

## **Model Language for Deed Acknowledgements/Restrictions**

The Pennsylvania Land Recycling Program is designed to encourage the cleanup of releases to the environment to standards that are based upon exposure and risk. This process has stimulated many owners of contaminated properties to resolve contamination issues using very cost-effective, yet scientifically safe methods. Cost of cleanup remains a major driving factor in successful brownfield property transactions. Costs are often controlled by managing or eliminating exposure to contaminated media onsite through the use of engineering and/or institutional controls.

When a remedial project is approved with either engineering or institutional controls as part of or the entire remedy, the implementation and proper recordation of these controls becomes as important as the successful application of any active technical method. Therefore, the Department of Environmental Protection (DEP) has initiated a compliance assurance program targeting those projects where controls of this nature have been specified.

Act 2 and the Chapter 250 regulations provide remediators the opportunity to apply engineering and/or institutional controls to meet the site specific standard or special industrial area requirements. Further, deed acknowledgement requirements referenced in both the Hazardous Site Cleanup Act (HSCA) and the Solid Waste Management Act are required upon property conveyance for cleanups attaining either the nonresidential statewide health and site specific standards, and special industrial area provisions. To facilitate remediator compliance with these requirements, DEP has drafted model language for both deed acknowledgements (notices) and deed restrictions specifying property use limitations.

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### **Model Language for Deed Acknowledgement/Notices**

#### **Act 2 Notice**

Pursuant to Section **[303(g)/304(m)/305(g) - specify one or the combination of the standards]** of the Pennsylvania Land Recycling and Environmental Remediation Standards Act (“Act 2”), 35 P.S. § 6026.30**[3(g)/4(m)/5(g) – specify the relevant sections]**, the Grantor hereby acknowledges that hazardous **[wastes/substances – specify one or both]** have been disposed of on the land described in the deed (“Land”). The surface area size and exact location of the disposed substances on the Land is as shown on the plan attached to the Pennsylvania Environmental Protection’s Act 2 **[Final Report approval letter and summary/Special Industrial Area agreement dated \_\_\_\_\_ - specify one or the other]**, attached hereto as Exhibit A. The types of hazardous **[wastes/substances – specify one or both as applicable]** disposed of on the Land were **[heavy metals/volatile organic compounds/semi-volatile compounds – specify the general description]**, including **[state compounds by name – identify compounds above the residential statewide health standards]**.

## Model Language for Deed Restriction

### **Act 2 Land Use Restrictions**

The Act 2 [Final Report approval letter and summary/Special Industrial Area Agreement – *specify one*] attached hereto as Exhibit A described various remediation measures that had been performed at the Land and demonstrated that site-specific pathway elimination for all contamination in [groundwater/soils – *specify one or both*] at the Land has been attained [where the Land is used - *use if SIA applied*]. Consistent with PADEP’s determinations set forth in Exhibit A, in accordance with the provision of Sections 30[3/4/5 – *state one or a combination*] of Act 2 (35 P.S. ‘6026.30[3/4/5 – *state one or a combination*], this conveyance is made and accepted subject to the following restrictions and covenants [*these provisions are not all inclusive, but are provided as examples of the most commonly specified use limitations. Choose all that apply, include other restrictions as needed to maintain the approved remedy*]: (1) the groundwater at and under the Land shall not be used for any drinking or agricultural purpose; (2) the Land shall be used solely for nonresidential purposes - *use this provision for the NR SHS and SIA or when a SSS numeric value is used*; and (3) the Grantee shall have a continuing duty to maintain the protective soil or fill cover, pavement caps and/or structures overlying contaminated soils on the Land identified in Exhibit A and shall not allow any excavations of an approved cap without prior written notice and a plan submitted to the Department of Environmental Protection (DEP) or successor with schedule of implementation setting forth worker health and safety requirements, access limitations during excavations and restoration of the cap or other alternatives that are approved by DEP in writing as described below.

In order to maintain the liability relief of Act 2 for areas of the Land subject to a protective cover identified in Exhibit A where the cover is breached or removed, remaining soils or other materials where such excavation or removal occurs (“Area”) shall either meet: (1) applicable statewide health standards or numeric based site specific standards approved by DEP in writing and all applicable federal, state and local laws, regulations and ordinances pertaining to the environment and occupational safety; or (2) be covered with materials that eliminate the pathway of exposure to the underlying contamination and is capable of physically supporting the intended use of the Area. Such alternative cover shall be placed on the Area within such period of time as set forth in the worker health and occupational safety plan developed with respect to such Area as approved by DEP. The alternative cover shall thereafter be maintained by the Land owner in good and proper repair.

All excavated materials removed from the Land shall be managed, transported and disposed of in compliance with all applicable federal, state and local laws, regulations and ordinances including, without

limitation, those pertaining to environmental protection and occupational safety (*use this provision when a cap is involved*), (4) excavation within the area identified on the Land within Exhibit A shall not extend below a depth of \_\_\_ feet from the land surface.]

Pursuant to Sections 30[3/4/5 – *state one or a combination*] of Act 2 (35 P.S. ‘ 6026.30[3/4/5 – *state one or a combination*]) and Exhibit A hereto, the above restrictions and covenants shall apply to and run with the Land, and no modification to these restrictions or covenants shall be made, except as authorized pursuant to Section 903 of Act 2 (35 P.S. ‘ 6026.903). This hazardous [**waste/substance – state one or a combination**] acknowledgement is required to be included in the description of the Land described in this deed for all future conveyances or transfers of the Land pursuant to [**Section 405 of the Solid Waste Management Act, 35 P.S. 6018.405/Section 512(b) of the Hazardous Sites Cleanup Act, 35 P.S. 6020.512(b) – state one or both as applicable**].