## INSTRUCTIONS FOR IMPLEMENTING AND PREPARING A

## 'NOTICE OF CONTAMINATED SITE' REFERENCING LAND USE RESTRICTIONS

## FOR APPROVAL AND FILING

The following list of instructions will assist in the preparation and filing of a ***Notice of Contaminated Site.***

1. The notice and any included restrictions must be agreed to by the owner of the real property, included in a remedial action plan for the site that has been approved by the Secretary, and implemented as part of the remedial action program for the site. The Secretary may approve restrictions included in the remedial action plan in accordance with standards that the Secretary determines to be applicable to the site.
2. The person who proposes to conduct risk-based remediation, which includes filing a Notice with the necessary restrictions, where the contamination has impacted one or more off-site properties shall:

Notify the owner(s) of any contaminated off-site property of the proposed remedial action plan;

* 1. Provide the property owner(s) with copies of (i) “Part 7 of Article 21A of Chapter 143 of the General Statutes” (G.S. 143-215.104AA) and (ii) a publication entitled *“Contaminated Property: Issues and Liabilities*” that has been prepared by the Department; and
	2. Obtain written consent from the property owner(s) acknowledging receipt of the guidance documentation and authorizing the person to remediate the off-site property using site-specific remediation standards. Forms to document this consent will match a format prescribed by the Department.
1. The Notice shall be prepared in accordance with the format provided in these instructions and shall include reference to the appropriate land use restrictions. (***REWORDING OF THE NOTICE IS NOT RECOMMENDED AND WILL SUBSTANTIALLY DELAY APPROVAL.****)*
2. The Notice shall include a survey plat entitled “NOTICE OF CONTAMINATED SITE”, prepared and certified by a professional land surveyor, and shall meet all requirements in G.S. 47-30 for maps and plats, all requirements in G.S. 143B-279.10(a) for the recordation of contaminated sites, and all requirements specified by the county Register of Deeds. ***(ALL CONTENTS OF THE PLAT MUST BE DRAWN IN INDELIBLE INK.)***
3. The Notice plat shall include one or more descriptions that would be sufficient as a description in an instrument of conveyance and shall identify all areas designated by the Department, including but not limited to:
	1. Property lines, north arrow, scale, bearings and distances as appearing on the deed;
	2. With respect to permanently surveyed benchmarks, the location and dimensions of any disposal area or area where contamination is known to exist in:
	* groundwater at a concentration exceeding the standard or interim standard established in 15A NCAC 2L. 0202, and/or
	* soil at a concentration exceeding the residential maximum soil contaminant concentration established in 15A NCAC 2L .0411;
	1. Other areas of potential environmental concern, such as all visible and apparent rights-of-way, watercourses, utilities, roadways, and other such improvements or structures whether wholly contained within, or crossing or forming any boundary for a disposal area or area of contamination;
	2. The following language: "The areas of contamination depicted upon the map are approximations derived from the best available information at the time of filing.”;
	3. The type, location, and quantity of contamination known to the owner of the site to exist on the site;
	4. Any restriction approved by the Department on the current or future use of the site to protect public health, the environment, or users of the property;
	5. The printed name(s) and title(s) and properly notarized signature(s) of individual(s) with authority to legally bind the responsible party(ies) (i.e., the responsible party(ies), an individual with power of attorney for the responsible party(ies), officer of a corporation, etc.) ***(PRINTED TEXT, SIGNATURES, AND NOTARY SEALS, AS WITH ALL MARKINGS ON THE PLAT, MUST BE MADE IN INDELIBLE INK)***;
	6. The following language, for use by the Department, positioned in the upper left corner of the plat:

|  |  |
| --- | --- |
|  |  |
|  | "Approved for the purposes of N.C.G.S. 143B-279.9 and 143B-279.10 |
|  |  | , |
|  | *(signature of Regional Supervisor)* |  |
|  |  | , Regional Supervisor |
|  | *(printed name of Regional Supervisor)* |  |
|  |  |  Regional Office |
|  | *(name of Region)* |  |
|  | UST Section |
|  | Division of Waste Management |
|  | Department of Environmental Quality |
|  |  |
|  | NORTH CAROLINA |
|  |  | COUNTY |
|  |  |
|  | I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:  |
|  |  | *(printed full name of Regional Supervisor)*. |  |
|  |  |  |  |
|  | WITNESS my hand and official seal, this the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_. |  |
|  |  |
|  | (Official Seal) |  |  |
|  |   |  |  |
|  |  | *(signature of Notary Public)* |  |
|  |  |  |  |
|  |  | *(printed or typed name of Notary Public)* |  |
|  |  | Notary Public |  |
|  |  |  |  |
|  |  | My commission expires: |  |  |
|  |  |  |  |  |

