

Note: Pursuant to 310 CMR 40.1074(5), upon transfer of any interest in or a right to use the property or a portion thereof that is subject to this Notice of Activity and Use Limitation, the Notice of Activity and Use Limitation 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. Within 30 days of so incorporating the Notice of Activity and Use Limitation in a deed that is recorded or registered, a copy of such deed shall be submitted to the Department of Environmental Protection.

NOTICE OF ACTIVITY AND USE LIMITATION

42 U.S.C. § 9601, *et seq.*; 40 CFR Part 300; M.G.L. c. 21E, § 6; and 310 CMR 40.0000

*[Note: This Notice of Activity and Use Limitation has been recorded pursuant to 310 CMR 40.0111 as part of an institutional control for a site that is both a federal Superfund site, listed on the National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and a disposal site under M.G.L. c. 21E.]*

Superfund Site Name: Atlas Tack Corporation Superfund Site  
Site Location: Fairhaven, Massachusetts  
EPA Site Identification Number: MAD001026319  
MassDEP Release Tracking No.: 4-0000068

This Notice of Activity and Use Limitation (“Notice”) is made as of this 27th day of October, 2017, by Atlas Tack Corporation, together with its successors and assigns (collectively “Owner”). All capitalized terms used herein without definition shall have the meaning given to them in the Massachusetts Oil and Hazardous Materials Release, Prevention and Response Act, M.G.L. c. 21E, as amended (“Chapter 21E”) and the Massachusetts Contingency Plan, 310 CMR 40.0000, as amended (the “MCP”).

W I T N E S S E T H:

WHEREAS, Atlas Tack Corporation is the owner in fee simple of that certain parcel of land located in the Town of Fairhaven, Bristol County, Massachusetts, with the buildings and improvements thereon, pursuant to deeds recorded, respectively, with the Bristol County South Registry of Deeds in Book 217, Pages 246-253 on June 22, 1901, Book 504, Pages 55-57 on July 27, 1920, and Book 497, Pages 287-291 on May 4, 1920, said parcel of land more particularly bounded and described in Exhibit A attached hereto and made a part hereof (the “Property”);

WHEREAS, certain portions of the Property have been designated, respectively “Area A” and “Area B,” Area A and Area B together comprising the entirety of the Property, and each being more particularly bounded and described in Exhibit B;

WHEREAS, the Property, Area A and Area B is shown on a plan entitled "Plan of Property, Including Area A and Area B" ("Plan") recorded in the Bristol County South Registry of Deeds in Plan Book \_\_\_\_\_, Plan \_\_\_\_\_, a photo-reduced version of which is attached hereto as Exhibit C;

WHEREAS, the Owner is a Settling Party to a judicial consent decree with the United States ("Consent Decree"), pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, for the Atlas Tack Corporation Superfund Site, Atlas Tack Corp. v. Fairhaven, No. 01-10501WGY (lead case); United States v. Atlas Tack Corp., No. 03-11601WGY; U.S. v. Atlas Tack Corp., No. 04-11880WGY, under Section XIII of the Consent Decree, the Owner being obligated to establish and comply with Institutional Controls (as that term is defined in the Consent Decree) with respect to the Property;

WHEREAS, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and the National Contingency Plan, 40 CFR §§ 300.1, *et seq.* (the "NCP"), the United States Environmental Protection Agency, an agency established under the laws of the United States ("EPA"), having its New England regional office at Five Post Office Square, Boston, Massachusetts 02109 ("Region 1"), placed land containing the Property on the National Priorities List, set forth at 40.C.F.R. Part 300, Appendix B, by publication in the Federal Register on February 21, 1990, 55 Fed. Reg. 6154-6176, due to a release of hazardous substances, as that term is defined by the Section 104 of CERCLA, 42 U.S.C. § 9604 ("Hazardous Substances"), such land being a federal Superfund Site known as the Atlas Tack Corporation Superfund Site ("Superfund Site");

WHEREAS, pursuant to Chapter 21E and the MCP, the Massachusetts Department of Environmental Protection, an agency established under the laws of the Commonwealth of Massachusetts, having its principal office at One Winter Street, Boston, Massachusetts 02108 ("MassDEP"), assigned to releases of oil and/or hazardous materials occurring at, from or onto the Property MassDEP Release Tracking Number 4-0000068, and all places where such oil and/or hazardous materials have come to be located are a disposal site under Chapter 21E and the MCP (the "Disposal Site");

WHEREAS, in a document entitled, "Record of Decision, Atlas Tack Corporation Superfund Site," dated March 10, 2000, and as modified in a document entitled Explanation of Significant Differences, Atlas Tack Corporation Superfund Site Fairhaven, Massachusetts, dated September 16, 2009 (collectively, the "ROD"), said ROD being on file at the EPA Region I Record Center located at Five Post Office Square, Boston, Massachusetts ("EPA Region 1 Record Center"), EPA, with the concurrence of MassDEP, as evidenced by a letter of concurrence, from Deirdre C. Menoyo, Assistant Commissioner, Bureau of Waste Site Cleanup, Massachusetts Department of Environmental Protection, to Patricia Meaney, Director, Office of Site Remediation, EPA Region 1, dated March 9, 2000, has selected one or more response actions (collectively, the "Selected Remedy") for the Superfund Site in accordance with CERCLA and the NCP;

WHEREAS, the Selected Remedy is based, in part, upon the restriction of human access to and contact with Hazardous Substances in soil, sediment, and/or groundwater and the restriction of certain uses and activities occurring in, on, through, over or under the Property;

WHEREAS, in a document entitled "IC Design Statement," dated January 9, 2017 (the "IC Design Statement"), said IC Design Statement being attached hereto as Exhibit D, EPA approved a remedial design for land use restrictions and other institutional controls at the Superfund Site;

WHEREAS, the IC Design Statement contains a description of the basis for land use restrictions, and the release event(s) or site history that resulted in the contaminated media subject to this Notice, including (a) a statement that specifies why the Notice is necessary to the Selected Remedy; (b) a description of the release event(s) or site history that resulted in the contaminated media subject to the Notice (*i.e.*, date of the release(s), to the extent known, release volumes(s), and response actions taken to address the release(s)); (c) a description of the contaminated media (*i.e.*, media type(s) and approximate vertical and horizontal extent) subject to the Notice, (d) a statement of which activities and uses are consistent, and which are inconsistent, with maintaining the Selected Remedy, (e) a description of all other components of the institutional and land use controls at the Property;

WHEREAS, pursuant to 310 CMR 40.0111(1), MassDEP shall deem response actions at a disposal site subject to CERCLA adequately regulated for purposes of compliance with the MCP provided certain enumerated conditions are satisfied, including disposal sites subject to CERCLA with respect to which MassDEP has issued a letter of concurrence;

WHEREAS, pursuant to 310 CMR 40.0111, land use controls may be implemented at disposal sites deemed adequately regulated under CERCLA by means of a Notice of Activity and Use Limitation; and

WHEREAS, pursuant to 310 CMR 40.0111(10), disposal sites adequately regulated under CERCLA at which (a) remedial actions have been completed in accordance with the ROD for the site, (b) subsequent design, construction, and other pertinent plans have been approved by EPA, and (c) EPA has certified completion of the remedial action, will be considered to have achieved a Permanent Solution under M.G.L. c. 21E and the MCP for those hazardous substances subject to such remedial actions.

