to be inconsistent with the requirements of State and Federal Law.

Witnesseth

WHEREAS, Article 12 of the New York State Navigation Law authorizes DEC to respond to and effectuate the prompt cleanup and removal of petroleum spills which may result in damage to the lands, waters, or natural resources of the State. The statute further requires State and local agencies to provide assistance as required by the Commissioner of the DEC to carry out this responsibility. The New York State Highway Law authorizes the Department of Transportation (hereinafter “DOT”) to maintain and repair state highways.

WHEREAS, the DEC and the DOT declare that it is to their mutual advantage to update and consolidate previous formal and informal agreements regarding the management of spills of petroleum and hazardous materials on or adjacent to state highways. This Memorandum of Understanding (hereinafter “MOU”) between the DEC and DOT supersedes all previous agreements relating to the specific topics addressed below.

WHEREAS, the DEC and DOT agree to establish procedures to address the following topics:

A. Accidental or Emergency Spills or Releases on or Adjacent to State Highways
B. NYS Highway Work Permits for DEC Standby Cleanup Contractors
C. Temporary Storage of Spill Cleanup Wastes

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

ARTICLE I. Term

This MOU will commence on December 31, 2014 and will remain in effect unless or until terminated in accordance with Article VI of this MOU.
ARTICLE II. Scope of Work

A. Accidental or Emergency Spills or Releases on or Adjacent to State Highways

In keeping with the DOT Commissioner's responsibility to maintain an open roadway for the traveling public and in the interest of all and to prevent further traffic and environmental impacts, the DOT and the DEC agree to implement specific steps to respond to and clean up any incident requiring spill mitigation in an expeditious manner, utilizing the resources of both agencies. The majority of spills are cleaned up by the responsible party under the oversight of DEC. In the event that the responsible party is unknown, unwilling, or unable to conduct the cleanup, DEC will call upon one of their standby contractors to effectuate prompt cleanup and removal of spills on or adjacent to state highways. However, issues relevant to the location, size, and type of some spills may require cooperation between the two agencies in the following areas. DOT will employ a best effort approach and provide assistance when resources permit. The DOT Resident Engineer will notify DEC if DOT resources are unavailable to assist due to conflicting high priority events or lack of staff resources.

1. As necessary, DOT will set up traffic control to provide for the safe and efficient movement of traffic and to protect workers, and the public from damage to person and property from or around a spill site. DEC spill response staff will provide guidance on safety distances for such traffic control at spills of unknown materials or known hazardous substances for the purpose of protecting the health and safety of on-site personnel and the public. DOT will coordinate with the DEC regarding the length of time needed to provide traffic safety services. If containment work progresses to a duration longer than 2 hours, the contractor and/or its subcontractors shall, after consultation with DOT, provide traffic control in accordance with DOT guidelines. Immediately following containment, DEC or their contractor and/or subcontractor shall consult with DOT and obtain DOT approval to progress with necessary cleanup work. Such approval will be contingent on DOT’s review of the nature of the cleanup work and site specific traffic control or safety concerns. Prior to any excavation work, the contractor and/or its subcontractor shall meet with the DOT Resident Engineer or designee to discuss the proposed work. DOT may require the contractor to submit plans and engineering analysis to show all methods, materials and temporary traffic control to be used within the right-of-way.

2. Upon request of DEC spill response staff, DOT, will spread sand and/or absorbent on spills of known petroleum products on state highways for containment purposes. If DEC spill response staff determines that the sand or absorbent is contaminated and needs to be picked up and disposed of, or if DOT staff determines that the sand or absorbent needs to be picked up and disposed of for highway safety purposes, and no responsible party is identified, DEC has the option of mobilizing a DEC standby contractor. However, if DOT resources are readily available and the amount of contaminated sand or absorbent is relatively small, or for traffic safety purposes, DOT may be requested to undertake the activity, at DOT’s discretion, if the material can be legally and safely loaded and transported by available DOT personnel and equipment resources.

3. To decrease response time on larger spills and/or in high traffic areas, DOT may request DEC to mobilize a contractor prior to DEC spill response staff arriving at the scene. After receiving the spill information from the DEC Hotline, spill response staff will contact DOT staff at the scene.
If deemed necessary and/or DEC determines that the responsible party (discharger) is unknown, unable, or unwilling to conduct the cleanup within necessary timeframes and requirements, DEC staff will call out a contractor at this time. If a DOT staff member needs to contact the DEC responder to suggest mobilizing a contractor, they should call the Hotline (1-800-457-7362) and request a call back from the DEC. If the spill is clearly of the nature that DOT has the capabilities to address, and the discharger cannot handle the cleanup, the DOT may spread sand and/or absorbent in the interest of opening the road.

