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CC-254

Form 1075

NOTICE OF ACTIVITY AND USE LIMITATION

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

Disposal Site Name: Chestnut Hill Pump Station
2436 Beacon Street
Brighton, Massachusetts

DEP Release Tracking No.: #3-11703

Paul R. Tierney
REGISTER OF DEEDS

2000 SEP 12 PM 3: 24

SUFFOLK REGISTRY OF DEEDS
REC'D INTO EXAMINER'S

Property Street Address: Chestnut Hill Pump Station 2436 Beacon Street, Brighton, MA

This Notice of Activity and Use Limitation ("Notice") is made as of this 12th day of September, 2000, by the Commonwealth of Massachusetts, by and through its Division of Capital Asset Management and Maintenance ("DCAM"), One Ashburton Place, Boston, Massachusetts, for use by the Massachusetts Water Resources Authority ("MWRA"), 100 First Avenue, Charlestown Navy Yard, Boston, Massachusetts, together with its successors and assigns ("Owner").

WITNESSETH:

WHEREAS, the Commonwealth of Massachusetts is the owner in fee simple of that certain parcel of land located in Brighton, Suffolk County, Massachusetts, with the buildings and improvements thereon, pursuant to deeds recorded with the Suffolk County Registry of Deeds in: Book 2459, Page 580; Book 2613, Page 326; and Book 6019, Page 89;

WHEREAS, said parcel 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. The Property is shown on a plan entitled "Plan of Chestnut Hill Pumping Station Plan of Property in Boston (Brighton), Massachusetts", Plan A Property Plan, dated October 22, 1999, recorded with the Suffolk Country Registry of Deeds in Plan Book 25344, Plan End;
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WHEREAS, a portion of the Property ("Portion of the Property") is subject to this Notice. 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 entitled "Plan of Chestnut Hill Pumping Station, Plan B Site Subject to Activity and Use Limitation (AUL)", dated December 22, October 25, 1999, recorded with the Suffolk Country Registry of Deeds in Plan Book 25344, Plan End;
Page

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WHEREAS, the Portion of the Property comprises all of disposal site 3-11703 as the result of a release of oil and/or hazardous material. Exhibit B is a sketch plan showing the relationship of the Portion of the Property subject to this Notice 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 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 groundwater and/or (b) the restriction of certain activities occurring in, on, through, over or under the Portion of the Property. The basis for such restrictions is set forth in an Activity and Use Limitation Opinion ("AUL Opinion"), dated 9/6/00, 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 a condition of No Significant Risk to health, safety, public welfare or the environment exists for any foreseeable period of time (pursuant to 310 CMR 40.0000) so long as any of the following activities and uses occur on the Portion of the Property:

(i) Commercial, industrial or cultural or higher education institution activities. Other uses may include, but not be limited to, landscaping and routine maintenance of landscaped areas, vehicular traffic and parking, which do not cause and/or result in direct contact with, a disturbance and/or relocation of petroleum-contaminated soil located at a depth more than 3 feet below the surface grade;

(ii) Construction of buildings provided they are "slab on grade" type structures without any floors or spaces, such as a basement, extending to a depth more than 3 feet below surface grade and are constructed with a vapor barrier in accordance with the Obligations and Conditions section below;

(iii) Any activity associated with underground utility or construction work, including, but not limited to, excavation, which is likely to cause and/or result in direct contact with, a disturbance

and/or relocation of petroleum-contaminated soil at a depth more than 3 feet below the surface grade, provided that the activities are conducted in accordance with a Soil Management Plan and a Health and Safety Plan prepared and implemented in accordance with the Obligations and Conditions section below prior to the commencement of the activity;

(iv) Pedestrian traffic, walkways, greenbelts and controlled access are also permitted in accordance with the Obligations and Conditions discussed below;

(v) Activities and uses which are not identified by this Opinion as being inconsistent with maintaining a condition of No Significant Risk; and

(vi) Such other activities or uses which, in the Opinion of a Licensed Site Professional ("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.

