

Appendix D

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.

NOTICE OF ACTIVITY AND USE LIMITATION

42 U.S.C. § 9601, *et seq.*; 40 CFR Part 300; M.G.L. c. 21E, § 6; and 310 CMR 40.0000

[Note: This Notice of Activity and Use Limitation has been [recorded]/[filed] pursuant to 310 CMR 40.0111 as part of an institutional control for a site that is both a federal Superfund site, listed on the National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and a disposal site under M.G.L. c. 21E.]

Superfund Site Name: Nuclear Metals Inc. Superfund Site
Site Location: Concord, MA
EPA Site Identification Number: _____
MassDEP Release Tracking No.(s): _____
[Identify Parcel]

This 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”). All capitalized terms used herein without definition shall have the meaning given to them in the Massachusetts Oil and Hazardous Materials Release, Prevention and Response Act, M.G.L. c. 21E, as amended (“Chapter 21E”) and the Massachusetts Contingency Plan, 310 CMR 40.0000, as amended (the “MCP”).

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], said parcel(s) of land more

particularly bounded and described in Exhibit A attached hereto and made a part hereof (the “Property”);

WHEREAS, 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, certain portion(s) of the Property have been designated _____ [*list names of each type of restricted area, such as “Area A” or the “Cap Area” – this reference and the legal descriptions and survey plan must use internally consistent terminology*] (collectively, all of the foregoing areas comprising the “Restricted Areas”), the Restricted Areas being more particularly bounded and described in Exhibit B, attached hereto and made a part hereof, and being shown on a plan recorded with the _____ Registry of Deeds in Plan Book _____, Plan _____ (“Plan of Restricted Areas”), a photo-reduced version of which is attached hereto as Exhibit C;

WHEREAS, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. § 9605 (“CERCLA”) and the National Contingency Plan, 40 CFR §§ 300.1, et seq. (the “NCP”), the United States Environmental Protection Agency, an agency established under the laws of the United States (“EPA”), having its New England regional office at Five Post Office Square, Boston, Massachusetts 02109 (“Region 1”), placed land [*containing*][*within*] the Property on the National Priorities List, set forth at 40.C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 14, 2001, 66 Fed. Reg. 32235,32241, due to a release of hazardous substances, as that term is defined by the Section 104 of CERCLA, 42 U.S.C. § 9604 (“Hazardous Substances”), such land being a federal Superfund Site known as the Nuclear Metals, Inc. Superfund Site (“Superfund Site”);

WHEREAS, pursuant to Chapter 21E and the MCP, the Massachusetts Department of Environmental Protection, an agency established under the laws of the Commonwealth of Massachusetts, having its principal office at One Winter Street, Boston, Massachusetts 02108 (“MassDEP”), assigned to releases of oil and/or hazardous materials occurring at, from or onto the Property MassDEP Release Tracking Number(s) _____, and all places where such oil and/or hazardous materials have come to be located are a disposal site under Chapter 21E and the MCP (the “Disposal Site”);

WHEREAS, the Plan of Restricted Areas shows the relationship of the Property and the Restricted Areas to the boundaries of the Superfund Site and Disposal Site, to the extent such boundaries have been established;

WHEREAS, in a document entitled, “Record of Decision, Nuclear Metals Inc. Superfund Site,” dated September 28, 2015 [*include in this definition any ROD Amendments or Explanations of Significant Differences*] (collectively, the “ROD”), said ROD being on file at the EPA Region 1 Record Center located at Five Post Office Square, Boston, Massachusetts (“EPA Region 1 Record Center”), EPA, with the concurrence of MassDEP, as evidenced by a letter of concurrence, from Paul Locke, Acting Asst. Commissioner, MassDEP to Robert Cianciarulo, Office of Site Remediation and Restoration, Region 1, dated September 25, 2015, has selected one or more response actions (collectively, the “Selected Remedy”) for the Superfund Site in accordance with CERCLA and the NCP;

WHEREAS, the Selected Remedy is based, in part, upon the restriction of human access to and contact with hazardous substances, as that term is defined in CERCLA (“Hazardous Substances”), in soil, sediment, and/or groundwater and the restriction of certain uses and activities occurring in, on, through, over or under the Restricted Areas;

WHEREAS, in a document entitled “IC Design Statement,” dated _____ (the “IC Design Statement”), said IC Design Statement being attached hereto as Exhibit D, EPA approved a remedial design for land use restrictions and other institutional controls at the Superfund Site;

