

APPENDIX P

(modified from amended MCP Form 1075)

NOTICE OF ACTIVITY AND USE LIMITATION

M.G.L. c. 21E, § 6 and 310 CMR 40.0000

Disposal Site Name: _____
DEP Release Tracking No.(s): _____

This Notice of Activity and Use Limitation ("Notice") is made as of this ____ day of _____, 19____, by _____ [Name and address of property owner(s)], together with his/her/its/their successors and assigns (collectively "Owner").

WITNESSETH:

WHEREAS, _____ (Name of Owner(s)), [is][are] the owner(s) in fee simple of [that][those] certain parcel(s) of [vacant] land located in _____ (Town/City), _____ County, Massachusetts [with the buildings and improvements thereon], pursuant to [a deed recorded with the _____ County Registry of Deeds in Book _____, Page _____];[source of title other than by deed]; and/or [Certificate of Title No. _____ issued by the Land Registration Office of the _____ County Registry District];

WHEREAS, said parcel(s) of land, which is more particularly bounded and described in Exhibit A, attached hereto and made a part hereof ("Property") is subject to this Notice of Activity and Use Limitation. The Property is shown on [a plan recorded in the _____ County Registry of Deeds in Plan Book _____, Plan _____], and/or on [Land Court Plan No. _____];

[WHEREAS, a portion of the Property ("Portion of the Property") is subject to this [Notice of Activity and Use Limitation]. The Portion of the Property is more particularly bounded and described in Exhibit A-1, attached hereto and made a part hereof. The Portion of the Property is shown on [a plan recorded with the _____ County Registry of Deeds in Plan Book _____, Plan _____], and/or on [a sketch plan attached hereto as Exhibit A-2 and filed herewith for registration];

WHEREAS, the [Property] [Portion of the Property] comprises [all][part of] a disposal site as the result of a release of oil and/or hazardous material. Exhibit B is a sketch plan showing the relationship of the [Property][Portion of the Property] subject to this Notice of Activity and Use Limitation to the boundaries of said disposal site existing within the limits of the Property and to the extent such boundaries have been established. Exhibit B is attached hereto and made a part hereof; and

WHEREAS, one or more response actions have been selected for [the Disposal Site][Portion of the Disposal Site] in accordance with M.G.L. c.21E ("Chapter 21E") and the Massachusetts Contingency Plan, 310 CMR 40.0000 ("MCP"). Said response actions are based upon (a) the restriction of human access to and contact with oil and/or hazardous material in soil [and/or groundwater] and/or (b) the restriction of certain activities occurring in, on, through, over or under the [Property] [Portion of the Property]. The basis for such restrictions is set forth in an Activity and Use Limitation Opinion ("AUL Opinion"), dated _____, (which is attached hereto as Exhibit C and made a part hereof);

NOW, THEREFORE, notice is hereby given that the activity and use limitations set forth in said AUL Opinion are as follows:

1. **Activities and Uses Consistent with the AUL Opinion.** The AUL Opinion provides that (select one) [a condition of No Significant Risk to health, safety, public welfare or the environment exists for any foreseeable period of time] [no substantial hazards remain] (pursuant to 310 CMR 40.0000) so long as any of the following activities and uses occur on the [Property][Portion of the Property]:

(i) ;

(ii) ;

(iii) Such other activities or uses which, in the Opinion of an LSP, shall present no greater risk of harm to health, safety, public welfare or the environment than the activities and uses set forth in this Paragraph; and

(iv) Such other activities and uses not identified in Paragraph 2 as being Activities and Uses Inconsistent with the AUL.

2. **Activities and Uses Inconsistent with the AUL Opinion.** Activities and uses which are inconsistent with the objectives of this Notice of Activity and Use Limitation, and which, if implemented at the [Property] [Portion of the Property], may result in a significant risk of harm to health, safety, public welfare or the environment or in a substantial hazard, are as follows:

(i) ;

(ii) ; and

(iii) .

3. **Obligations and Conditions Set Forth in the AUL Opinion.** If applicable, obligations and/or conditions to be undertaken and/or maintained at the [Property] [Portion of the Property] to (select one) [maintain a condition of No Significant Risk] [eliminate a substantial hazard] as set forth in the AUL Opinion shall include the following:

(i) ;

(ii) ; and

(iii) .

4. **Proposed Changes in Activities and Uses.** Any proposed changes in activities and uses at the [Property] [Portion of the Property] which may result in higher levels of exposure to oil and/or hazardous material than currently exist shall be evaluated by an LSP who shall render an Opinion, in accordance with 310 CMR 40.1080 *et seq.*, as to whether the proposed changes will (select one) [present a significant risk of harm to health, safety, public welfare or the environment] [will invalidate the conclusion that no substantial hazards remain]. Any and all requirements set forth in the Opinion to meet the objective of this Notice shall be satisfied before any such activity or use is commenced.

5. **Violation of a Response Action Outcome.** The activities, uses and/or exposures upon which this Notice is based shall not change at any time to cause a significant risk of harm to health,

safety, public welfare, or the environment or to create substantial hazards due to exposure to oil and/or hazardous material without the prior evaluation by an LSP in accordance with 310 CMR 40.1080 *et seq.*, and without additional response actions, if necessary, to achieve or maintain a condition of No Significant Risk or to eliminate substantial hazards.

If the activities, uses, and/or exposures upon which this Notice is based change without the prior evaluation and additional response actions determined to be necessary by an LSP in accordance with 310 CMR 40.1080 *et seq.*, the owner or operator of the [Property] [Portion of the Property] subject to this Notice at the time that the activities, uses and/or exposures change, shall comply with the requirements set forth in 310 CMR 40.0020.

6. Incorporation Into Deeds, Mortgages, Leases, and Instruments of Transfer. This Notice shall be incorporated either in full or by reference into all future deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer, whereby an interest in and/or a right to use the Property or a portion thereof is conveyed.

Owner hereby authorizes and consents to the filing and recordation and/or registration of this Notice, said Notice to become effective when executed under seal by the undersigned LSP, and recorded and/or registered with the appropriate Registry(ies) of Deeds and/or Land Registration Office(s).

WITNESS the execution hereof under seal this _____ day of _____, 19____.

[Name of Owner]

[COMMONWEALTH OF MASSACHUSETTS]
[STATE OF _____]

_____, ss _____, 19____

Then personally appeared the above-named _____ and acknowledged the foregoing instrument to be [his][her] free act and deed before me,

Notary Public:
My Commission Expires:

The undersigned LSP hereby certifies that [he][she] executed the aforesaid Activity and Use Limitation Opinion attached hereto as Exhibit C and made a part hereof and that in [his][her] Opinion this Notice of Activity and Use Limitation is consistent with the terms set forth in said Activity and Use Limitation Opinion.

Date: _____

[Name of LSP]

[LSP SEAL]

[COMMONWEALTH OF MASSACHUSETTS]
[STATE OF _____]

_____, ss

_____, 19__

Then personally appeared the above named _____ and acknowledged the foregoing instrument to be [his][her] free act and deed before me,

-
Notary Public:
My Commission Expires:

Upon recording, return to:
(Name and Address of Owner)