

COPY

Alewife Land Corporation  
Lehigh/Babo's

Form 1075

**NOTICE OF ACTIVITY AND USE LIMITATION**  
M.G.L. c. 21E, § 6 and 310 CMR 40.0000

Disposal Site Name: Former Lehigh Metals and Babo's  
DEP Release Tracking No.(s): 3-3411

This Notice of Activity and Use Limitation ("Notice") is made as of this 16<sup>th</sup> day of February, 2006, by Alewife Land Corporation, with an address of c/o W.R. Grace & Co.-Conn., 62 Whittemore Avenue, Cambridge, Massachusetts, 02140 (together with its successors and assigns, collectively "Owner").

**W I T N E S S E T H:**

WHEREAS, Alewife Land Corporation is the owner in fee simple of certain parcel(s) of vacant land located in Cambridge, Middlesex County, Massachusetts ("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 as Lot 3 and Lot 4 on Land Court Plan 23209B, a copy of which is filed with the Middlesex South Registry District of the Land Court in Registration Book 729, Page 46, with Certificate of Title 119796;

WHEREAS, the Property comprises all 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 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 February 13, 2006 (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 C.M.R. 40.0000) so long as any of the following activities and uses occur on the Property:

- (i) Existing uses of un-built areas for paved parking, paved public walkways, and open space;
- (ii) Existing grounds-keeping activities, including but not limited to installation of signs and fence posts, cutting and raking of grass areas, and maintenance and resurfacing of parking lots, sidewalks, and driveways;
- (iii) Maintenance of the Protective Cover as hereinafter described;
- (iv) Response actions conducted in accordance with the applicable provisions of Chapter 21E;
- (v) Limited short term, as defined in DEP policy, or emergency utility work in accordance with applicable federal, state, and local laws, ordinances, and regulations, including without limitation the Cambridge Asbestos Protection Ordinance;
- (vi) Such other activities or uses not identified in Paragraph 2 as being Activities and Uses Inconsistent with the AUL; and
- (vii) Such other activities and 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. Such opinion of a Licensed Site Professional shall be rendered final only after completion of any public involvement activities required by the Public Involvement Plan, in accordance with the Obligations and Conditions below.

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) Any use other than the Permitted Activities and Uses identified in Paragraph 1 above;
- (ii) Use of the Property as a residence, school, nursery, daycare, recreational area, and/or such use at which a child's day-long presence is likely;
- (iii) Active recreational uses, such as athletic fields or playgrounds, involving more than casual contact with the existing ground;
- (iv) Activities that may cause degradation or destruction of the Protective Cover as defined in the Obligations and Conditions section; and

- (v) Use of on-site soils for cultivation of fruits or vegetables destined for human consumption.

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) Maintain the existing top six (6) inches of surface soil, and existing pavement and concrete slabs, pavement and concrete slab sub-base materials, structures, topsoil/loam, landscaping or the like (hereinafter the "Protective Cover"). In the event the Protective Cover is degraded or removed, reinstall a Protective Cover to prevent exposure of underlying soil in a timely fashion;
- (ii) Prepare a Soil Management Plan ("SMP") prior to the commencement of activities that are likely to disturb the soil below the Protective Cover. The SMP must be prepared by a Licensed Site Professional ("LSP") in accordance with the Massachusetts Contingency Plan ("MCP") and, if applicable, the Cambridge Asbestos Protection Ordinance, and submitted for public review and comment in accordance with the provisions of the 27 December 1995 (or subsequent revisions) Public Involvement Plan ("PIP"). At a minimum, the SMP must describe the soil excavation, handling, storage, transport, and disposal procedures, as well as the engineering controls and air monitoring procedures, necessary to ensure that the potential impact of fugitive asbestos fibers and volatile emissions to workers, nearby residents, and other receptors in the vicinity are taken into account to ensure compliance with applicable standards;
- (iii) Prepare a Health and Safety Plan ("HASP") prior to the commencement of activities that involve the removal or disturbance of the Protective Cover and/or activities that are likely to disturb the soil below the Protective Cover. The HASP must be prepared by an LSP and a Certified Industrial Hygienist ("CIH") and control future exposures to groundwater. It must be submitted for public review and comment in accordance with the provisions of the 27 December 1995 (or subsequent revisions) PIP;
- (iv) Implement the Protective Cover Monitoring Plan ("PCMP") attached to the AUL Opinion. The PCMP describes methods for verifying that the cover materials continue to function in a manner which prevents incidental exposure or direct contact with subsurface soils, as well as methods for restoring such integrity, if compromised through erosion or other unplanned disturbances to the Protective Cover. On-site workers should be informed of the requirements of the PCMP, and the PCMP must be available at the Property at all times. Inspections are to be conducted monthly for the first year and quarterly thereafter. The PCMP requires that logs of the inspection and any response actions completed thereafter be filed with the DEP and placed in the current public document repositories;