WHEREAS, the IC Design Statement contains a description of the basis for land use restrictions, and the release event(s) or site history that resulted in the contaminated media subject to this Notice, including (a) a statement that specifies why the Notice is necessary to the Selected Remedy; (b) a description of the release event(s) or site history that resulted in the contaminated media subject to the Notice (*i.e.*, date of the release(s), to the extent known, release volumes(s), and response actions taken to address the release(s)); (c) a description of the contaminated media (*i.e.*, media type(s) and approximate vertical and horizontal extent) subject to the Notice, (d) a statement of which activities and uses are consistent, and which are inconsistent, with maintaining the Selected Remedy, (e) a description of all other components of the institutional and land use controls at the Property;

WHEREAS, pursuant to 310 CMR 40.0111(1), MassDEP shall deem response actions at a disposal site subject to CERCLA adequately regulated for purposes of compliance with the MCP provided certain enumerated conditions are satisfied, including disposal sites subject to CERCLA with respect to which MassDEP has issued a letter of concurrence;

WHEREAS, pursuant to 310 CMR 40.0111, land use controls may be implemented at disposal sites deemed adequately regulated under CERCLA by means of a Notice of Activity and Use Limitation; and

WHEREAS, pursuant to 310 CMR 40.0111(10), disposal sites adequately regulated under CERCLA at which (a) remedial actions have been completed in accordance with the ROD for the site, (b) subsequent design, construction, and other pertinent plans have been approved by EPA, and (c) EPA has certified completion of the remedial action, will be considered to have achieved a Permanent Solution under M.G.L. c. 21E and the MCP for those hazardous substances subject to such remedial actions.

NOW, THEREFORE, notice is hereby given that the activity and use limitations required by the ROD and more particularly set forth in the IC Design Statement are as follows:

1. Activities and Uses Consistent with Maintaining the Selected Remedy. The following Activities and Uses are consistent with maintaining the Selected Remedy and, as such, may occur on the [*Property*][*Restricted Areas*] without compromising the Permanent Solution that has been achieved for the Site:

[set forth, in non-technical, unambiguous language, all permitted activities and uses

described in the IC Design Statement]:

- (i) ;
- (ii) ; and
- (iii) Such other activities and uses not identified in Paragraph 2 as being Activities and Uses Inconsistent with maintaining the Selected Remedy.

2. Activities and Uses Inconsistent with Maintaining the Selected Remedy. The following Activities and Uses are inconsistent with maintaining the Selected Remedy, and, as such, may not occur on the [*Property*][*Restricted Areas*] without compromising the Permanent Solution that has been achieved for the Site:

[set forth, in non-technical language, all restricted activities and uses described in the IC Design Statement]:

- (i) ;
- (ii) ; and
- (iii) Any activity or use which would interfere with, or would be reasonably likely to interfere with, the implementation, effectiveness, integrity, operation, or maintenance of the Selected Remedy, including, but not limited to, [*cap(s), cover(s) or other ground covering features of response actions conducted to implement the Selected Remedy*]; [*systems to collect, contain, treat, and discharge groundwater*]; [*systems or containment areas to excavate, store, treat, and dispose of soils and sediments*]; and [*systems and studies to monitor implementation of the Selected Remedy, to provide long-term environmental monitoring of on-site groundwater, soils, and/or sediments, and to ensure that the remedial action is effective in the long-term and protective of human health and the environment*]. Reference is made to the Plan of Restricted Areas, which provides information about the location within the Property and engineering details, respectively, of certain of the foregoing components of the Selected Remedy. [*Include references to important site-specific components of the Selected Remedy, including where detailed information about them may be found*].

3. Obligations and Conditions. The following obligations and/or conditions are necessary and shall be undertaken at the Property to maintain the Selected Remedy and to avoid compromising the Permanent Solution that has been achieved for the Site:

[Set forth, in non-technical language, all obligations and conditions described in the IC Design Statement. These should be obligations that will apply to current and future landowners, rather than obligations that will remain with any other entity

after the land is transferred.]:

- (i) _____ ;
- (ii) _____ ; and
- (iii) _____

4. *[Delete/revise this paragraph as necessary for properties with no soil or sediment contamination.]*