* 1. Surveyor's certification and seal (using a permanent ink stamp).
1. Where a contaminated site is located on more than one parcel or tract of land, a composite map or plat showing all parcels or tracts may be recorded in lieu of multiple maps or plats.
2. In addition to the plat, a separate text Declaration of Perpetual Land Use Restriction shall be prepared as part of the Notice to be filed with the applicable county Register of Deeds.
3. Once complete, the signed and notarized Notice plat and declaration shall be sent to the appropriate UST Section Regional Office for review.
4. After the Department approves, notarizes and returns the Notice plat and declaration, the responsible party shall, within thirty (30) days of its return:
	1. File the approved Notice plat in the County Register of Deeds' office of the county or counties in which the site is located;
	2. Once the Notice plat has been filed, the applicable plat book(s) and page number(s) should be added to the Notice declaration as a reference, and the Notice declaration filed immediately; and
	3. Send to the appropriate UST Section Regional Office, a certified copy of the Notice plat and declaration affixed with the seal of the Register of Deeds and reflecting the book(s) and page number(s) where each was recorded, along with a copy of the page(s) in the grantor index where the Notice(s) are referenced.

# **NOTICE OF CONTAMINATED SITE**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_County, North Carolina

*(Site name)*

 **The property that is the subject of this Notice (hereinafter referred to as the “Site”) contains residual petroleum and is a petroleum release incident from a source other than an Underground Storage Tank (UST) under North Carolina’s Statutes and Regulations, which consist of N.C.G.S. 143-215.94 and regulations adopted thereunder. This Notice is part of a remedial action for the Site that has been approved by the Secretary (or his/her delegate) of the North Carolina Department of Environmental Quality (or its successor in function), as authorized by N.C.G.S. Section 143B-279.9 and 143B-279.10 for the purpose of protecting public health and the environment. The North Carolina Department of Environmental Quality (or its successor in function) shall hereinafter be referred to as “DEQ”.**

# **NOTICE**

 Petroleum product was released and/or discharged at the Site. **Petroleum constituents remain on the site, but are not a danger to public health and the environment, provided that the restrictions described herein, and any other measures required by DEQ pursuant to N.C.G.S. Sections 143B-279.9 and 143B-279.10, are strictly complied with.** This "Notice of Contaminated Site" is composed of a description of the property, the location of the residual petroleum and the land use restrictions on the Site. The Notice has been approved and notarized by DEQ pursuant to N.C.G.S. Sections 143B-279.9 and 143B-279.10 and has been/shall be recorded at the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County Register of Deeds’ office, Book \_\_\_\_\_\_, Page \_\_\_\_\_\_\_.

As required under N.C.G.S Section 143B-279.10, the associated map or plat has been/shall be recorded at the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County Register of Deeds’ office Book \_\_\_\_\_\_, Page \_\_\_\_\_\_, and has been incorporated into this Notice by this reference.

When the Site or portion(s) of the Site defined within this notice is/are sold, leased, conveyed or transferred, pursuant to N.C.G.S 143B-279.10, the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the real property being sold, leased, conveyed, or transferred is a contaminated Site and shall include a reference by book(s) and page(s) to the recordation of the Notice of Contaminated Site plat and declaration.

The owner shall notify DEQ within fourteen (14) calendar days of the effective date of any conveyance, grant, gift, or other transfer, whole or in part, of the owner’s interest in the Site. This notification shall include the name, business address and phone number of the transferee and the expected date of transfer. This provision shall not apply to leases that do not provide for the right to take actions that would violate any prohibitions or restrictions of this Notice.

#### Source Property

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is the owner in fee

(*owner’s name*) (*city & state of owner*)

simple of all or a portion of the Site, which is located in the County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, State of North Carolina, and is known and legally described as:

|  |
| --- |
| *(Insert Real Property Description Here for Source Property)* |

Additional Affected Property Owned or Formerly Owned by the Responsible Party and Subject to Restrictions

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is the owner in fee simple of a

 *(owner’s name)* *(city & state of owner)*

Parcel that constitutes a portion of the Site, which is located in the County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, State of North Carolina.