NOW, THEREFORE, notice is hereby given that the activity and use limitations required by the ROD and more particularly set forth in the IC Design Statement are as follows:

1. Activities and Uses Consistent with Maintaining the Selected Remedy.

- A. The following Activities and Uses, if they occur on Area A, are consistent with maintaining the Selected Remedy and, as such, may occur on Area A without compromising the Permanent Solution that has been achieved for the Site:

- i. Excavation, drilling or otherwise disturbing the soil in the top 24 inches below grade existing on the date of this Notice;
  - ii. Excavation, drilling or otherwise disturbing the soil below 24 inches below grade existing on the date of this Notice, provided such excavation, drilling or soil disturbance has been previously approved by MassDEP pursuant to a Excavation Approval in accordance with Paragraph 5, below;
  - iii. Commercial and industrial use, excluding daycare facilities;
  - iv. Recreational activity and recreational uses approved by MassDEP pursuant to Recreational Approval in accordance with Paragraph 4, below;
  - v. Placement of surface materials including, but not limited to, paving, and placement of barriers of stone or concrete;
  - vi. Routine maintenance and repair of landscaped areas by an adult worker including, but not limited to, lawn mowing, seeding, mulching, weeding, or planting; and
  - vii. Such other activities and uses not identified in Paragraph 2.A, below, as being Activities and Uses inconsistent with maintaining the Selected Remedy.
- B. The following Activities and Uses, if they occur on Area B, are consistent with maintaining the Selected Remedy and, as such, may occur on Area B without compromising the Permanent Solution that has been achieved for the Site:
- i. Excavation, drilling or otherwise disturbing the soil, provided such excavation, drilling or soil disturbance has been previously approved by MassDEP pursuant to an Excavation Approval in accordance with Paragraph 5, below;
  - ii. Recreational activity and recreational uses approved by MassDEP pursuant to a Recreational Approval in accordance with Paragraph 4, below;
  - iii. Placement of surface materials including, but not limited to, paving, and placement of barriers of stone or concrete;
  - iv. Routine maintenance and repair of landscaped areas by an adult worker including, but not limited to, lawn mowing, seeding, mulching, weeding, or planting; and

- v. Such other activities and uses not identified in Paragraph 2.B, below, as being Activities and Uses inconsistent with maintaining the Selected Remedy.

2. Activities and Uses Inconsistent with Maintaining the Selected Remedy.

A. The following Activities and Uses, if they occur on Area A, are inconsistent with maintaining the Selected Remedy, and, as such, may not occur on Area A without compromising the Permanent Solution that has been achieved for the Site:

- i. Withdrawal, consumption, exposure or utilization of groundwater, for any purpose including potable, industrial, irrigation, or agricultural use except for activities associated with operation and maintenance or monitoring of the Selected Remedy;
- ii. Excavation, drilling or otherwise disturbing the soil below 24 inches below grade existing on the date of this Notice for any purpose, except any excavations, drilling or soil disturbances approved by MassDEP pursuant to an Excavation Approval in accordance with Paragraph 5, below;
- iii. Cultivation of plants or crops for human consumption;
- iv. Residential use, or use as a school or childcare center;
- v. Recreational activity or recreational use not approved by MassDEP pursuant to Recreational Approval in accordance with Paragraph 4, below; and
- vi. Any activity or use that would interfere with, or would be reasonably likely to interfere with, the implementation, effectiveness, integrity, operation, or maintenance of the Selected Remedy, including, but not limited to the monitoring wells that are components of the Selected Remedy, to provide long-term environmental monitoring of on-site groundwater. Reference is made to the Plan, which provides information as to engineering detail and the location within the Property of certain of the foregoing components of the Selected Remedy.

B. The following Activities and Uses, if they occur on Area B, are inconsistent with maintaining the Selected Remedy, and, as such, may not occur on Area B without compromising the Permanent Solution that has been achieved for the Site:

- i. Withdrawal, consumption, exposure or utilization of groundwater, for any purpose including potable, industrial, irrigation, or agricultural use except for activities associated with operation and maintenance or monitoring of the Selected Remedy;

- ii. Excavation, drilling or otherwise disturbing the soil, for any purpose, except any excavations, drilling or soil disturbances approved by MassDEP pursuant to a Excavation Approval in accordance with Paragraph 5, below;
  - iii. Cultivation of plants or crops for human consumption;
  - iv. Residential use, commercial, or industrial activity, including use as a school or childcare center;
  - v. Recreational activity or recreational use not approved by MassDEP pursuant to Recreational Approval in accordance with Paragraph 4, below; and
  - vi. Any activity or use that would interfere with, or would be reasonably likely to interfere with, the implementation, effectiveness, integrity, operation, or maintenance of the Selected Remedy, including, but not limited to the monitoring wells that are components of the Selected Remedy, to provide long-term environmental monitoring of on-site groundwater. Reference is made to the Plan, which provides information as to engineering detail and the location within the Property of certain of the foregoing components of the Selected Remedy.
3. Obligations and Conditions. The following obligations and/or conditions are necessary and shall be undertaken at the Property to maintain the Selected Remedy and to avoid compromising the Permanent Solution that has been achieved for the Site:
- A. Compliance by the Owner with all applicable laws, rules, and regulations regarding soil management and disposition; and
  - B. Submission by the Owner of an annual compliance letter to EPA and MassDEP, no later than June 1 of each calendar year, which shall (a) describe generally the permitted activities and uses that have occurred on the Property during the past calendar year and (b) certify that all activities and uses that have occurred at the Property in the previous year are consistent with this Notice and with any approvals or plans issued or prepared in connection with this Notice, such certification to include any supporting information upon which such certifications are based.
4. Recreational Approval. Any approvals of recreational uses or recreational activities within the Area A or Area B issued in connection with this Notice (“Recreational Approvals”) shall be obtained as follows:
- A. Submittal of Request for Recreational Approval. Owner shall submit to MassDEP, with a copy to EPA, a written request for approval of a recreational use or activity within Area A or Area B (“Request for Recreational Approval”). The

Request for Recreational Approval shall be submitted to MassDEP and EPA at least thirty (30) days in advance of the proposed date for the commencement of such use or activity, and shall be prepared and signed by a qualified hazardous waste site cleanup professional, such as a "Licensed Site Professional" or "LSP" as defined in the MCP at 310 CMR 40.0006(12) ("Qualified Professional").