Emergency Excavation. If it becomes necessary to excavate within the Restricted Areas as part of a response to an emergency (for example, repairing utility lines or responding to a fire or flood), the provisions of Paragraph 1 of this Notice shall be suspended with respect to such excavation to the extent necessary to permit such response, provided that the Owner:

- (i) orally notifies the following persons of such emergency as soon as possible but no later than two (2) hours after having learned of such emergency:
 - A. EPA National Response Center at (800) 424-8802 and EPA Region 1, Office of Site Remediation and Restoration, Emergency Planning and Response Branch at (617) 918-1236; and
 - B. MassDEP Emergency Response at (888) 304-1133 and MassDEP _____ Regional Office of Emergency Response Section;

or such other persons as MassDEP and EPA, respectively, may identify in writing, from time to time, to Owner for such oral emergency response notifications;

- (ii) notifies MassDEP and EPA in writing of such emergency no later than five (5) days after having learned of such emergency, such notifications to be sent to the following addresses:
 - A. _____; and
 - B. _____;

or to such addresses as MassDEP and EPA, respectively, may identify in writing, from time to time, to Owner for such written emergency response notifications;

- (iii) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency;

- (iv) implements all measures necessary to limit actual or potential risk to the public health and environment;
- (v) engages a qualified hazardous waste site cleanup professional, such as a “Licensed Site Professional” (“LSP”) as defined in the MCP at 310 CMR 40.0006(12), to oversee the implementation of this Paragraph, and to prepare and oversee the implementation of a written plan (“Emergency Restoration Plan”) that will restore the Property to a condition that meets or exceeds the performance standards established under the ROD for the Selected Remedy and that is consistent with this Notice, and to review and evaluate response actions contained in the Emergency Restoration Plan to ensure minimal disturbance of any contaminated soils and sediments; and
- (vi) performs all actions laid out in the Emergency Restoration Plan within thirty (30) days of the occurrence of the emergency or within such other time period as may be approved by MassDEP and EPA in writing, and submit a copy of the Emergency Restoration Plan to MassDEP and EPA within ten (10) days of its performance, with a statement from the cleanup professional confirming that the Property has been restored to the standard described above.

5. Proposed Changes in Activities and Uses; Amendments. Pursuant to 310 CMR 40.0111(8)(c), the Owner must notify and obtain approval from EPA and MassDEP of any proposed change in activities and uses at the Property that is not provided for in this Notice. Pursuant to 310 CMR 40.0111(8)(d), the Owner must obtain EPA and MassDEP approval of any Amendment or Termination of this Notice. All EPA and MassDEP approvals of any Amendment or Termination of this Notice must be in writing and be recorded and/or registered with the appropriate Registry(ies) of Deeds and/or Land Registration Office(s) to be effective.

6. Violations. The activities, uses and/or exposures upon which this Notice is based must not change at any time to (a) cause risks that are not protective of human health or the environment, pursuant to the criteria set forth in the NCP at 40 CFR 300.430(e)(2)(i), (b) interfere with the Selected Remedy, or (c) cause a significant risk of harm to health, safety, public welfare, or the environment pursuant to Chapter 21E and the MCP.

Compliance with the terms and conditions of this Notice is subject to enforcement pursuant to Chapter 21E, the MCP, M.G.L. c. 21A, § 16 and 310 CMR 5.00 and CERCLA and the NCP. Such enforcement may include, without limitation, enforcement with respect to (a) any activities or uses that may occur that are described in Paragraph 2 of this Notice as being inconsistent with the Selected Remedy, (b) any failure to undertake any obligations and conditions described in Paragraph 3 of this Notice as being necessary to maintain the Selected Remedy, and

(c) any other failure to maintain the Selected Remedy or Permanent Solution resulting from a failure to act consistently with this Notice.

7. 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).

8. Reservation of Rights

This instrument shall not limit or otherwise affect the right of EPA and/or MassDEP to obtain access to, or restrict the use of, the Property pursuant to CERCLA, Chapter 21E, or any other applicable statute or regulation.

This instrument shall not release the Owner or any other party from liability for releases of oil or hazardous substances or materials, nor shall this instrument excuse the Owner or any other party from complying with CERCLA, Chapter 21E, or any other applicable federal, state or local laws, regulations, or ordinances or by-laws.

Owner hereby authorizes and consents to the filing and recordation and/or registration of this Notice, said Notice to become effective when 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 _____, 20__.