4. DEC will provide full cooperation and support when DOT staff pick up and dispose of sand or absorbent contaminated by known petroleum products at DEC direction, by expediting necessary permits, providing assistance in locating a disposal site, and recommending reimbursement of DOT costs from the New York Environmental Protection and Spill Compensation Fund.

5. DEC will not request DOT to spread sand or absorbent on spills of unknown materials or spills of known hazardous substances, as defined in 6 NYCRR Part 597 “List of Hazardous Substances.”.

6. DOT may be called upon to provide passive containment measures in a non-hazardous zone away from the immediate spill site of unknown materials or known hazardous substances or at spill locations with known petroleum products. Such passive countermeasures would include activities such as depositing materials to prevent contaminated runoff from entering catch basins, streams, or wetlands. DEC spill response staff will ensure such passive containment measures are carried out at safe distances from the immediate spill site or the spread path of the substance.

7. Cleanup contractors will be responsible for restoration of the spill site right of way to its pre-spill condition or as determined by the DEC and DOT.

8. All on-site DEC contractors and subcontractors shall meet the applicable health and safety requirements of 29 CFR 1910.120 and 1926 including training, preparation and compliance with incident-specific health and safety plans, use of personal protective equipment, etc. Contractors will be required to have the capability and willingness to upgrade levels of personal and respiratory protection when required. DEC contractors shall provide for its employees and any subcontractor, all equipment and clothing necessary, including monitoring equipment, respirators, and chemical resistant clothing, to provide adequate health protection and safety in any area containing hazardous materials. This equipment and clothing shall be readily available at the site to the contractor’s employees.

9. All on-site contractors, subcontractors, and State workers shall wear at all times protective helmets and construction apparel consisting of a vest, shirt, or jacket; florescent orange-red or florescent yellow-green or combination of these colors meeting the Class II requirements of American National Standards Institute (ANSI) 107-2004. All high-visibility apparel shall be closed front and rear; in good condition to maintain the color, visibility, reflectivity, and conspicuity. Protective helmets and high-visibility apparel is not required for workers when they are within a completely enclosed cab constructed of a steel frame and glass, or inside a motor vehicle.

10. DOT will provide assistance with drainage information/maps as available for identification of spill pathways to ensure prompt response, containment, and recovery.
11. An After-Action Review can be requested by DEC or DOT to discuss spill actions and responses after an incident(s) to assist in coordination of future procedures and actions.

B. NYS Highway Work Permits for DEC Standby Cleanup Contractors

When a spill occurs, DEC will call upon their standby Response and Containment (hereinafter "R&C") contractors to contain and clean up the spill. When such a spill occurs within state highway right of way, these contractors are required to have a NYS Highway Work Permit (hereinafter “HWP”). DOT will handle these HWPs as follows:

1. DOT will issue annual NYS HWPs to DEC standby R&C contractors for spill containment, as set forth herein.

2. Acquiring and complying with the HWP will be a requirement for the Contractor’s proposed standby R&C contract. A separate single job HWP will be required for clean up work following the completion of containment unless DOT, at its discretion, allows the work under the annual HWP after the consultation and review required in Article A. 1 of this MOU.

3. It will be the Contractor’s responsibility to apply for and obtain the HWP in each DOT Region they will respond in, upon the execution of a standby contract with DEC. DOT may, at its discretion, issue a multi-region HWP through the Main Office. The contractor cannot perform work for the DEC without having first acquired a HWP in areas where it would otherwise be required.

4. The DOT Regional Permit Engineer (RPE) will, on receipt of a properly executed permit application package in their Region, issue the HWP. The RPE will send the HWP to DEC for inclusion in the proposed R&C contract, with copies to the Main Office DOT Permit Engineer Contact and a copy of the transmittal to the contractors. If DOT issues a multi-region HWP, the Main Office DOT Permit Contact will issue the HWP, send a copy to DEC and the Regional Permit Engineer and provide a copy of the transmittal to the contractor.