- B. Contents of Request for Recreational Approval. The Request for Recreational Approval shall include a detailed description of the proposed recreational use or recreational activity, and any risk assessments and other plans necessary in order to show that the proposed recreational use or activity will (1) not result in an unacceptable risk to human health and the environment; and (2) not disturb or interfere with, or be reasonably likely to disturb or interfere with, the implementation, operation or maintenance of the Selected Remedy (collectively, the "Recreational Performance Standards").
  - C. Additional Materials. At any point after a Request for Recreational Approval is submitted to MassDEP, and prior to any approval (including any presumptive approval) or denial thereof, MassDEP may request the submittal of such additional materials that MassDEP deems necessary to ensure that the Recreational Performance Standards are met (collectively, "Additional Recreational Materials").
  - D. Approval or Denial. MassDEP, in consultation with EPA, may (1) approve, with or without conditions, the Request for Recreational Approval, as supplemented with any Additional Recreational Materials, pursuant to a Recreational Approval, or (2) deny the Request for Recreational Approval. Unless within thirty (30) days after MassDEP receives the Request for Recreational Approval MassDEP requests Additional Recreational Materials, denies the Request for Recreational Approval, or otherwise notifies Owner that no presumptive approval may be inferred, then the Request for Recreational Approval shall be presumptively approved on the thirtieth (30<sup>th</sup>) day after receipt by MassDEP of the Request for Recreational Approval.
5. Excavation Approval. Any approvals of excavations, drilling or soil disturbances within Area A or Area B issued in connection with this Notice ("Excavation Approvals") shall be obtained as follows:
- A. Submittal of Excavation Request. Owner shall submit to MassDEP, with a copy to EPA, a written request to excavate, drill or disturb the soil within Area A or Area B ("Excavation Request"). The Excavation Request shall be prepared and signed by a Qualified Professional.
  - B. Contents of Excavation Request. The Excavation Request shall include a detailed explanation and map of the proposed excavation, drilling or soil disturbance, a performance schedule, and all health and safety plans, soil management plans and any other plans necessary to show that the proposed excavation or disturbance

will (1) not result in an unacceptable risk to human health and the environment; (2) not disturb or interfere with, or be reasonably likely to disturb or interfere with, the implementation, operation or maintenance of the Selected Remedy, including by ensuring that all components of the Selected Remedy, including without limitation all caps and covers, are restored after the proposed excavation, drilling or soil disturbance to a condition that meets the standards established under the ROD; (3) ensure that soils from the top 24 inches of excavated soil are, at all times during the proposed excavation, drilling or soil disturbance, segregated from soil excavated from below 24 inches of the surface; (4) ensure that any soils removed from Area A or Area B are either replaced at the same location from which they were removed or analyzed, below the applicable depth interval, or managed and disposed of off-Property in accordance with all applicable federal and state laws and regulations; (5) ensure that following any disturbance to the soil cover, the soil cover shall be restored to the previously existing grade thereby ensuring a minimum cover depth of 24 inches; and (6) ensure protection of worker safety and health and the proper and safe management of groundwater and contaminated soils and sediments (collectively, the "Excavation Performance Standards").

- C. Additional Materials. At any point after an Excavation Request is submitted to MassDEP, and prior to any approval or denial thereof, MassDEP may request the submittal of such additional materials that MassDEP deems necessary to ensure that the Excavation Performance Standards are met (collectively, "Additional Excavation Materials").
  - D. Approval or Denial. MassDEP, in consultation with EPA, may (1) approve, with or without conditions, the Excavation Request, as supplemented with any Additional Excavation Materials, pursuant to an Excavation Approval, or (2) deny the Excavation Request.
  - E. Expiration of Excavation Approvals. Except as otherwise extended by MassDEP, in consultation with EPA, all Excavation Approvals shall expire one hundred eighty (180) days after the issuance thereof, unless the activities described therein are substantially commenced on the field within such time.
  - F. Certification of Completion. No activities shall be deemed to have been conducted in accordance with an Excavation Approval thirty (30) days after the substantial completion or cessation of such activities unless within such time a Qualified Professional submits to MassDEP, with a copy to EPA, a written statement certifying that all requirements of the Excavation Approval have been satisfied.
6. Emergency Excavation. If it becomes necessary to excavate within Area A or Area B as part of a response to an emergency (for example, repairing utility lines or responding to a fire or flood), the provisions of Paragraph 2 of this Notice shall be suspended with respect

to such excavation to the extent necessary to permit such response, provided that the Owner:

- A. orally notifies the following persons of such emergency as soon as possible but no later than two (2) hours after having learned of such emergency:
  - i. EPA National Response Center at (800) 424-8802;
  - ii. EPA Region 1, Office of Site Remediation and Restoration, Emergency Planning and Response Branch at (617) 918-1236;
  - iii. MassDEP Emergency Response at (888) 304-1133; and
  - iv. MassDEP Regional Office of Emergency Response Section at (508) 946-2700;

or such other persons as MassDEP and EPA, respectively, may identify in writing, from time to time, to Owner for such oral emergency response notifications;

- B. notifies MassDEP and EPA in writing of such emergency no later than five (5) days after having learned of such emergency, such notifications to be sent to the following addresses:
  - i. Project Manager for  
Atlas Tack Corporation Superfund Site  
MassDEP – BWSC  
1 Winter Street  
Boston, MA 02108; and
  - ii. Remedial Project Manager for  
Atlas Tack Corporation Superfund Site  
EPA Region 1, Office of Site Remediation and Restoration  
5 Post Office Square., Suite 100  
Boston, MA 02119;

or to such addresses as MassDEP and EPA, respectively, may identify in writing, from time to time, to Owner for such written emergency response notifications;

- C. limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency;
- D. implements all measures necessary to limit actual or potential risk to the public health and environment;

- E. engages a Qualified Professional to oversee the implementation of this Paragraph, and to prepare and oversee the implementation of a written plan (“Emergency Restoration Plan”) that will restore the Property to a condition that meets or exceeds the performance standards established under the ROD for the Selected Remedy and that is consistent with this Notice, and to review and evaluate response actions contained in the Emergency Restoration Plan to ensure minimal disturbance of any contaminated soils and sediments; and
- F. performs all actions laid out in the Emergency Restoration Plan within thirty (30) days of the occurrence of the emergency or within such other time period as may be approved by MassDEP and EPA in writing, and submit a copy of the Emergency Restoration Plan to MassDEP and EPA within ten (10) days of its performance, with a statement from the cleanup professional confirming that the Property has been restored to the standard described above.
7. Proposed Changes in Activities and Uses; Amendments. Pursuant to 310 CMR 40.0111(8)(c), the Owner must notify and obtain approval from EPA and MassDEP of any proposed change in activities and uses at the Property that is not provided for in this Notice. Pursuant to 310 CMR 40.0111(8)(d), the Owner must obtain EPA and MassDEP approval of any Amendment or Termination of this Notice. All EPA and MassDEP approvals of any Amendment or Termination of this Notice must be in writing and be recorded and/or registered with the appropriate Registry(ies) of Deeds and/or Land Registration Office(s) to be effective.
8. Notices. Unless provided otherwise, any notices of letters required by this Notice of Activity and Use Limitation shall be sent to the following addresses:
- As to MassDEP:
- Project Manager for  
Atlas Tack Corporation Superfund Site  
MassDEP – BWSC  
1 Winter Street  
Boston, MA 02108; and
- As to EPA:
- Remedial Project Manager for  
Atlas Tack Corporation Superfund Site  
EPA Region 1, Office of Site Remediation and Restoration  
5 Post Office Square., Suite 100  
Boston, MA 02119;
9. Violations. The activities, uses and/or exposures upon which this Notice is based must not change at any time to (a) cause risks that are not protective of human health or the environment, pursuant to the criteria set forth in the NCP at 40 CFR 300.430(e)(2)(i), (b)

interfere with the Selected Remedy, or (c) cause a significant risk of harm to health, safety, public welfare, or the environment pursuant to Chapter 21E and the MCP.

