

APPENDIX E

Copy of Activity & Use Limitation Opinion and Form 1075  
for W.R. Grace and Alewife Land Corporation owned Parcels

## Form 1075

### NOTICE OF ACTIVITY AND USE LIMITATION

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

Disposal Site Name: W.R. Grace & Co.-Conn

DEP Release Tracking No.(s): 3-0277

This Notice of Activity and Use Limitation ("Notice") is made as of this \_\_\_\_\_, day of January, 2005, by W.R. Grace & Co.-CONN, with an address of W.R. Grace & Co.-Conn., 62 Whittemore Avenue, Cambridge, Massachusetts, 02140 (together with its successors and assigns, collectively "Owner").

#### WITNESSETH:

WHEREAS, W.R. Grace & Co.-Conn. is the owner in fee simple of certain parcel(s) of land located in Cambridge, Middlesex County, Massachusetts with the buildings and improvements thereon ("Property");

WHEREAS, said parcel(s) of land, which are more particularly bounded and described in Exhibit A, attached hereto and made a part hereof ("Property") are subject to this Notice of Activity and Use Limitation. The Property is shown on a plan recorded in the Middlesex County South District Registry of Deeds in Plan Book \_\_\_\_\_, Plan \_\_\_\_\_;

WHEREAS, the Property comprises part of a disposal site as the result of a release of oil and/or hazardous material. Exhibit B is a sketch plan showing the relationship 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 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. The basis for such restrictions is set forth in an Activity and Use Limitation Opinion ("AUL Opinion"), dated \_\_\_\_\_, (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 Property:

- (i) Activities and uses consistent with the Property's current use as an office building, with adjacent grounds and parking open to the public;
- (ii) Any other office, industrial, retail, commercial, research and development (R&D) or similar use, along with associated-parking and grounds open to the public;
- (iii) Landscaping and grounds keeping activities, including but not limited to planting of trees and shrubs, installation of signs and fence posts, cutting and raking of grassy areas, and maintenance and resurfacing of parking lots, sidewalks and driveways, provided these activities do not involve "Intrusive Activity." The definition of "Intrusive Activity" as it is used in this document means any activity which involves penetration through the "Protective Cover" (as hereinafter defined) and involves excavation of a volume of soil greater than 15 cu. ft.;
- (iv) Excavation and subsurface activities associated with limited short term or emergency utility work, provided such work is conducted in accordance with soil and wastewater management procedures set forth at 310 CNM 40.0030;
- (v) Excavation associated with potential future construction provided that such work is conducted in accordance with the provisions of the Section below entitled Obligations and Conditions;
- (vi) Activities and uses which are not identified in Paragraph 2 as being inconsistent with maintaining a condition of No Significant Risk; and
- (vii) Such other activities or uses which, in the Opinion of an 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 of Activity and Use Limitation, and which, if implemented at 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) Residential uses;
- (ii) School, as defined by 310 CMR 40.0006, kindergarten, day care center, or similar use;
- (iii) Active recreational uses, such as athletic fields or playgrounds, involving more than casual contact with the existing ground;
- (iv) Use of on-site soils for cultivation of fruits or vegetables destined for human consumption;
- (v) Subsurface activities associated with utility work or future construction which may result in the disturbance, excavation, relocation, or removal of contaminated soils or groundwater at the Property which are not conducted in accordance with the Obligations and Conditions set forth in Paragraph 3;
- (vi) Construction of occupied structures without first undertaking the evaluation described in Paragraph 3(iv) below.