Based on the above, it is agreed that the Permit Fee for the annual HWP will be waived. The bonding requirements will depend on the individual contractor’s performance, with review and mutual agreement by DOT and DEC, warranting the need for bonding.

C. Temporary Storage of Wastes Resulting from Cleanup of Spills on or Adjacent to State Highways

Temporary storage of spill cleanup wastes is often necessary until laboratory analysis results are known and arrangements for proper disposal can be completed. Storage at the site of generation (spill site) or at other locations under the same ownership (State of New York for spills on State Right-of-Way (hereinafter “ROW”)) may often be the most practical and cost effective option. DEC may request from DOT the use of the highway ROW or other property, controlled by DOT, for such storage of spill cleanup wastes from spills occurring along DOT ROW. Any storage or staging of spill cleanup wastes from spills along DOT ROW shall be outside of the clear area of the ROW (typically 30 feet, or where it would not be a hazard to an errant vehicle or behind protective guide railing/concrete barrier).

This Memorandum of Understanding sets forth the agreement for storing wastes from spills
along or adjacent to State highways, with the exception of those located within New York City (since maintenance of the State highways within New York City is delegated to the New York City Department of Transportation (hereinafter “NYCDOT”), additional coordination with NYCDOT is required and is not specifically included in this MOU). The DEC and DOT agree as follows:

1. **Locations for Storage of Spill Cleanup Wastes** - The first priority is to remove the spill cleanup wastes directly to a disposal facility. If that is not feasible, the DOT Resident Engineer or designee will assist in determining an appropriate location for such storage which is under the control of DOT and which maximizes security and minimizes potential impacts to traffic flow, the environment, and the health and safety of personnel and the public. Such locations may include the ROW or other State property controlled by DOT, as determined by the DOT Resident Engineer.

2. **Time Limits** - If feasible, wastes will be removed for disposal from the site at the time of cleanup. When samples of spill cleanup wastes must be collected and sent for appropriate laboratory analysis prior to transport and disposal, sampling must be done as quickly as feasible, but not to exceed more than three days from generation and with analytical turn-around times of less than 1 week. Wastes being temporarily stored while awaiting analysis results and/or disposal facility acceptance, must be removed as soon as reasonably possible. DOT will not be responsible for removal of these wastes. Allowable storage times shall be as follows:

   - **Non-hazardous Waste** - All reasonable efforts will be made by DEC and DEC contractors to remove the waste within 30 days. In no case shall storage exceed 60 days.
   - **Hazardous Waste** - The waste must be manifested and removed within 10 days after the test results are known showing the material is a hazardous waste.

3. **Storage Record Form** - A storage record form (example attached as Appendix A) indicating the location and identity of the waste shall be completed by DEC and provided to the DOT Resident Engineer or designee for each storage of spill cleanup wastes at a particular DOT-controlled location. The Record form will document the information as well as provide basic hazard communication information as feasible. The records will be maintained by DEC and DOT until the waste is satisfactorily removed and the site restored to pre-storage condition and to the satisfaction of DOT. Record retention of at least three years is recommended.

4. **Protection of Roadside Safety** - All operations and storage shall be conducted in a manner that maximizes the potential for adverse impact on traffic safety. The DOT Resident Engineer or designee will provide case-specific guidance on storage criteria to maximize traffic safety. Any labor costs necessary for the installation, maintenance and removal of all hardware, equipment, materials, etc. to provide protection of roadside safety, done to meet the requirements of DOT, shall be borne by the discharger or the NYS Environmental Protection and Spill Compensation Fund as appropriate.

5. **Waste Storage** - Any storage of spill cleanup wastes on DOT property shall comply with all DEC rules and regulations for environmentally sound storage of the material. DEC and/or the spill cleanup contractor shall provide for the prevention of runoff or leaching of contaminated materials from waste storage. DEC shall periodically (once per week) inspect locations for any deficiencies in waste storage. DOT personnel shall also report any noted deficiencies in waste storage.
storage to the DEC. A brief record of conversation, memo or e-mail shall be retained by DOT until the completion of storage, with a recommended retention of at least three years. DEC shall correct the deficiencies as soon as possible, but in no case longer than 48 hours from the time the deficiency is reported to DEC. Any labor and other costs incurred to provide storage shall be borne by the discharger or the NYS Environmental Protection and Spill Compensation Fund as appropriate.