Petroleum contamination is located on this property at the time this Notice is approved. This property is or was also owned or controlled by the owner or operator or another party responsible for the petroleum discharge or release at the time the discharge or release was discovered or reported, or at any time thereafter. This property is known and legally described as:

|  |
| --- |
| *(Insert Real Property Description Here for Additional Properties Owned or Controlled by Any Owner or Operator or Other Responsible Party, if Applicable)* |

**For protection of public health and the environment, the following land use restrictions required by N.C.G.S. Section 143B-279.9(a) shall apply to all of the above-described real property.**

### Additional Affected Property Not Subject to Restrictions

### ***[Note to be deleted on final document - Include a separate reference for each off-site, non-site-owner parcel that has been impacted by the release.]***

Residual petroleum is also located on the following property. This property is not and has not been owned by the party responsible for the release, and therefore is not subject to the subsequent land use restrictions pursuant to N.C.G.S. Section 143B-279.9(a), but is included within this Notice for the purpose of protecting public health and the environment. The landowner for this unrestricted property, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, has been informed of the presence of contamination, and has provided *(owner’s name)*

written consent for the use of this Notice as part of the remedial action plan for this Site. The following property is known and legally described as:

|  |
| --- |
| *(Insert Legal Description of Other, Unrestricted Real Property Affected by Residual Petroleum Not Owned or Controlled by Any Owner or Operator or Other Responsible Party, if Applicable)* |

## DECLARATION OF PERPETUAL LAND USE RESTRICTIONS

**[Note to be deleted on final document** **- Restrictions apply to activities on, over, or under the land. Choose one, two, or all of the following as appropriate.]**

*Site Use: The Site shall be used for industrial/commercial use only. Industrial/commercial use allows exposure to soil contamination that is limited in time and does not involve exposure to children or other sensitive populations such as the elderly or sick. The real property shall not be developed or utilized for residential purposes including but not limited to: primary or secondary residences (permanent or temporary), schools, daycare centers, nursing homes, playgrounds, parks, recreation areas and/or picnic areas.*

*Soil: Soil containing residual petroleum, above applicable regulatory standard(s), remains on the site as depicted within the Notice of Contaminated Site plat or map, recorded in the applicable plat book as described above. Any action that has the potential to expose the residual soil contamination at the Site (such as construction, grading, trenching, or drilling/boring, etc.) shall be approved in writing in advance by the appropriate Regional Office of the DEQ, Division of Waste Management, Underground Storage Tank Section, or its successor in function, and shall be conducted in accordance with all applicable state and federal statutes, regulations and guidelines.*

*Groundwater: Groundwater from the site is prohibited from use as a water supply. The installation of groundwater wells or any other action (such as excavating or drilling/boring, etc.) that will produce or expose contaminated groundwater for any purpose other than monitoring groundwater quality or providing for the remediation of contaminated groundwater is prohibited without prior written approval by the appropriate Regional Office of the DEQ, Division of Waste Management, Underground Storage Tank Section, or its successor in function.*

## RIGHT OF ENTRY

The property owner for the Site grants and conveys to DEQ, its agents, contractors, and employees, and any person performing pollution remediation activities under the direction of DEQ, access at reasonable times and under reasonable security requirements to the Site to determine and monitor compliance with the land-use restrictions set forth in this Notice. Such investigations and actions are necessary by DEQ to ensure that use, occupancy, and activities of and at the Site are consistent with the land-use restrictions and to ensure that the structural integrity and continued effectiveness of any engineering controls (if appropriate) described in the Notice are maintained. Whenever possible, at least 48 hours advance notice will be given to the owner of the Site prior to entry. Advance notice may not always be possible due to conditions such as response time to complaints and emergency situations

No person conducting environmental assessment or remediation at the Site or involved in determining compliance with applicable land-use restrictions, at the direction of, or pursuant to a permit or order issued by DEQ may be denied access to the Site for the purpose of conducting such activities.

## ENFORCEMENT

**Adherence to the above land use restrictions is necessary to protect public health and the environment.The owner, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereby declares that the property shall be held, sold and conveyed subject to the aforementioned perpetual land use restriction(s), which shall run with the land; shall be binding on all parties having any right, title or interest in the Parcel of Property or any part thereof, their heirs, successors and assigns; and as provided in N.C.G.S. 143B-279-9(a), shall be enforceable without regard to lack of privity of estate or contract, lack of benefit to particular land, or lack of any property interest in particular land by any owner of the land, operator of the facility, or party responsible for the site. The above land use restriction(s) may also be enforced by DEQ through any of the remedies provided by law or by means of a civil action, and may also be enforced by any unit of local government having jurisdiction over any part of the Site.**