3. Obligations and Conditions Set Forth in the AUL Opinion. If applicable, obligations and/or conditions to be undertaken and/or maintained at the Property to maintain a condition of No Significant Risk as set forth in the AUL Opinion are as follows:

- (i) The existing surface soil, pavement and concrete slabs, pavement and concrete slab sub-base materials, structures, topsoil/loam, landscaping or the like are considered to be "Protective Cover". In the event the Protective Cover is degraded or removed, a Protective Cover shall be reinstalled to cover the underlying subsurface soils to prevent contact;
- (ii) Implement a health and safety plan pursuant to 310 CMR 40.0018 developed by a Certified Industrial Hygienist or similar knowledgeable and trained professional, in conjunction with the airborne asbestos and dust management and monitoring plan, described in Paragraph (iii) of this section, in the event of excavation associated with construction or other Intrusive Activities, as defined in Paragraph (iii) above, which are likely to involve more than incidental exposure to, or casual direct contact with the subsurface soils, or the potential for direct contact with groundwater. The purpose of this plan is to protect health and safety of on-site workers, visitors to the property, and the general public. Excavated materials and dewatering effluent shall be managed in accordance with the soil and wastewater management procedures set forth at 310 CMR 40.0030; and

- (iii) In the event Intrusive Activity is undertaken, implement an airborne asbestos, dust, and odor management and monitoring plan. The plan shall be developed by a Certified Industrial Hygienist or similarly knowledgeable and trained professional. The plan shall require that any Intrusive Activity into the soil at the Property be done in a manner that prevents the liberation of asbestos fibers and/or dust into the ambient air in excess of applicable standards and prevents any potential odors from creating a nuisance condition, per applicable local and state standards. It is envisioned that the plan would require utilization of proactive wetting of the exposed soil and handling techniques which would minimize the potential for dust generation. It is also envisioned *[sic]* that the plan would require the use of excavation techniques and/or *[sic]* odor suppressants intended to mitigate potential odors. The plan would also include a procedure(s) to monitor the level of dust, asbestos fibers, and odors in the air during Intrusive Activities to confirm compliance with the management plan. The management plan would also contain a provision requiring that the Intrusive Activity would be stopped and the area secured if the monitoring plan indicates the level of asbestos fibers, dust, or odors are in the air in excess of applicable limits.
  - (iv) In the event additional occupied structures are constructed at the site, an LSP shall evaluate the potential risks associated with migration of volatile compounds from the subsurface into indoor air and the inhalation of these compounds. If a condition of "No Significant Risk" cannot be demonstrated, measures, such as excavation of contaminated soils or the inclusion of engineered controls (i.e., impermeable vapor barrier and/or sub-slab venting) or similar measures shall be implemented to provide a condition of "No Significant Risk".
  - (v) If an Intrusive Activity is undertaken for construction of new subsurface utilities, clean fill materials must be used to backfill around the utilities to cover the underlying subsurface soils, so as to prevent future contact with contaminated soil during utility work.
4. Proposed Changes in Activities and Uses. Any proposed changes in activities and uses at the Property which may result in higher levels of exposure to oil and/or hazardous material than currently exist shall be evaluated by an 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 an 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 an LSP in accordance with 310 CMR 40.1080 *et seq.*, the owner or operator 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.

Owner hereby authorizes and consents to the filing and recordation and/or registration of this Notice, said Notice to become effective when executed under seal by the undersigned LSP, and 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 \_\_\_\_\_, 2005.

W.R. GRACE & CO.-CONN.

By: \_\_\_\_\_  
Robert F. Jenkins  
Vice President

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ ss

\_\_\_\_\_ 2005

Then personally appeared the above-named Robert F. Jenkins and acknowledged the foregoing instrument to be his free act and deed before me,

\_\_\_\_\_  
Notary Public:  
My Commission Expires:

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: \_\_\_\_\_

\_\_\_\_\_  
William W. Beck, Jr., LSP

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ ss

\_\_\_\_\_ 2005

Then personally appeared the above-named William W. Beck, Jr. and acknowledged the foregoing instrument to be his free act and deed before me,

\_\_\_\_\_  
Notary Public:  
My Commission Expires:

Upon recording, return to:  
W.R. Grace & Co.-Conn.  
62 Whittemore Avenue  
Cambridge, MA 02140  
Attn: Legal Department