6. **Disposal** - DEC will arrange, accomplish, and bear all costs for the disposal of the spill cleanup wastes. In addition, the cost of cleanup and disposal of spill cleanup wastes, resulting from DOT assistance in placement of sand/absorbents on roadside spills, which is accomplished by DOT (if resources permit) at the discretion of DEC, will be borne by the discharger, DEC, or the NYS Environmental Protection and Spill Compensation Fund as appropriate.

7. **Liability** - Unless DOT is deemed by DEC to be a responsible party for the spill, with DOT reserving all its rights, including, but not limited to, any defense, counterclaim or right to contest, it is the responsibility of DEC to ensure that the spill is cleaned up (including sampling, cleanup, and disposal) at no cost to DOT. Any damage that occurs as a result of the waste stored at the discretion of DEC on DOT property or to the stored waste is the responsibility of DEC to correct and/or remediate as necessary. As long as DOT is deemed by DEC not to be a responsible party, DEC will hold DOT harmless in any and all deficiencies at the site of the spill in transportation related to the spill, in the storage of the spilled material, in the disposal of spilled material, in record keeping requirements, and in any and all other matter related to the spill in question. Notwithstanding any other provision of this MOU, if there currently exists or may exist in the future a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against DOT or any of its successors or assigns, nothing in this MOU shall be construed, or deemed, to preclude the State of New York from recovering such claims plus applicable fines and/or penalties from DOT or any of its successors or assigns. Nothing in this MOU shall be construed, or deemed, to preclude DOT from reserving or enforcing all its rights including, but not limited to, any defense, counterclaim, or right to contest.

8. **Alterations to ROW** - Any proposed alterations to the right-of-way to provide for storage of clean-up wastes and/or for staging areas to perform the cleanup shall be subject to the review and approval of the DOT Resident Engineer. Approval for such alterations may be made verbally or may require detailed drawings.

9. **Highway Work Permit** - The discharger and/or DEC shall obtain a DOT highway work permit, if one is not already in effect.

**ARTICLE III. Cost**

Not Applicable

**ARTICLE IV. Representations**

DEC Representative Nancy Lussier, Director, Division of Management and Budget and DOT Representative, Joan McDonald, Commissioner, or their designees, are the authorized representatives
and will be responsible for the administration of this MOU.

ARTICLE V. Equipment

Not applicable.

ARTICLE VI. Termination

This MOU may be terminated by either party giving the other 30 days advanced written notice of such intent and the reasons thereof. Neither party shall enter into or otherwise create new obligations relative to this MOU following receipt of such notice, without the written consent of the other party. Both parties agree to enter into good faith negotiations to resolve any differences and provide for an orderly closure of this MOU if agreement cannot be reached. Termination will be effective only after agreement has been reached with respect to the amount of equitable reimbursement and payment for all outstanding commitments.

ARTICLE VII. Executory Clause

Not applicable.

In WITNESS WHEREOF, the individuals listed below, or their designees, are authorized to sign and execute this MOU between their respective Executive Department Agencies, on the date appearing below their respective signatures.

New York State Department of Environmental Conservation
By Nancy Wursie
Title: Director, Division of Management and Budget
Dated FEB 05 2015

New York State Department of Transportation
By Joan McDonald
Title: Commissioner
Dated 12/17/14
Appendix A
STORAGE RECORD FORM

New York State Department of Environmental Conservation (DEC) Storage of Spill Clean-up Wastes from Spills on State Right-of-Way on Property Controlled by the New York State Department of Transportation (DOT)

Date: ____________

DEC Representative Name: ____________________________________________

DEC Representative Phone Number/E-mail: ______________________________

DOT Representative Name: ____________________________________________

DOT Representative Phone Number/E-mail: ______________________________

Discharger Representative Name: ______________________________________

Discharger Representative Phone Number/E-mail: _________________________

Spill Location - Nearest Highway Marker _________________________________
(and distance and direction to it)
Spill Number: ________________________________________________________

Storage Location - Nearest Highway Marker ______________________________
(and distance and direction to it or other location identification)
Description of Location of Storage _________________________________________

_____________________________________________________________________
_____________________________________________________________________

Description of Spill Clean-up Wastes including approximate quantities:
_____________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________

Anticipated Removal Date: ________________

Potential Hazardous Properties of the Wastes: ______________________________

_____________________________________________________________________

Closure Date: ____________________ DEC Representative: ___________________

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