**Failure by any party required or authorized to enforce any of the above restriction(s) shall in no event be deemed a waiver of the right to do so thereafter as to the same violation or as to one occurring prior or subsequent thereto. If any provision of this Declaration is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.**

|  |  |  |
| --- | --- | --- |
|  | IN WITNESS WHEREOF, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ has caused this Notice to be executed pursuant to N.C.G.S. Sections 143B-279.9 and 143B-279.10, this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,20\_\_\_\_. |  |
|  |  |
|  |  |  |  |
|  |  | (*name of responsible party if agent is signing*) |  |
|  |  |  |  |
|  | By:  |  |  |
|  |  | (*signature of responsible party, attorney or other agent if there is one*) |  |
|  |  |  |  |
|  |  |  |  |
|  |  | (*Title of agent for responsible party if there is one*) |  |
|  |  |  |  |
|  | Signatory’s name typed or printed:  |  |  |
|  |  |  |  |

(Note to be deleted on final document - Preparer of document must assure that the correct acknowledgement is used and complies with changes effective October 1, 2006.)

[Choice One: Instrument signed by one person]

|  |  |
| --- | --- |
|  |  |
|  | NORTH CAROLINA |
|  |  | COUNTY |
|  | (*Name of county in which acknowledgment was taken)* |
|  | I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. |  |
|  |  |  |  |
|  | WITNESS my hand and official seal, this the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.  |  |
|  |  |
|  |  |
|  |  |
|  | (Official Seal)  |  |  |
|  |  |  |  |
|  |  | *(signature of Notary Public)* |  |
|  |  |  |  |
|  |  | *(printed or typed name of Notary Public)* |  |
|  |  | Notary Public |  |
|  |  |  |  |
|  |  | My commission expires: |  |  |
|  |  |

##### [Choice Two: Acknowledge by attorney in fact]

|  |  |
| --- | --- |
|  |  |
|  | NORTH CAROLINA |
|  |  | COUNTY |
|  | (*Name of county in which acknowledgment was taken)* |
|  | I, , a Notary Public for said County and State, do hereby certify that \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , attorney in fact for , personally appeared before me this day, and being by me duly sworn, says that he executed the foregoing and annexed instrument for and in behalf of the said , and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of in the County of , State of , on the day of , 20\_\_ and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney.I do further certify that the said \_\_\_\_\_\_\_\_ acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said \_\_\_\_\_\_\_\_\_\_\_\_\_ . |  |
|  |  |  |  |
|  | WITNESS my hand and official seal, this the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_. |  |
|  |  |
|  | (Official Seal)  |  |  |
|  |  |  |  |
|  |  | *(signature of Notary Public)* |  |
|  |  |  |  |
|  |  | *(printed or typed name of Notary Public)* |  |
|  |  | Notary Public |  |
|  |  |  |  |
|  |  | My commission expires: |  |  |
|  |  |

#####  [Choice Three: Conveying security interest in personal property of a corporation]

|  |  |
| --- | --- |
|  |  |
|  | NORTH CAROLINA |
|  |  | COUNTY |
|  | (*Name of county in which acknowledgment was taken)* |
|  | I, \_\_\_ \_ , a Notary Public for said County and State, do hereby certify that  \_ personally came before me this day and acknowledged that he is \_\_\_ \_\_\_\_\_ \_ of \_\_\_ \_\_ and acknowledged, on behalf of \_\_\_\_\_\_\_\_\_\_\_ , the grantor the due execution of the foregoing instrument. |  |
|  |  |  |  |
|  | WITNESS my hand and official seal, this the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_. |  |
|  |  |
|  | (Official Seal)  |  |  |
|  |  |  |  |
|  |  | *(signature of Notary Public)* |  |
|  |  |  |  |
|  |  | *(printed or typed name of Notary Public)* |  |
|  |  | Notary Public |  |
|  |   |  |  |
|  |  | My commission expires: |  |  |
|  |  |
|  | "Approved for the purposes of N.C.G.S. 143B-279.10 |
|  |  |
|  |  | , |
|  | *(signature of Regional Supervisor)* |  |
|  |  | , Regional Supervisor |
|  | *(printed name of Regional Supervisor)* |  |
|  |  |  Regional Office |
|  | *(name of Region)* |  |
|  | UST Section |
|  | Division of Waste Management |
|  | Department of Environmental Quality |
|  |  |
|  | NORTH CAROLINA |
|  |  | COUNTY |
|  | (*Name of county in which acknowledgment was taken)* |
|  | I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:  |  |
|  |  | *(printed full name of Regional Supervisor)*. |  |
|  |  |  |  |
|  | WITNESS my hand and official seal, this the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_. |  |
|  |  |
|  | (Official Seal)  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  | *(signature of Notary Public)* |  |
|  |  |  |  |
|  |  | *(printed or typed name of Notary Public)* |  |
|  |  | Notary Public |  |
|  |  |  |  |
|  |  | My commission expires: |  |  |
|  |  |  |  |  |