[Name of Owner]

COMMONWEALTH OF MASSACHUSETTS

_____, 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)

In accordance with CERCLA, 42 U.S.C. § 9601, *et seq.*, and the National Contingency Plan, the United States Environmental Protection Agency, Region 1, hereby approves this Notice of Activity and Use Limitation.

Date: _____

Director, Office of Site Remediation and Restoration
U.S. Environmental Protection Agency, Region 1

In accordance with M.G.L. c. 21E, § 6, and the Massachusetts Contingency Plan (310 CMR 40.0000), the Department of Environmental Protection hereby approves this Notice of Activity and Use Limitation (as to form only).

Date: _____

[Title]
Department of Environmental Protection

List of Exhibits:

Exhibit A: Legal Description of the Property

Exhibit B: Legal Description of the Restricted Areas

Exhibit C: Photo-Reduced Copy of Plan of Restricted Areas

Exhibit D: IC Design Statement

Return to:

[The Registry of Deeds returns original documents after recording. Accordingly, insert a return address for the return of the document after recording.]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
New England Region
Five Post Office Square -- Suite 100
Boston, Massachusetts 02109-3912

INSTITUTIONAL CONTROL DESIGN STATEMENT

1. Introduction

Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*, (“CERCLA”) and the National Contingency Plan, 40 CFR Part 300 (the “NCP”), this document contains a description of the basis for land use restrictions, the release event(s) or site history that resulted in the contaminated media that require institutional controls in the form of Activity and Use Limitations, and uses that are consistent and inconsistent with Selected Remedy (as described below).

Notice(s) of Activity and Use Limitation is/are necessary and appropriate at the Nuclear Metals, Inc. Superfund Site located in Concord, Massachusetts (the “Site”), a site listed on EPA’s National Priorities List (“NPL”), based on the fact that contaminants remain in place at levels higher than those appropriate for unlimited use or unrestricted exposure, groundwater underlying the Site contains hazardous substances at levels that present an unacceptable risk of exposure, and certain remedial measures constructed at the Site must be protected and maintained to ensure that the Selected Remedy remains protective.

EPA’s Record of Decision dated September 28, 2015 specified the need for Institutional Controls to ensure long-term performance and protectiveness of the Selected Remedy. Accordingly, the Institutional Controls described herein are necessary and appropriate to ensure that the Selected Remedy for the Site remains protective of human health and the environment. The remedy for the Site as described in the ROD and in any ROD Amendments or Explanation of Significant Differences is referred to herein and in the Notice as the “Selected Remedy.”

2. Site History/Background

[Insert a brief summary (from a Five Year Review or the Site’s NPLPAD) that includes the following:

(a) a description of the release event(s) or site history that resulted in the contaminated media subject to the Notice of Activity and Use Limitation (“NAUL”) (i.e., date of the release(s), to the extent known, release volumes(s), and response actions taken to address the release(s)); and

(b) a description of the contaminated media (i.e., media type(s) and approximate vertical and horizontal extent) subject to the NAUL.)]

[Include Site figure(s) showing the properties subject to restrictions.]

[Include references to Site documents, such as the ROD and the RI/FS, for more detailed information.]

3. Summary of Required Institutional Controls

[Insert information on each property (or groupings of properties if multiple properties are covered by same NAUL). The language on consistent/inconsistent uses should be the same language that will be inserted into the NAUL form, similar to prior GERE language on restricted/permitted uses.]

- a. [PROPERTY 1]
 - i. Uses Consistent with the Selected Remedy
 - ii. Uses Inconsistent with the Selected Remedy
 - iii. Obligations and Conditions Necessary to Maintain the Selected Remedy
 - iv. All Other Institutional and Land Use Controls

- b. [PROPERTY 2]
 - i. Uses Consistent with the Selected Remedy
 - ii. Uses Inconsistent with the Selected Remedy
 - iii. Obligations and Conditions Necessary to Maintain the Selected Remedy
 - iv. All Other Institutional and Land Use Controls

4. Implementation of Notices

For the reasons described above and in relevant EPA decision documents, Notice(s) of Activity and Use Limitation should be implemented and recorded at the Site pursuant to CERCLA, the NCP, and regulations set forth in the Massachusetts Contingency Plan at 310 Code of Massachusetts Regulations Sections 40.0111(8), 40.1070(4), and (as applicable) 40.1074.

Date: _____

Director, Office of Site Remediation and Restoration
Environmental Protection Agency, Region 1