Compliance with the terms and conditions of this Notice is subject to enforcement pursuant to Chapter 21E, the MCP, M.G.L. c. 21A, § 16 and 310 CMR 5.00 and CERCLA and the NCP. Such enforcement may include, without limitation, enforcement with respect to (a) any activities or uses that may occur that are described in Paragraph 2 of this Notice as being inconsistent with the Selected Remedy, (b) any failure to undertake any obligations and conditions described in Paragraph 3 of this Notice as being necessary to maintain the Selected Remedy, and (c) any other failure to maintain the Selected Remedy or Permanent Solution resulting from a failure to act consistently with this Notice.

10. 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 in accordance with 310 CMR 40.1074(5).

11. Reservation of Rights

This instrument shall not limit or otherwise affect the right of EPA and/or MassDEP to obtain access to, or restrict the use of, the Property pursuant to CERCLA, Chapter 21E, or any other applicable statute or regulation.

This instrument shall not release the Owner or any other party from liability for releases of oil or hazardous substances or materials, nor shall this instrument excuse the Owner or any other party from complying with CERCLA, Chapter 21E, or any other applicable federal, state or local laws, regulations, or ordinances or by-laws.

Owner hereby authorizes and consents to the filing and recordation and/or registration of this Notice, said Notice to become effective when recorded and/or registered with the appropriate Registry(ies) of Deeds and/or Land Registration Office(s).

WITNESS the execution hereof under seal this 27<sup>th</sup> day of October 2017.

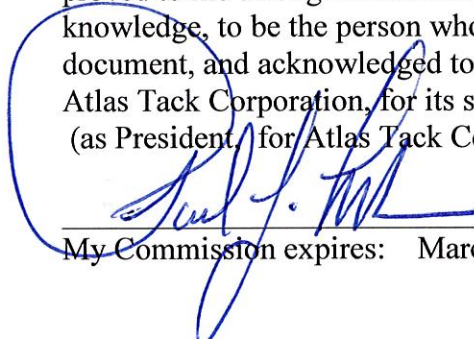
M. Leonard Lewis, as President of Atlas Tack and not  
Name: M. Leonard Lewis *individually*  
As President of Atlas Tack Corporation and not individually  
Title *and not individually*

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

On this 27th day of October, 2017, before me, the undersigned notary public, personally appeared M. Leonard Lewis, President of Atlas Tack Corporation, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily, as President of Atlas Tack Corporation, for its stated purpose.

(as President for Atlas Tack Corporation, a corporation)

 (official signature and seal of notary)

My Commission expires: March 26, 2021

List of Exhibits:

Exhibit A: Legal Description of the Property

Exhibit B: Legal Description of Area A and Area B

Exhibit C: Plan of Property, Including Area A and Area B

Exhibit D: IC Design Statement

Return to:

Kimberly White

Remedial Project Manager for

Atlas Tack Corporation Superfund Site

EPA Region 1, Office of Site Remediation and Restoration

5 Post Office Sq., Suite 100, OSRR07-01

Boston, MA 02119

In accordance with CERCLA, 42 U.S.C. § 9601, *et seq.*, and the National Contingency Plan, the United States Environmental Protection Agency, Region I, hereby approves this Notice of Activity and Use Limitation.

Date: 11/1/17

A handwritten signature in blue ink, appearing to be 'A. J. ...', written over a horizontal line.

Name  
Director, Office of Site Remediation and Restoration  
U.S. Environmental Protection Agency  
Region 1

In accordance with M.G.L. c. 21E, § 6, and the Massachusetts Contingency Plan (310 CMR 40.0000), the Department of Environmental Protection hereby approves this Notice of Activity and Use Limitation (as to form only).

Date: 11/8/2017



Name **Paul Locke**  
Assistant Commissioner  
Department of Environmental Protection

Exhibit A

The area of land in the Town of Fairhaven,

Beginning at a stone bound at the Northeast corner of Church Street and Pleasant Street;

thence N 07°54'33" W a distance of 475.41', by Pleasant Street, to a corner;

thence N 71°46'00" E a distance of 935.40' by the Southerly line of the former railroad, now or formerly of the Town of Fairhaven, to a point;

thence N 71°46'00" E a distance of 402.30' by the Southerly line of the former railroad, now or formerly of the Town of Fairhaven, to a corner;

thence S 35°35'35" E a distance of 161.31' to a point;

thence Easterly and Southerly by the thread of Boy's Creek 562' ± to a lot corner;

thence S 52°29'01" W a distance of 330.23' to a lot corner;

thence N 43°26'33" W a distance of 21.17' to a point;

thence N 39°45'50" W a distance of 72.29' to a [point];

thence N 30°10'15" W a distance of 131.17' to a lot corner;

thence S 70°54'45" W a distance of 306.43' to a point;

thence S 70°45'45" W a distance of 782.36' to a corner;

thence S 51°18'50" W a distance of 114.66' to a corner;

thence S 79°30'56" W a distance of 111.97', by Church Street, to a stone bound;

which is the point of beginning,

having an area of 718,899.2 square feet or 16.53 acres

**Exhibit B**

AREA A

The area of land in the Town of Fairhaven,

Beginning at a stone bound at the Northeast corner of Church Street and Pleasant Street;

thence N 07°54'33" W a distance of 475.41', by Pleasant Street, to a corner;

thence N 71°46'00" E a distance of 935.40' by the Southerly line of the former railroad, now or formerly of the Town of Fairhaven, to a corner;

thence S 40°40'16" E a distance of 17.74' to a corner;

thence N 73°35'40" E a distance of 72.47' to a corner;

thence S 09°51'53" E a distance of 19.96' to a corner;

thence S 08°30'47" E a distance of 229.26' to a corner;

thence S 08°38'03" E a distance of 127.55' to a corner;

thence S 22°50'07" W a distance of 23.79' to a corner;

thence S 26°27'03" W a distance of 29.41' to a corner;

thence S 70°45'45" W a distance of 782.36' to a corner;

thence S 51°18'50" W a distance of 114.66' to a corner;

thence S 79°30'56" W a distance of 111.97', by Church Street, to a stone bound;

which is the point of beginning,

having an area of 449,968.3 square feet or 10.330 acres

**Exhibit B**

AREA: B

The land in the Town of Fairhaven,

Beginning at a point 422.24' Southwesterly from the intersection of Westerly line of Hyland Street and Southeasterly line of the former railroad, now or formerly the Town of Fairhaven;

thence S 71°46'00" W a distance of 402.30' by said land now or formerly of the Town of Fairhaven, to a point;

thence S 40°40'16" E a distance of 17.74' by Area A to a point;

thence N 73°35'40" E a distance of 72.47' by Area A to a point;

thence S 09°51'53" E a distance of 19.96' by Area A to a point;

thence S 08°30'47" E a distance of 229.26' by Area A to a point;

thence S 08°38'03" E a distance of 127.55' by Area A to a point;

thence S 22°50'07" W a distance of 23.79' by Area A to a point;

thence S 26°27'03" W a distance of 29.41' by Area A to a point;

thence N 70°54'45" E a distance of 306.43' to a lot corner;

thence S 30°10'15" E a distance of 131.17' to a lot corner;

thence S 39°45'50" E a distance of 72.29' to a lot corner;

thence S 43°26'33" E a distance of 21.17' to a lot corner;

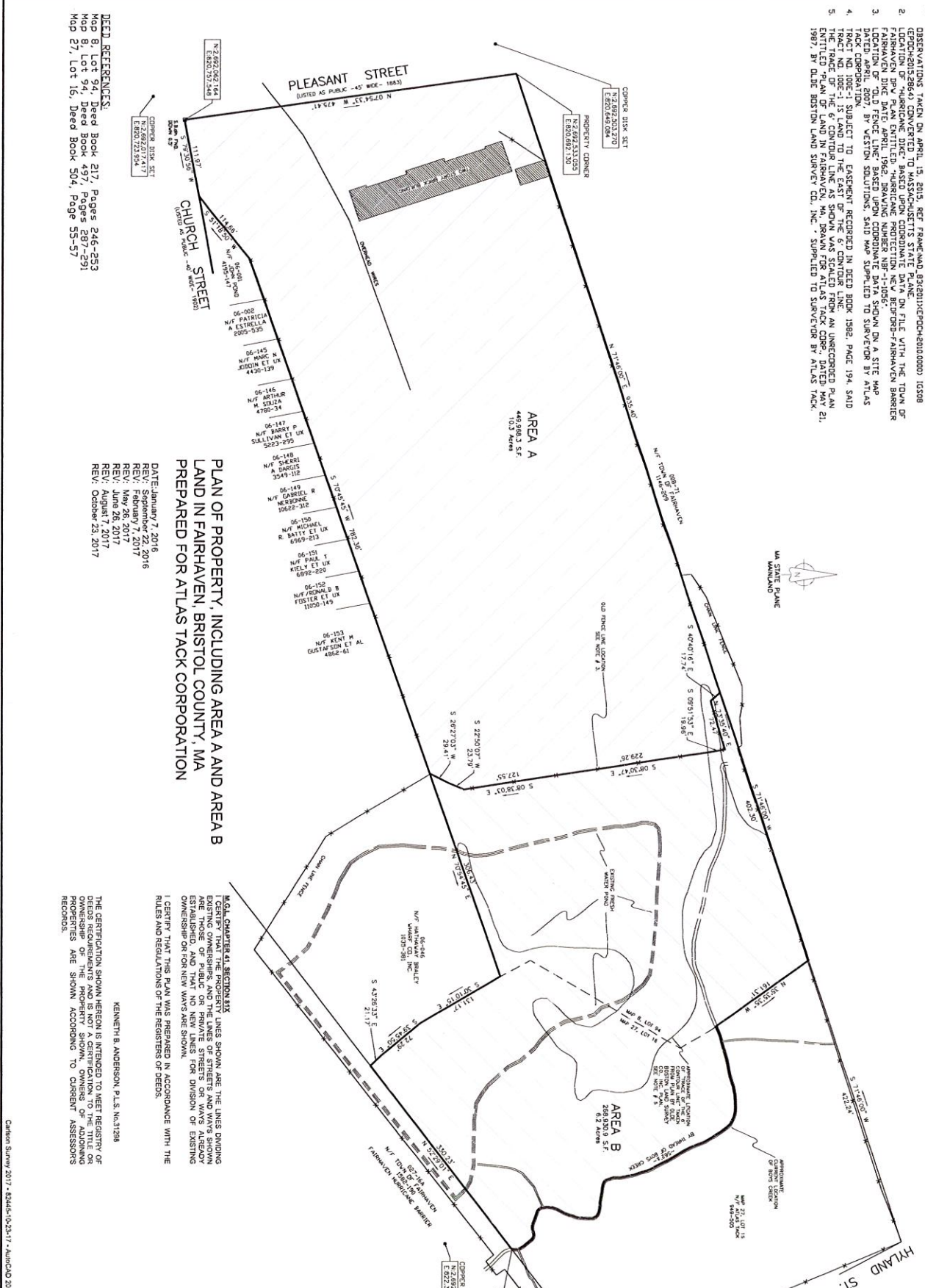
thence N 52°29'01" E a distance of 330.23' to a lot corner;

thence Northerly and Westerly by the thread of Boy's Creek 562' ± to a lot corner;

thence N 35°35'35" W a distance of 161.31' to a lot corner;

which is the point of beginning, having an area of 268,930.9 square feet, or 6.2 acres

- PLAN NOTES:**
1. BEARINGS AND COORDINATES SHOWN ARE BASED UPON AN OPUS SOLUTION OF GPS OBSERVATIONS TAKEN ON FEBRUARY 13, 2016, AND THE PLAN IS BASED ON THE DATUM OF 1983.
  2. LOCATION OF "MARIANNE DRIVE" BASED UPON COORDINATE DATA ON FILE WITH THE TOWN OF FAIRHAVEN BY PLAN ENTITLED "MARIANNE PROTECTION NEW RECORD-FAIRHAVEN BARRIER ROADWAY" DATED APRIL 1982, PLAN NUMBER 194-5A1D.
  3. LOCATION OF "MARIANNE DRIVE" BASED UPON COORDINATE DATA ON FILE WITH THE TOWN OF FAIRHAVEN BY PLAN ENTITLED "MARIANNE PROTECTION NEW RECORD-FAIRHAVEN BARRIER ROADWAY" DATED APRIL 2007, BY WESTON SOLUTIONS, SAID MAP SUPPLIED TO SURVEYOR BY ATLAS TACK CORPORATION.
  4. TRACT NO. 100E-1 SUBJECT TO EASEMENT RECORDED IN DEED BOOK 1982, PAGE 194, SAID TRACT NO. 100E-1 CONTAINS THE SUBJECT PROPERTY.
  5. THE TRACE OF THE "G" CONTOUR LINE AS SHOWN WAS SCALED FROM AN UNRECORDED PLAN ENTITLED "PLAN OF LAND IN FAIRHAVEN, MA, DRAWN FOR ATLAS TACK CORP.", DATED MAY 21, 1987, BY OLIVE BOSTON LAND SURVEY CO., INC., SUPPLIED TO SURVEYOR BY ATLAS TACK.



**PLAN OF PROPERTY, INCLUDING AREA A AND AREA B  
LAND IN FAIRHAVEN, BRISTOL COUNTY, MA  
PREPARED FOR ATLAS TACK CORPORATION**

DATE: January 7, 2016  
 REV: February 7, 2017  
 REV: May 26, 2017  
 REV: August 7, 2017  
 REV: October 23, 2017

MARSHALL B. ANDERSON, P.L.L.C.  
 800 HIGH STREET  
 FAIRHAVEN, MA 02724

DEED REFERENCES:  
 MAP 8, Lot 94, Deed Book 217, Pages 246-253  
 MAP 8, Lot 94, Deed Book 457, Pages 287-291  
 MAP 27, Lot 16, Deed Book 504, Pages 55-57

THE CERTIFICATION SHOWN HEREON IS INTENDED TO MEET REGISTRY OF DEEDS REQUIREMENTS AND IS NOT A CERTIFICATION TO THE TITLE OR OWNERSHIP OF THE PROPERTY SHOWN. OWNERS OF ADJOINING PROPERTIES ARE SHOWN ACCORDING TO CURRENT ASSESSORS RECORDS.

KENNETH B. ANDERSON, P.L.L.C. No. 21298

RESERVED FOR REGISTRY OF DEEDS

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**ANDERSON SURVEYS, INC.**  
 Professional Land Surveyors  
 800 HIGH STREET  
 FAIRHAVEN, MA 02724-0149  
 (781) 293-3249  
 anderson@vps.com

SCALE: 1" = 60'

0 60 120 180



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**New England Region**  
**Five Post Office Square -- Suite 100**  
**Boston, Massachusetts 02109-3912**

INSTITUTIONAL CONTROL DESIGN STATEMENT

1. Introduction

Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq., ("CERCLA") and the National Contingency Plan, 40 CFR Part 300 (the "NCP"), this document contains a description of the basis for land use restrictions, the release event(s) or site history that resulted in the contaminated media that require institutional controls in the form of Activity and Use Limitations, and uses that are consistent and inconsistent with Selected Remedy (as described below).

A Notice of Activity and Use Limitation is necessary and appropriate at the Atlas Tack Corporation Superfund Site located in Fairhaven, Massachusetts ("Site"), a site listed on EPA's National Priorities List ("NPL"), based on the fact that contaminants remain in place at levels higher than those appropriate for unlimited use or unrestricted exposure; groundwater underlying the Site contains hazardous substances at levels that present an unacceptable risk of exposure; and certain remedial measures constructed at the Site must be protected and maintained to ensure that the Selected Remedy remains protective.

EPA's Record of Decision dated March 2000, specified the need for Institutional Controls to ensure long-term performance and protectiveness of the Selected Remedy. Accordingly, the Institutional Controls described herein are necessary and appropriate to ensure that the Selected Remedy for the Site remains protective of human health and the environment. The remedy for the Site as described in the ROD and in any ROD Amendments or Explanation of Significant Differences is referred to herein and in the Notice as the "Selected Remedy."

2. Site History/Background

The Site is located at 83 Pleasant Street in Fairhaven, Bristol County, Massachusetts. The Site is approximately 48 acres and is located about 0.5 mile from Fairhaven Center in a predominantly residential area. It is bounded by a bicycle path, residences and a few commercial/light industrial businesses to the north, a tidal marsh to the east and south, a former elementary school about 200 feet to the northwest, and residences immediately to the south. The Site includes property owned by the Atlas Tack Corporation ("Atlas Tack"), a property at the end of Church Street owned by the Hathaway-Braleley Wharf Company, Inc. ("Hathaway-Braleley"), and portions of Boys Creek and the adjacent saltwater tidal marsh extending to Buzzards Bay. A hurricane dike (also referred to as "barrier"), built in the early 1960s, runs northeasterly through the marsh area of the Site.

The former Atlas Tack facility was built in 1901 and manufactured cut and wire tacks, steel nails, and similar items until approximately 1985. From the 1940s until some point in the late 1970s or 1980s, process waste containing acids, metals such as copper and nickel and solvents were discharged into drains in the floor of the main building and into an on-site, unlined acid neutralizing lagoon. Waste containing cyanide and heavy metals were also discharged into the lagoon, which was located approximately 200 feet east of the manufacturing building and adjacent to a saltwater tidal marsh in Buzzards Bay Estuary. The lagoon effluent discharged to the salt marsh and Boys Creek. Some chemicals utilized in the facility permeated the floors and timbers of the building and migrated to adjacent soils and groundwater.

Approximately 8,500 cubic yards of industrial fill was deposited on top of the original marsh surface to the east of the Atlas Tack buildings. A disposal area (designated in EPA Site reports as the Commercial and Industrial Debris or CID Area), located on the Hathaway-Braleley property, may also have received wastes from Atlas Tack and other sources. The CID contained approximately 3,000 to 4,000 cubic yards of material.

In February 1990, the Site was placed on the National Priorities List and a Remedial Investigation/Feasibility Study was completed in 1998. For the purposes of the remedial investigation, the Site was divided into the Commercial Area, various Non-Commercial Areas (Solid Waste and Debris, Marsh, and Creek Bed Area), and Groundwater. The Commercial Area, and Solid Waste and Debris Area contained the majority of the contamination at the Site. The contaminants migrated into the Marsh and Creek Bed Area.

#### **Affected Media**

The following summarizes the affected media and contaminants of concern prior to EPA's implementation of the Selected Remedy:

##### Soil

*Commercial Area:* This area included both the soils surrounding the Atlas Tack building and sludges and waste areas inside and formerly inside the building. Contaminants identified in these areas were metals (including arsenic, beryllium, cadmium, chromium, copper, lead, nickel, and zinc), cyanide, volatile organic compounds (VOCs, primarily toluene), semi-volatile organic compounds (SVOCs, primarily polycyclic aromatic hydrocarbons [PAHs]), and polychlorinated biphenyls (PCBs) (Arochlor 1260). Rainfall caused the leaching of the Site contaminants into the groundwater resulting in their eventual migration to the marsh and Boys Creek. Surface water runoff was also a means of migration of contaminants from the Commercial Area to other areas on and off the Site. Additionally, some of the contaminants leached from the soils located below the groundwater table.

*Solid Waste and Debris Area:* This area included the Fill Area, Former Lagoon Area, and Commercial and Industrial Debris Area at the eastern end of Church Street. Contaminants identified in these areas were metals (including antimony, copper, lead, and zinc), cyanide, VOCs, PAHs, PCBs, and pesticides. The contamination in this area migrated via groundwater and surface water runoff to Boys Creek and Marsh Areas, and eventually off the Site into Buzzards Bay.

*Marsh Area:* Contaminants identified in this area were metals (including cadmium, copper, and zinc), cyanide, and VOCs. The contaminant concentrations in the marsh near the source area (Solid Waste and Debris Area) were as much as an order of magnitude higher than the contaminant concentrations outside the hurricane barrier. The contamination in this marsh (and marshes in general) were adsorbed by the marsh soils and/or vegetation. Also, the hurricane barrier limited surface water flow into this marsh and the flushing out of this marsh.

#### Groundwater

Contaminants identified in the groundwater were metals (including beryllium, cadmium, copper, lead, nickel, and zinc), cyanide, and VOCs. Groundwater below the Site exceeded Ambient Water Quality Criteria (AWQC) [now the National Recommended Water Quality Criteria (NRWQC)] for cadmium, copper, lead, mercury, nickel, zinc, and cyanide. Contaminated groundwater flows from under the Site in a northeasterly direction and discharges into the marsh and Boys Creek.

#### Surface Water

The surface water bodies at the Site include the main channel and tributaries of Boys Creek. AWQC were exceeded in these water bodies for the following metals: arsenic, cadmium, copper, lead, nickel, silver, and zinc; and cyanide. Contaminated groundwater and rainfall runoff from the upland portion of the Site is a significant source of this contamination. The water in Boys Creek flows into Buzzards Bay.

#### Sediment

The contaminated sediments at the Site were located in the main channel and tributaries of Boys Creek. These are collectively referred to as the Creek Bed Area. Contaminants identified in this area were metals (arsenic, cadmium, copper, nickel, and zinc); cyanide; and pesticides. Contaminants that reached the Creek Bed Area via groundwater or rain runoff were either absorbed by the sediments or migrated into the surface water.

#### Biota

The Site shellfish and fish were found to contain metals, SVOCs, and pesticides in concentrations greater than those found in the shellfish and fish at the background location on West Island in Fairhaven. Samples of sediment in the marsh and Boys Creek showed elevated concentrations of cadmium, copper, lead, nickel, zinc, and pesticides (dichloro-diphenyl-trichloroethane [DDT] and Dichlorodiphenyldichloroethylene [DDE]) as compared to background concentrations.

### **Overall Risk Assessment Conclusion Prior to Remediation**

Results of the baseline human health risk assessment identified concentrations of arsenic, polyaromatic hydrocarbons (PAHs), polychlorinated biphenyls, (PCBs), and lead in soils and sediments in the commercial area and Boys Creek that are present at levels which represent unacceptable carcinogenic and non-carcinogenic risks. Given the anticipated future use of the Site, commercial/industrial use, worker exposure to contaminated soil in the Commercial Area was considered the principal human health threat at the Site. Human health risks were also posed by ingestion of contaminated shellfish from Boys Creek.

Results of the baseline ecological risk assessment identified concentrations of copper, lead, mercury, nickel, silver, zinc and cyanide in surface waters throughout the site that frequently exceeded unacceptable risk levels. The risk to aquatic organisms in the surface waters and associated wetlands from exposure to these chemicals was of ecological concern. Concentrations of endosulfan sulfate, anthracene, DDT (total), cadmium, copper, cyanide, lead and zinc were identified as representing the greatest risk to the survival, reproduction and growth of the benthic community. The risk to the benthic community was confirmed by results from the sediment toxicity testing, which indicated an increase in mortality at locations north of the hurricane barrier where contaminants of concern were elevated. Through direct consumption of marsh vegetation and incidental ingestion, the meadow vole is potentially at risk from exposure to several compounds. The chemicals contributing the greatest risk were endosulfan II, endosulfan sulfate, iron, and lead. The exposure pathway responsible for risk to the black duck was the ingestion of benthic fauna and incidental sediment ingestion. Arsenic and cyanide were the major contaminants of concern contributing to the risk to the black duck and great blue heron, through the ingestion of contaminated fish.

Neither Boys Creek nor the groundwater beneath and in the vicinity of the site is currently or expected to be used for drinking water because the water is brackish due to its proximity to the ocean.

#### **Selected Remedy**

In March 2000, EPA issued a ROD that set forth the Selected Remedy at the Site. Surface soils, 0-2 feet in depth in the Commercial Area and sediments in Boys Creek was the focus of the remedial action necessary to protect human health, while soils, sediments, and groundwater throughout the Site was the focus of the remedial action necessary to protect invertebrates, fish, and wildlife. The major components of the selected remedy included:

- the excavation, treatment, and off-site disposal of approximately 55,000 cubic yards of contaminated soil, debris and sediment, demolition of contaminated buildings;
- marsh mitigation and restoration of the affected areas;
- monitored natural attenuation (MNA), with phytoremediation (planting of specific types of trees to lower the level of residually contaminated groundwater) as an enhancement component, was chosen to address the groundwater beneath the Site;
- long term (30 years) monitoring of soil, sediment, surface water and vegetation; and
- establishment of institutional controls

The ROD also required that a more extensive bioavailability study be implemented to determine the extent of sediment removal in the marsh area. Cleanup levels were developed based on the correlation between the level of contamination (principally metals) and associated toxicity data for each sampling location.

The Interim Groundwater Cleanup Levels (IGCLs) established in the ROD are ecologically based, four out of the five IGCL parameters (copper, nickel, zinc, and cyanide) are based on the NRWQC subject to a dilution factor. There is no NRWQC standard for toluene. Therefore, the

Massachusetts Contingency Plan (MCP), Upper Concentration Limit (UCL) for toluene was used.

An ESD was issued on September 16, 2009. The primary remedy changes were:

- Rather than restore the freshwater wetland and salt water marsh areas to the precise contours that existed in 1901, the area of saltwater marsh north of the hurricane dike was designed with a smaller footprint because the maximum tidal flow through the dike was believed to be insufficient to sustain a larger area of saltwater marsh.
- Elimination of the phytoremediation component of the remedy because EPA determined that lowering the groundwater table would not allow for enough groundwater flow into the freshwater wetland area, which would substantially frustrate a key feature in the design of the wetland, i.e., sustaining sufficient standing water to minimize the growth of the common reed (*Phragmites australis* or *Phragmites a.*), an invasive species.

### **Remedy Implementation**

Remedial cleanup activities were conducted in three phases from June 2005 – September 2007.

- Phase I, the Commercial Area Remediation, initiated in June 2005, included: demolition of the three-story manufacturing building, the power plant building and smokestack; demolition and excavation of the concrete slabs remaining from the previously demolished, former one-story building, and from other buildings demolished in this phase; and excavation and off-site disposal of contaminated soil, sludge and debris. 5,480 cy of contaminated soil and 775 cy of plating sludge (RCRA listed waste F009) were excavated and disposed of at appropriate off-site licensed landfills in Phase I. Following demolition and excavation, the area was backfilled and graded to facilitate proper site drainage. This phase was completed in March 2006.
- Phase II the Solid Waste and Debris Area Remediation, initiated in 2006, involved excavation and off-site disposal of 36,600 cy of contaminated soil and debris from the solid waste disposal (fill) areas on the Atlas Tack property and the Former Lagoon Area (east of the Commercial Area), and the Commercial and Industrial Debris Area located on the Hathaway-Braleley property. Most of the fill areas remediated in this phase were originally wetland. As the remedy called for these areas to be restored as wetland, restoration of this area, including final grading, occurred in conjunction with the marsh restoration activities during Phase III.
- Phase III, the Boys Creek Marsh and Boys Creek Remediation and Site Restoration, initiated in January 2007, entailed excavation of contaminated marsh sediment and creek bed sediment and restoration of the site. 36,430 cy marsh and creek bed sediment was removed. Site restoration activities included: installation of a security fence and boulder barricade; regrading, placement of loam, and seeding with a wildflower seed mix; planting of salt marsh vegetation; installation of coir fiber logs and biodegradable erosion control blankets along Boys Creek to prevent erosion; *Phragmites a.*, also known as common reed, growing near the restored area was controlled with herbicide to deter it from spreading into the restored area; and adjacent upland areas were planted with trees and shrubs, and were seeded with native plant seed mixes. Temporary fencing was installed to deter grazing on herbaceous plantings by waterfowl. The wetlands were

restored and included re-creation of a fresh and salt water wetland environment (approximately 5.5 acres).

All components of the remedy were performed in accordance with the plans and specifications approved by EPA.

### **Remaining Contamination**

Groundwater beneath and in the vicinity of the Site remains contaminated, but groundwater is not used as a drinking water supply and interim groundwater cleanup goals are ecologically based. Since 2007, concentrations of several contaminants of concern have been monitored under an established long-term groundwater monitoring (LTGM) plan associated with monitored natural attenuation and will continue until interim ecological clean up goals are attained.

Institutional controls (“ICs”) are required on the Atlas Tack property north of the hurricane dike to ensure that the remedy is protective of human health and the environment. Specifically, these are needed to prevent any future use of the groundwater at the Site for drinking water. Also, the ROD contemplated that ICs would include restricting the types of use and construction within portions of the Commercial Area to only commercial and industrial uses (i.e., no residential use). Institutional controls are required in the Non-Commercial Area to limit the use of that area to certain recreational uses consistent with the risk assessment and with the response actions conducted in that area.

Accordingly, because of the need for somewhat different controls in the Commercial Area and Non-Commercial Areas of the Site, for purposes of the ICs, this area of the Atlas Tack property has been designated as Area A and Area B, consistent with Appendix G of the consent decree with the United States (“Consent Decree”) between Atlas Tack (and others) and the United States, in the consolidated cases of Atlas Tack Corp. v. Fairhaven, No. 01-10501WGY (lead case); United States v. Atlas Tack Corp., No. 03-11601WGY; U.S. v. Atlas Tack Corp., No. 04-11880WGY.

### 3. Summary of Required Institutional Controls

#### a. Activities and Uses Consistent with Maintaining the Selected Remedy.

- i. The following Activities and Uses, if they occur on Area A, are consistent with maintaining the Selected Remedy and, as such, may occur on Area A without compromising the Permanent Solution that has been achieved for the Site:
  1. Excavation, drilling or otherwise disturbing the soil in the top 24 inches below grade existing on the date of the Notice;
  2. Excavation, drilling or otherwise disturbing the soil below 24 inches below grade existing on the date of the Notice, provided such excavation, drilling or soil disturbance has been previously approved by MassDEP pursuant to the Notice;

3. Commercial and industrial use, excluding daycare facilities;
  4. Recreational activity and recreational uses that have been previously approved by MassDEP pursuant to the Notice;
  5. Placement of surface materials including, but not limited to, paving, and placement of barriers of stone or concrete;
  6. Routine maintenance and repair of landscaped areas by an adult worker including, but not limited to, lawn mowing, seeding, mulching, weeding, or planting; and
  7. Such other activities and uses not identified as being activities and uses inconsistent with maintaining the Selected Remedy.
- ii. The following Activities and Uses, if they occur on Area B, are consistent with maintaining the Selected Remedy and, as such, may occur on Area B without compromising the Permanent Solution that has been achieved for the Site:
1. Excavation, drilling or otherwise disturbing the soil, provided such excavation, drilling or soil disturbance has been previously approved by MassDEP pursuant to the Notice;
  2. Recreational activity and recreational uses that have been previously approved by MassDEP pursuant to the Notice;
  3. Placement of surface materials including, but not limited to, paving, and placement of barriers of stone or concrete;
  4. Routine maintenance and repair of landscaped areas by an adult worker including, but not limited to, lawn mowing, seeding, mulching, weeding, or planting; and
  5. Such other activities and uses not identified as being activities and uses inconsistent with maintaining the Selected Remedy.
- b. Activities and Uses Inconsistent with Maintaining the Selected Remedy.
- i. The following Activities and Uses, if they occur on Area A, are inconsistent with maintaining the Selected Remedy, and, as such, may not occur on Area A without compromising the Permanent Solution that has been achieved for the Site:
1. Withdrawal, consumption, exposure or utilization of groundwater, for any purpose including potable, industrial, irrigation, or

agricultural use except for activities associated with operation and maintenance or monitoring of the Selected Remedy;

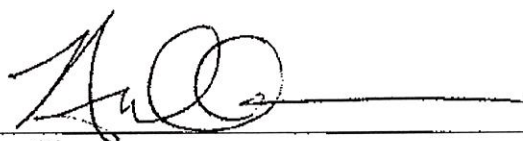
2. Excavation, drilling or otherwise disturbing the soil below 24 inches below grade existing on the date of the Notice for any purpose, except any excavations, drilling or soil disturbances approved by MassDEP pursuant to the Notice;
  3. Cultivation of plants or crops for human consumption;
  4. Residential use, or use as a school or childcare center;
  5. Recreational activity or recreational use not approved by MassDEP pursuant to the Notice; and
  6. Any activity or use that would interfere with, or would be reasonably likely to interfere with, the implementation, effectiveness, integrity, operation, or maintenance of the Selected Remedy, including, but not limited to the monitoring wells that are components of the Selected Remedy, to provide long-term environmental monitoring of on-site groundwater.
- ii. The following Activities and Uses, if they occur on Area B, are inconsistent with maintaining the Selected Remedy, and, as such, may not occur on Area B without compromising the Permanent Solution that has been achieved for the Site:
1. Withdrawal, consumption, exposure or utilization of groundwater, for any purpose including potable, industrial, irrigation, or agricultural use except for activities associated with operation and maintenance or monitoring of the Selected Remedy;
  2. Excavation, drilling or otherwise disturbing the soil, for any purpose, except any excavations, drilling or soil disturbances that have been previously approved by MassDEP pursuant to the Notice;
  3. Cultivation of plants or crops for human consumption;
  4. Residential use, commercial, or industrial activity, including use as a school or childcare center;
  5. Recreational activity or use not approved by MassDEP pursuant to the Notice; and

6. Any activity or use that would interfere with, or would be reasonably likely to interfere with, the implementation, effectiveness, integrity, operation, or maintenance of the Selected Remedy, including, but not limited to the monitoring wells that are components of the Selected Remedy, to provide long-term environmental monitoring of on-site groundwater.
- c. Obligations and Conditions. The following obligations and/or conditions are necessary and shall be undertaken at the Property to maintain the Selected Remedy:
- i. