

Form 1075

Note: Pursuant to 310 CMR 40.1074(5), upon transfer of any interest in or a right to use the property or a portion thereof that is subject to this Notice of Activity and Use Limitation, the Notice of Activity and Use Limitation 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. Within 30 days of so incorporating the Notice of Activity and Use Limitation in a deed that is recorded or registered, a copy of such deed shall be submitted to the Department of Environmental Protection.

[CONFIRMATORY] 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 [Confirmatory] Notice of Activity and Use Limitation ("Notice") is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ [Name and address of property owner(s)], together with his/her/its/their successors and assigns (collectively "Owner").

W I T N E S S E T H:

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 \_\_\_\_\_ 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 \_\_\_\_\_ 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 \_\_\_\_\_ 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 \_\_\_\_\_ Registry of Deeds in Plan Book \_\_\_\_\_, Plan \_\_\_\_\_], and/or on [a sketch plan attached hereto 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[(s)] 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]. A description of the basis for such restrictions, and the oil and/or hazardous material release event(s) or site history that resulted in the contaminated media subject to the Notice of Activity and Use Limitation is attached hereto as Exhibit C and made a part hereof (Provide the following information in Exhibit C: (a) a statement that specifies why the Notice of Activity and Use Limitation is appropriate to maintain a Permanent Solution and condition of No Significant Risk or maintain a Temporary Solution and condition of No Substantial Hazard; (b) a description of the oil and/or hazardous material release event(s) or site history that resulted in the contaminated media subject to the Notice of Activity and Use Limitation (*i.e.*, date of the release(s), to the extent known, release volumes(s), and response actions taken to address the release(s); and (c) a description of the contaminated media (*i.e.*, media type(s), approximate vertical and horizontal extent) subject to the Notice of Activity and Use Limitation.);

NOW, THEREFORE, notice is hereby given that the activity and use limitations set forth in this Notice of Activity and Use Limitation are as follows:

1. Activities and Uses Consistent with Maintaining (select one) [No Significant Risk] [No Substantial Hazard] Conditions. The following Activities and Uses are consistent with maintaining (select one) [a Permanent Solution and a condition of No Significant Risk][a Temporary Solution and a condition of No Substantial Hazard] and, as such, may occur on the [Property][Portion of the Property] pursuant to 310 CMR 40.0000:

(i) ;

(ii) ;

(iii) Such other activities or uses which, in the Opinion of a Licensed Site Professional, 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 (select one)[maintaining No Significant Risk][No Substantial Hazard]Conditions.

2. Activities and Uses Inconsistent with (select one)[Maintaining No Significant Risk][No Substantial Hazard] Conditions. The following Activities and Uses are inconsistent with maintaining a (select one) [a Permanent Solution and a condition of No Significant Risk][a Temporary Solution and a condition of No Substantial Hazard] pursuant to 310 CMR 40.0000, and, as such, may not occur on the[Property][Portion of the Property]:

(i) ;

(ii) ; and

(iii) .

3. Obligations and Conditions. The following obligations and/or conditions are necessary and shall be undertaken and/or maintained at the [Property] [Portion of the Property] to (select one) [maintain a Permanent Solution and a condition of No Significant Risk] [maintain a Temporary Solution and a condition of No Substantial Hazard] :

(i) ;

(ii) ; and

(iii) .

(For a Permanent Solution with Conditions that relies upon the operation and maintenance of an Active Exposure Pathway Mitigation Measure pursuant to 310 CMR 40.1025, include the following in the listed Obligations and Conditions:

[(i) The Active Exposure Pathway Mitigation Measure comprised of (insert description of the system type) located (specify where on the property the system is located) shall be operated according to the operating regimen specified in the Permanent Solution Statement submitted to the Department of Environmental Protection to ensure a level of No Significant Risk is maintained for the Receptor(s) of concern under normal operating conditions;

(ii) The Active Pathway Mitigation Measure shall employ remote monitoring technology that alerts the property owner and operator and the Department of Environmental Protection immediately upon loss of power, mechanical failure or other significant disruption of the effectiveness of the system;

(iii) In the event of any suspension or failure of the Active Exposure Pathway Mitigation Measure, immediate steps shall be taken to return the Active Exposure Pathway Mitigation Measure to full operating condition;

(iv) If such suspension or failure of the system lasts 30 consecutive days, written notice shall be provided to both Department of Environmental Protection and any non-transient building occupant who may have experienced exposure to oil and/or hazardous material as the result of the system failure or suspension on the 30th day from the start of the suspension or failure period; this notice shall document the reason for the suspension or failure of the system, any efforts taken to resume operation of such Measures, and the expected timeframe for resuming operation of such Measure; and

(v) . ])

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 a Licensed Site Professional who shall render an Opinion, in accordance with 310 CMR 40.1080, as to whether the proposed changes (select one) [are inconsistent with maintaining a Permanent Solution and a condition of No Significant Risk] [are inconsistent with maintaining a Temporary Solution and a condition of No Substantial Hazard]. 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 Permanent or Temporary Solution. 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 a Licensed Site Professional in accordance with 310 CMR 40.1080, and without additional response actions, if necessary, to maintain a condition of (select one) [No Significant Risk] [No Substantial Hazard].

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 a Licensed Site Professional in accordance with 310 CMR 40.1080, 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 in accordance with 310 CMR 40.1074(5).

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

[This Confirmatory Notice of Activity and Use Limitation is given to correct the inadvertent error(s) made in the Notice of Activity and Use Limitation dated \_\_\_\_\_, and recorded with the \_\_\_\_\_ Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, said error(s) being as follows:

(i) \_\_\_\_\_ ;

(ii) \_\_\_\_\_ ; and

(iii) \_\_\_\_\_ .

In all other respects the terms of the Notice of Activity and Use Limitation remain unchanged.]

WITNESS the execution hereof under seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

[Name of Owner]

[COMMONWEALTH OF MASSACHUSETTS]
[STATE OF \_\_\_\_\_]

\_\_\_\_\_, ss \_\_\_\_\_, 20\_\_

On this \_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_ (name of document signer), proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

- (as partner for \_\_\_\_\_, a partnership)
(as \_\_\_\_\_ for \_\_\_\_\_, a corporation)
(as attorney in fact for \_\_\_\_\_, the principal)
(as \_\_\_\_\_ for \_\_\_\_\_, (a) (the) \_\_\_\_\_)

\_\_\_\_\_ (official signature and seal of notary)

The undersigned Licensed Site Professional hereby certifies that in [his][her] Opinion this [Confirmatory] Notice of Activity and Use Limitation is consistent with (select one) [a Permanent Solution and maintaining a condition of No Significant Risk][a Temporary Solution and maintaining a condition of No Substantial Hazard].

Date: \_\_\_\_\_

\_\_\_\_\_[Name of Licensed Site Professional]
[Licensed Site Professional SEAL ]

[COMMONWEALTH OF MASSACHUSETTS]
[STATE OF \_\_\_\_\_]

\_\_\_\_\_, ss \_\_\_\_\_, 20\_\_

On this \_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_ (name of document signer), proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

- (as partner for \_\_\_\_\_, a partnership)
(as \_\_\_\_\_ for \_\_\_\_\_, a corporation)
(as attorney in fact for \_\_\_\_\_, the principal)
(as \_\_\_\_\_ for \_\_\_\_\_, (a) (the) \_\_\_\_\_)

\_\_\_\_\_ (official signature and seal of notary)

Upon recording, return to:

(Name and Address of Owner)