- (v) The owner shall provide copies of the PCMP and the cover inspection reports to any purchaser of all or a portion of the Property as part of the sale of the Property;
- (vi) In the event that activity intruding into surface soil other than permitted activities and use as provided herein ("Intrusive Activity") is undertaken, implement an Airborne Asbestos, Dust, and Odor Management and Monitoring Plan. The plan shall be developed by a CIH and an LSP, and it must comply with applicable Best Management Practices, the Cambridge Asbestos Protection Ordinance, if applicable, and applicable state and federal regulations. The plan shall require that any such activity must be carried out in a manner that prevents the liberation of asbestos fibers and/or dust into the ambient air in excess of applicable standards (OSHA, EPA, DEP, or other applicable standards) and prevents any potential odors from creating a nuisance condition, as these conditions may be defined by applicable regulations of the City of Cambridge, the Commonwealth of Massachusetts, and the federal government. It is envisioned that the plan would require utilization of proactive wetting of the exposed soil and handling techniques that would minimize the potential for dust generation. It is also envisioned that the plan would require the use of excavation techniques and/or 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 the Intrusive Activities to confirm compliance with the plan. The plan would also contain a provision requiring that the intrusive activity would be stopped and the area secured if the monitoring indicates that the level of asbestos fibers, dust, or odors in the air are in excess of applicable limits. This plan shall be submitted for public review and comment in accordance with the provisions of the 27 December 1995 (or subsequent revisions) PIP;
- (vii) In the event that occupied structures are constructed at the Property, 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 inside such structures. If a condition of "No Significant Risk" cannot be demonstrated, such measures as excavation of contaminated soils or the inclusion of engineered controls (i.e., impermeable vapor barrier and/or sub-slab venting) shall be implemented to provide a condition of "No Significant Risk";
- (viii) Provide a draft of any proposed changes to this AUL or any monitoring plans that are developed for public comment, in accordance with the provisions of the 27 December 1995 (or subsequent revisions) PIP; and
- (ix) All activities that may disrupt the Protective Cover shall comply with the applicable requirements of the Cambridge Asbestos Protection Ordinance in

effect at the time of the disruption.

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 16<sup>th</sup> day of February,  
2006.

ALEWIFE LAND CORPORATION

By: W. Brian McGowan  
W. Brian McGowan  
President

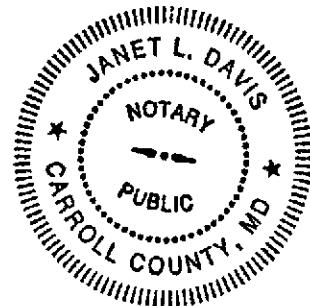
STATE OF MARYLAND

COUNTY OF Howard, ss

On this 16 day of February, 2006, before me, the undersigned notary public, personally appeared W. Brian McGowan, proved to me through satisfactory evidence of identification, which was a Virginia driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as President of Alewife Land Corporation.

[Notary Seal/Stamp]

JANET L. DAVIS  
Notary Public  
My commission expires: 9-1-06



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: 1 MARCH 2006

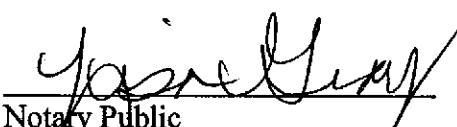
  
William W. Beck, Jr., LSP

STATE OF Massachusetts

COUNTY OF Suffolk, ss

On this 1<sup>st</sup> day of March, 2006, before me, the undersigned notary public, personally appeared William W. Beck, Jr., proved to me through satisfactory evidence of identification, which was New Hampshire driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

[Notary Seal/Stamp]

  
Lisa Gray  
Notary Public  
My commission expires: \_\_\_\_\_



LISA GRAY  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
April 14, 2011

Upon recording, return to:  
Sherin and Lodgen LLP  
101 Federal Street, 30<sup>th</sup> Floor  
Boston, Massachusetts 02110  
Attn: Peter Friedenberg, Esq.