

APPENDIX E
DEED NOTICE

The model document in this appendix contains blanks and matter in brackets []. These blanks shall be replaced with the appropriate information prior to submission to the Department for approval. The model document in this appendix is not subject to the variance provisions of N.J.A.C. 7:26E-1.7.

Matter bracketed [] is not intended for deletion, but rather is intended to be descriptive of the variable information that may be contained in the final document.

IN ACCORDANCE WITH N.J.S.A. 58:10B-13, THIS DOCUMENT IS TO BE RECORDED IN THE SAME MANNER AS ARE DEEDS AND OTHER INTERESTS IN REAL PROPERTY.

Prepared by:

[Signature]

[Print name below signature]

Recorded by:

[Signature, Officer of County Recording Office]

[Print name below signature]

DEED NOTICE

This Deed Notice is made as of the ____ day of _____, _____, by [Name and address of each current property owner] (together with his/her/its/their successors and assigns, collectively "Owner").

WITNESSETH:

WHEREAS, Owner is the owner in fee simple of certain real property designated as Block____ Lot____, on the tax map of the [City/Borough/ Township/Town] of [Name of municipality], _____ County; New Jersey Department of Environmental Protection Known Contaminated Site List Number _____, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, the lead program during the remediation was _____, and the program identification number, if applicable, was _____; and

WHEREAS, the New Jersey Department of Environmental Protection ("Department") approved a remedial action on _____, for [Comprehensive Site List Case

No./Case Name] concerning the Property in which the Department has approved the use of institutional controls and/or engineering controls in accordance with N.J.S.A. 58:10B-13; and

WHEREAS, this Deed Notice itself is not intended to create any interest in real estate in favor of the Department, nor to create a lien against the Property, but merely is intended to provide record or notice of certain conditions and restrictions on the property and to reflect the regulatory and statutory obligations imposed as a condition of using institutional and/or engineering controls; and

WHEREAS, the areas described on Exhibit B attached hereto and made a part hereof (the "Affected Areas") contain contaminants above the applicable remediation standards that would allow for the unrestricted use of the Property; and

WHEREAS, the type, concentration and specific location of the contaminants are described on one or more diagrams, maps and/or tables on Exhibit B attached hereto and made a part hereof; and

WHEREAS, a narrative description of all institutional controls and associated monitoring and maintenance activities are provided in Exhibit C; and

[Other WHEREAS clauses shall be added to provide notice of additional site-specific concerns when required, and when engineering controls are implemented at the site, such as:

WHEREAS, a narrative description of engineering controls and associated monitoring and maintenance activities is provided in Exhibit C; and

WHEREAS, to prevent the potential for migration of the contaminants and unacceptable risk of exposure to the contamination to humans or the environment, an [impermeable/ permeable] surface cover is in place at the Property, at the location shown in Exhibit D on maps or diagrams; and

WHEREAS, to prevent the potential for unacceptable exposure to the contamination to humans or the environment, a [fence, posted sign(s), liners or any other engineering controls] is in place at the Property, at the locations shown in Exhibit D on maps or diagrams; and]

WHEREAS, in accordance with the Department's approval of the remedial action work plan, and in consideration of the terms and conditions of that approval, and other good and valuable consideration, Owner has agreed to subject the Property to certain statutory and regulatory requirements which impose restrictions upon the use of the Property, and to restrict certain activities at the Property, as set forth below.

NOW, THEREFORE, Owner agrees to the conditions and restrictions listed below and hereby notifies all interested parties, owners, lessees and operators that the applicable regulations and statutes require of each such person while owning, leasing or operating the Property as follows:

1. RESTRICTED USES. The owner(s) of all or any fee interest in all or any portion of the Affected Areas and each operator of all or any portion of the Affected

Areas, shall not allow any of the following uses of the following portions of the Affected Areas:

Portion of the Affected Area	Restricted Use
The Affected Areas as identified in Exhibit B.	The use shall be restricted [<i>to non-residential uses only and</i>] pursuant to paragraphs 2 and 3.

[The scope of the use restrictions will be dependent on the contaminants, concentrations, location, and type of engineering controls in place, if any. If, for example, engineering controls are designed to limit the uses to non-residential, the addition of "to non-residential uses only and", as noted above, is appropriate.]