2. Activities and Uses Inconsistent with the AUL Opinion.

Activities and uses which are inconsistent with the objectives of this Notice, and which, if implemented at the 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) Use of the portion of the property as a residence, school (with the exception of higher education), daycare center, nursery, active recreational area (such as a park or athletic field), and/or any other use at which a child's presence is likely;

(ii) Any cultivation of food crops, such as vegetables or fruit trees, for human or animal consumption;

(iii) Any activity associated with underground utility or construction work, including, but not limited to, excavation, which is likely to cause and/or result in direct contact with, a disturbance and/or relocation of petroleum-contaminated soil located at a depth more than 3 feet below the surface, without prior development and implementation of a Soil Management Plan and a Health and Safety Plan in accordance with the Obligations and Conditions section below; and

(iv) Relocation of petroleum-contaminated soil currently at a depth more than 3 feet below the surface grade to a shallower depth, unless such activity is first evaluated by a LSP who renders an Opinion which states that such relocation is consistent with maintaining a condition of No Significant Risk.

3. Obligations and Conditions Set Forth in the AUL Opinion.

If applicable, obligations and/or conditions to be undertaken and/or maintained at the Portion of the Property to maintain a condition of No Significant Risk as set forth in the AUL Opinion shall include the following:

(i) A Soil Management Plan must be prepared by a LSP prior to the commencement of any activity which is likely to cause and/or result in direct contact with, a disturbance and/or relocation of petroleum-contaminated soil located at a depth more than 3 feet below the surface grade. The Soil Management Plan should describe appropriate soil management, characterization, storage, transport and disposal procedures in accordance with the provisions of the MCP cited at 310 CMR 40.0030 et seq. The Soil Management Plan should also describe access restrictions to the Portion of the Property during the duration of said activity. Workers who may come in contact with the petroleum-contaminated soil should be appropriately trained on the requirements of the soil Management Plan, and the Soil Management Plan must remain available on-site throughout the course of the project;

(ii) A Health and Safety Plan must be prepared and implemented prior to the commencement of any activity which is likely to cause and/or result in direct contact with, a disturbance and/or relocation of petroleum-contaminated soil at a depth more than 3 feet below the surface grade. The Health and Safety Plan should be prepared by a Certified Industrial Hygienist or other qualified individual appropriately trained in worker health and safety procedures and requirements. Workers who may come in contact with the petroleum-contaminated soil should be appropriately trained on the requirements of the Health and Safety Plan, and the Health and Safety Plan must remain available on-site throughout the course of the project;

(iii) The petroleum-contaminated soil at a depth more than 3 feet below the surface grade must remain at that depth and may not be relocated to a shallower depth, unless such activity is first

evaluated by a LSP who renders an Opinion which states that such activity poses no greater risk of harm to health, safety, public welfare, or the environment and ensures that a condition of No Significant Risk is maintained;

(iv) Any enclosed structures to be constructed in this area shall have an underslab vapor barrier constructed of an impermeable liner and a gravel bed vented through the foundation wall;

(v) Walkways and parkways shall be either asphalt or concrete. Any unpaved pedestrian walkway shall be underlain with a wear surface such as brick or stone; and

(vi) Any greenbelt area shall maintain a minimum of three feet of clean topsoil.

4. Proposed Changes in Activities and Uses.

Any proposed changes in activities and uses at the 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 LSP who shall render an Opinion, in accordance with 310 CMR 40.1080 *et seq.*, as to whether the proposed changes will present a significant risk of harm to health, safety, public welfare or the environment. 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 a 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.

