**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION \_\_**

**[NOTICE OF CONTAMINATION][[1]](#footnote-1)**

This [Notice of Contamination or Notice of Environmental Contamination OR Notice of Environmental Conditions**]** (“Notice”)is made this \_\_\_ day of \_\_\_\_\_\_, 20\_\_, by the United States Environmental Protection Agency (EPA) to provide information concerning [**insert type of contamination, i.e., subsurface**] contamination present on the real property located at [**address or description of location**] street address] (“the Property”), in [**city/town**] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, County, [**state/commonwealth**], and identify activities and uses that, if conducted at the Property, may undermine the integrity of the cleanup at the \_\_\_\_\_\_\_\_\_\_ Superfund Site (“Site”) and/or present an imminent and substantial endangerment to public health, welfare, or the environment.

**WHEREAS**, EPA [**has addressed/is addressing**] contamination at the Property, which is [**insert acreage and any other relevant property information**] and more particularly described in Exhibit A and shown on a map as Exhibit B, attached hereto and made a part hereof; and

**WHEREAS**, the taxing authority of the [**city/town/county**] of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ identifies the Property as Block \_\_\_\_\_, Lot \_\_\_\_\_, on the [**city/town/county**] of \_\_\_\_\_\_\_\_\_\_\_ Tax Assessor’s [map/parcel identification] number \_\_\_\_\_\_\_\_\_\_\_\_ and identifies the current owner of the Property as \_\_\_\_\_\_\_\_\_\_\_\_\_; [**optional: add GIS data if relevant**] and

**WHEREAS,** the Property is part of the Site[[2]](#footnote-2) where EPA conducted a response action under the authority of Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9604 and issued a record of decision (ROD) for the Site, in which the selected remedial action (“the Remedy”) for the Property included [**Note:** **add language about implemented aspects of the remedy (if applicable) to provide more information; e.g., “the selected remedial action for the Property included capping contaminated soils with 18 inches of clean fill, monitored natural attenuation of contaminants in groundwater, and the implementation of institutional controls to minimize the possibility of exposure to contaminated soil and groundwater**][[3]](#footnote-3); and

**WHEREAS,** the Remedy addresses the hazardous substances, pollutants and contaminants found at the Site, located in [**insert media impacted:** groundwater, soil, and sediment], and a list of the contaminants of concern identified at the Site is attached as Exhibit C; and

**WHEREAS,** the disturbance of remaining contamination at the Site could result in a risk of exposure to the public and may present an imminent and substantial endangerment to public health, welfare, or the environment; and

**WHEREAS**, this Notice does not and is not intended to create any right, title, or interest in real estate in favor of EPA, create a lien against the Property, or restrict the use and enjoyment of the Property. Rather, it is intended to provide notice and information concerning the presence of contamination at the Property and to caution interested parties against using the Property in any manner that may increase the risk of exposure to the contamination and result in an imminent and substantial endangerment to public health, welfare, or the environment.[[4]](#footnote-4)

**NOW, THEREFORE,** EPA provides notice that:

**FIRST**, the Property subject to this Notice is described in Exhibit A and is shown on a map attached to this Notice as Exhibit B and made a part hereof.

**SECOND**, EPA concluded in the ROD for this Site that engaging in any of the activities listed below may increase the risk of exposure to contamination and present an imminent and substantial endangerment to public health, welfare, or the environment:

[**Provide a list of any activities specifically identified in the ROD as increasing the risk of exposure to contamination (i.e., excavating, digging, or removing topsoil; residential use of the Property; potable use of groundwater; construction of new buildings; etc.) and refer to EPA’s or others’ analysis upon which these statements are based**][[5]](#footnote-5);

EPA has compiled an Administrative Record that includes the documents that were considered by EPA when selecting the Remedy for the Site, including the documents supporting the need for institutional controls (ICs) designed to prevent exposure after the cleanup has been finished. The Administrative Record also includes data and information regarding the [groundwater, soil, and sediment] samples collected from the Property.[[6]](#footnote-6) The Administrative Record is available for public review at the following location(s) listed below and/or electronically at [**insert URL**]:

[**insert physical location address**]

**THIRD**, EPA intends to use this Notice as an IC as part of the Remedy to help reduce future potential exposure to contamination. A person may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), if the person conducts activities at the Site which, among other things, cause the release of hazardous substances on-site. In order to qualify for certain conditional liability protections, namely the innocent landowner, bona fide prospective purchaser, or contiguous landowner protections under Sections 101(35)(A), 101(40)(B)(vi), 107(q)(1)(A)(v) of CERCLA, 42 U.S.C. §§ 9601(35)(A), 9601(40)(B)(vi), and 9607(q)(1)(A)(v), a person must, among other things, (i) comply with any land use restrictions established or relied on in connection with the response action at a facility including the ROD for this Site, and (ii) not impede the effectiveness or integrity of any IC employed at the facility in connection with a response action, including the ROD for this Site.

**FOURTH,** EPA is available to consult withany party seeking to engage in any activity at the Property. A request for consultation may be made by contacting EPA’s remedial project manager (RPM) for the \_\_\_\_\_\_\_\_\_ Site at [**insert** **email address and phone number**].

**IN WITNESS WHEREOF**, the undersigned, acting by and though the United States Environmental Protection Agency, has executed this instrument on the day written below.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name/Title of EPA Representative] Date

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Notary Public in and for the County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, [**State/Commonwealth**] of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, do hereby certify that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose name is signed to the writing above and the representative of the agency, has this day executed this document in my presence or this day acknowledged same to be the true act and deed of said agency.

Given under my hand this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

My commission expires \_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

1. This document may also be titled “Notice of Environmental Contamination,” “Notice of Environmental Conditions,” or simply “Deed Notice,” depending on the circumstances. As recording statutes vary among jurisdictions, the site attorney should be familiar with the requirements, limitations, and consequences associated with recording notices on a piece of property. [↑](#footnote-ref-1)
2. This provision may need to be reworded if the Property in question is not part of the Site but rather adjacent to the Site. [↑](#footnote-ref-2)
3. If there are judicial settlements or administrative orders regarding performance of response actions at the Site, modify this provision to identify and describe such settlements and orders (e.g., where potentially responsible parties have entered into a Consent Decree requiring implementation of the remedial action, identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court). Site history information, including a description of the contamination; type, extent, and volume of releases; and response actions taken, may also be included in this paragraph. To the extent possible, include language specifically found in Site decision documents, agreements, settlements, and/or orders. [↑](#footnote-ref-3)
4. Prior to filing a Notice of Contamination, the property owner should be informed that EPA intends to file the Notice and should be offered an opportunity to respond. Please contact OSRE for sample letters that can be sent to a property owner prior to recordation of a Notice of Contamination. [↑](#footnote-ref-4)
5. If the ROD does not identify specific activities that may increase the risk of exposure to contamination, please consult with OSRE on appropriate language to include in this clause. [↑](#footnote-ref-5)
6. Key documents in the Administrative Record may be specifically identified in this paragraph. [↑](#footnote-ref-6)