[When different areas of concern of the Property have engineering controls in place which result in different use restrictions each area of concern must be described separately in Exhibit B.]

[Describe other portions of the Property by reference to Exhibits referenced in the WHEREAS clauses above]	[Describe nature of restricted use]
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2. EMERGENCIES. In the event of an emergency which presents a significant risk to public health, safety, or the environment, the application of Paragraph 1 above may be temporarily and unilaterally suspended, by Owner, provided that the Owner:

- i. Immediately notifies the Department of the emergency;
- ii. Limits both the actual disturbance and the time needed for the disturbance to the minimum reasonably necessary to adequately respond to the emergency;
- iii. Implements all measures necessary to limit actual or potential, present or future risk of exposure to humans or the environment to the residual contamination; and
- iv. Restores the Affected Areas to the pre-emergency conditions to the extent reasonably possible, and provides a report to the Department of such emergency and restoration efforts within ninety (90) calendar days after the end of the emergency.

3. ALTERATIONS, IMPROVEMENTS, AND DISTURBANCES.

(a) Except as provided in Paragraph 2 above, no owner or operator shall make, or allow to be made, any alteration, improvement, or disturbance in, to, or about the

Affected Areas which disturbs any engineering control or which creates an unacceptable risk of exposure of humans or the environment to contamination in the Affected Areas without first obtaining the express written consent of the Department. Nothing herein shall constitute a waiver of the Owner's or operator's obligation to comply with all applicable laws and regulations.

(b) Notwithstanding subparagraph 3(a) above, the Department's consent is not required for any alteration, improvement, or disturbance provided the Owner or operator:

i. Provides for restoration of any disturbance of an engineering control to pre-disturbance conditions within sixty (60) calendar days after the initiation of the alteration, improvement or disturbance; and

ii. Does not allow an exposure level above those noted under Restricted Uses, provided that all applicable worker health and safety laws and regulations are followed during the alteration, improvement, or disturbance.

4. ACCESS. While this Deed Notice is in effect, the Owner agrees to allow the Department, its agents and representatives access to the property to inspect and evaluate the continued effectiveness of the institutional or engineering controls and to conduct additional remediation to ensure the protection of the public health and safety and the environment.

5. NOTICE TO LESSEES AND OTHER HOLDERS OF PROPERTY INTERESTS. Owner shall cause all leases, grants, and other written transfers of interest in the Affected Areas to contain a provision expressly requiring all holders thereof to take the Property subject to the restrictions contained herein and to comply with all, and not to violate any of the conditions of this Deed Notice. Nothing contained in this Paragraph shall be construed as limiting any obligation of Owner to provide any notice required by any law, regulation, or order of any governmental authority.

6. ENFORCEMENT OF VIOLATIONS. The restrictions provided herein may be enforceable solely by the Department against any person who violates this Deed Notice. A violation of this Deed Notice shall not affect the status of the ownership of or title to the Property. To enforce violations of this Deed Notice, the Department may initiate one or more enforcement actions pursuant to N.J.S.A. 58:10-23.11u and require additional remediation and assess damages pursuant to N.J.S.A. 58:10-23.11g.

7. SEVERABILITY. If any court of competent jurisdiction determines that any provision of this Deed Notice is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court. In the event that the provision invalidated is of such a nature that this provision cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this Deed Notice shall remain in full force and effect.

8. SUCCESSORS AND ASSIGNS. This Deed Notice shall be binding upon Owner and upon Owner's successors and assigns while each is an owner or operator of the Property, and the Department.

9. REQUIREMENT OF NOTIFICATION. The Owner shall notify any person who intends to excavate on the property of the nature and location of any contamination existing on the property and of any conditions or measures necessary to prevent exposure to contaminants.

10. TERMINATION AND MODIFICATION.

(a) This Deed Notice shall terminate only upon filing of an instrument, executed by the Department, in the office of the [County Clerk/Register of Deeds and Mortgages] of [Name of county] County, New Jersey, expressly terminating this Deed Notice.

(b) Any person may request in writing at any time that the Department modify or terminate this Deed Notice or initiate termination proceedings based on, for example, a proposal that the Property does not pose an unacceptable risk to public health and safety or the environment. Within ninety (90) calendar days after receiving such a request the Department will either:

i. Approve the request and have the Owner:

--Record with the office of the county recording officer a notice executed by the Department that the use of the Property is no longer restricted and the Deed Notice is terminated or record a modified Deed Notice delineating the new restrictions; and

--Provide written notice to each municipality in which the Property is located, with a copy to the Department, of the removal or change of the restrictions contained herein; or

ii. Issue a written notification of intent to deny the request pursuant to (c) below.