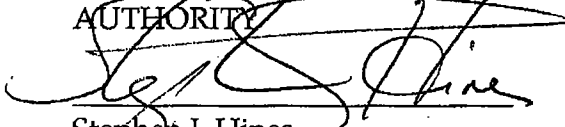
If the activities, uses, and/or exposures upon which this Notice is based change without the prior evaluation and additional response actions determined to be necessary by a LSP in accordance with 310 CMR 40.1080 *et seq.*, the owner or operator of the Portion of the Property subject to this Notice at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

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 of this Notice, said Notice to become effective when executed under seal by the undersigned LSP, and recorded at the Suffolk County Registry of Deeds.

WITNESS the execution hereof under seal this 21st day of August, 2000.

Owner: COMMONWEALTH OF MASSACHUSETTS
DIVISION OF CAPITAL ASSET MANAGEMENT AND
MAINTENANCE,
For Use By The MASSACHUSETTS WATER RESOURCES
AUTHORITY

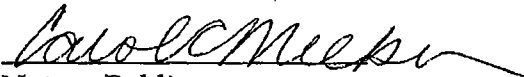
By: 
Stephen J. Hines
Deputy Commissioner, DCAM

COMMONWEALTH OF MASSACHUSETTS

Suffolk ss

August 21, 2000

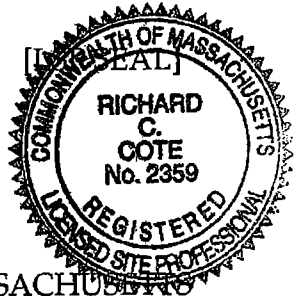
Then personally appeared the above-named STEPHEN J. HINES and acknowledged the foregoing instrument to be ~~his~~ free act and deed before me,


Notary Public:
My Commission Expires: March 11, 2005

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

Date: 9/6/00


Richard Cote




COMMONWEALTH OF MASSACHUSETTS

Jupell, ss

9/6, 2000

Then personally appeared the above named Richard Cote and acknowledged the foregoing instrument to be his free act and deed before me,


Notary Public
My Commission Expires: 2/9/01

Upon recording, return to:

Commonwealth of Massachusetts
Division of Capital Asset Management
One Ashburton Place
Boston, Massachusetts 02108
Attn: Carol C. Meeker, Esq.

EXHIBIT A

Description of Parcel of Land Containing Area Subject to AUL

A certain parcel of land situated at 2436 Beacon Street in the City of Boston, Suffolk County, Massachusetts, shown on a plan entitled "Plan of Chestnut Hill Pumping Station Plan of Property in Boston (Brighton), Massachusetts" dated October 25, 1999, Scale 1" = ¹⁰⁰80', prepared by Massachusetts Water Resources Authority Engineering and Construction Department Design Information System Center, and recorded with the Suffolk County Registry of Deeds in ~~Plan~~ ^{25344, Plan} Book ~~End~~ ^{Page}, and being more particularly bounded and described as follows:

BEGINNING	at the southeasterly corner of the parcel at an angle point in the land now or formerly of the Massachusetts Bay Transportation Authority; and thence running
S50°25'00"W	by land now or formerly of the Massachusetts Bay Transportation Authority, twenty-four and 95/100 (24.95) feet; thence turning and running
N69°17'50"W	by the land now or formerly of the N. Mahfuz Trust No.1, one hundred four feet and 77/100 (104.77) feet; thence turning and running
N75°38'50"W	by the land now or formerly of the N. Mahfuz Trust No.1, and land now or formerly of Andrew and Neala Melcer, one hundred ninety and 83/100 (190.83) feet, to a point in the easterly line of Beacon Street; thence continuing
NORTHERLY	on a curve to the left having a radius of four hundred fifty (450.00) feet, a length of one hundred forty-eight (148.0) feet, to the easterly side line of Beacon Street; thence turning and running
S46°50'00"E	along the easterly side line of Beacon Street, fifteen and 99/100 (15.99) feet; thence turning and running