(c) The Department will set forth in a notice of intent to deny a request to modify or terminate this Deed Notice the basis for its decision. The owner can respond to the intent to deny by providing new or additional information or data. The Department will review any such new or additional information or data and issue a final decision to grant or deny the request within sixty (60) calendar days after the Department's receipt of the owner's response.

IN WITNESS WHEREOF, Owner has executed this Deed Notice as of the date first written above.

[If Owner is an individual]

WITNESS:

[Print name below signature]

[Print name below signature]

[If Owner is a corporation]

ATTEST:

[Name of corporation]

By _____

[Print name and title]

[Print name and title]

[If Owner is a general or limited partnership]

WITNESS:

[Print name and title]

[Name of partnership]
By _____,
_____, General Partner
[Print name and title]

[If Owner is an individual]

STATE OF [State where document is executed]

SS.:

COUNTY OF [County where document is executed]

I certify that on _____, 19____, [Name of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person [or if more than one person, each person]

(a) is named in and personally signed this document; and

(b) signed, sealed and delivered this document as his or her act and deed.

_____, Notary Public
[Print name and title]

[If Owner is a corporation]

STATE OF [State where document is executed]

SS.:

COUNTY OF [County where document is executed]

I certify that on _____, 19____, [Name of person executing document on behalf of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the [secretary/assistant secretary] of [Owner], the corporation named in this document;

(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the [president/vice president] of the corporation;

(c) this document was signed and delivered by the corporation as its voluntary act and was duly authorized;

(d) this person knows the proper seal of the corporation which was affixed to this document; and

(e) this person signed this proof to attest to the truth of these facts.

[Print name and title of attesting witness]

Signed and sworn before me on

, 19

_____, Notary Public
[Print name and title]

[If Owner is a partnership]
STATE OF [State where document is executed]

SS.:

COUNTY OF [County where document is executed]

I certify that on _____, 19 [Name of person executing document on behalf of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

(a) is a general partner of [Owner], the partnership named in this document;

(b) signed, sealed and delivered this document as his or her act and deed in his capacity as a general partner of [owner]; and

(c) this document was signed and delivered by such partnership as its voluntary act, duly authorized.

_____, Notary Public
[Print name and title]

EXHIBIT A
Metes and Bounds Description of Property

(Attach a tax map of the site which shows the metes and bounds and the block and lot numbers of the site)

EXHIBIT B
Description of Affected Areas

(Attach maps, prepared by an engineer or surveyor, showing the location, depth and concentration of all contaminants exceeding applicable remediation standards, showing any institutional or engineering controls implemented or to be implemented at the site)

Contaminant	Concentration	Location
[List contaminants]	[List concentrations]	[Describe location of contaminants by reference to exhibits A and B]

EXHIBIT C

Include narratives describing institutional and engineering controls and the monitoring and maintenance activities for the institutional and engineering controls.

EXHIBIT D

Include maps and diagrams of as-built engineering controls. These maps and diagrams must show the location of the engineering controls. Maps shall be compatible with the Department's Geographic Information System. For requirements on electronic data submission, see N.J.A.C. 7:1 Appendix A. For additional guidance, see the version of the Guidance for the Submission and Use of Data in GIS Compatible Format most recent to the time of submission. This guidance document can be found at www.state.nj.us/dep/srp/regs/techrule/techgis2.htm. The following shall be included as part of this Exhibit:

1. A clean legible copy of that section of the United States Geological Survey Quadrangle map where the site is located with the site clearly identified on this map. The scale of this map should include enough of the surrounding community and road system so the site can be easily identified from air photography;
2. A clean legible copy of a map that identifies by name, roads in the vicinity of the site, for example Hagstrom County maps; and
3. A map of the site to scale that includes as-built diagrams of major surface topological features such as buildings, roads and parking lots. This map should also include as-built diagrams of engineering controls making sure that the engineering controls are clearly distinguishable. The engineering controls may be lightly shaded. If the engineering control is greater in size than 1 acre, the map/diagram should show the areas of highest contaminant concentrations.