- N56°15'30"E along the easterly side line of Beacon Street, three hundred twenty-two and 91/100 (322.91) feet; thence continuing
- NORTHERLY on a curve to the left having a radius of eight hundred sixty-four (864.00) feet, a length of five hundred seventy-five and 50/100 (575.50) feet, to the easterly side line of Beacon Street; thence turning and running
- N18°05'39"E along the easterly side line of Beacon Street, three hundred ninety (390.00) feet to a point in land now or formerly of the City of Boston; thence turning and running
- S51°02'01"E by the land now or formerly of the City of Boston, two hundred thirty-five and 02/100 (235.02) feet; thence turning and running
- N38°26'26"E by the land now or formerly of the City of Boston, eighty (80.00) feet; thence turning and running
- S51°02'01"E by the land now or formerly of the City of Boston, two hundred fifty (250.00) feet, to a point in the westerly line of the land now or formerly of the National Amusements, Inc.; thence turning and running
- S45°34'23° by the land now or formerly of the National Amusements, Inc., eighty and 53/100 (80.53) feet, thence turning and running
- S51°02'01"E by the land now or formerly of the National Amusements, Inc., seventeen and 98/100 (17.98) feet, to a point in the westerly line of land of now or formerly Massachusetts Bay Transportation Authority thence turning and running
- S53°11'03"W by land now or formerly of the Massachusetts Bay Transportation Authority, one hundred fifty (150.00) feet; thence turning and running

- S50°25'00"W by land now or formerly of the Massachusetts Bay Transportation Authority, one hundred seventy-eight and 3/100 (178.03) feet; thence turning and running
- S39°35'00"E by land now or formerly of the Massachusetts Bay Transportation Authority, twenty-five (25.00) feet; thence turning and running
- S50°25'00"W by land now or formerly of the Massachusetts Bay Transportation Authority, nine hundred nineteen and 85/100 (919.85) feet; thence turning and running
- S46°50'00"W by land now or formerly of the Massachusetts Bay Transportation Authority, fifteen and 12/100 (15.12) feet to the point of beginning, containing 7.86 acres, more or less, according to said plan.

EXHIBIT A - 1

Description of Area Subject to AUL

That certain portion of a parcel of land, said parcel of land being situated at 2436 Beacon Street in the City of Boston, Suffolk County, Massachusetts, shown on the aforementioned plan recorded with Suffolk County Registry of Deeds in Plan Book 25344 Page 2, said portion being shown as the "AUL Area" on said plan, and being more particularly bounded and described as follows:

BEGINNING at the southeasterly corner of the parcel, which point is N50°25'00"E from an angle point by land now or formerly of the Massachusetts Bay Transportation Authority, two hundred two and 11/100 (202.11) feet; thence turning and running

N40°03'13" seventeen and 16/100 feet to the Granite Foundation of the High Service Pumping Station; thence turning and running

N50°52'37"E along the exterior wall of the High Service Pumping Station, thirty and 60/100 feet; thence turning and running

N39°07'23"W along the exterior wall of the High Service Pumping Station, seventeen and 10/100 (17.10) feet; thence turning and running

N50°52'37"E along the exterior wall of the High Service Pumping Station, eighteen and 9/100 (18.09) feet; thence turning and running

S39°07'23"E along the exterior wall of the High Service Pumping Station, seventeen and 10/100 (17.10) feet; thence turning and running

N50°52'37"E along the exterior wall of the High Service Pumping Station, sixty-three and 34/100 (63.34) feet to a point in the granite foundation of the High Service Pumping Station; thence turning and running

S39°58'37"E to land now or formerly of the Massachusetts Bay Transportation Authority, sixteen and 26/100 (16.26) feet; thence turning and running

S50°25'00"W by land now or formerly of the Massachusetts Bay Transportation Authority, one hundred twelve (112.00) feet to the point of the beginning, containing 2,178 square feet of land, more or less, according to said plan.

EXHIBIT B

Sketch Plan of Disposal Site

The Notice of Activities and Use Limitations encompasses the entire disposal site existing within the limits of the Property

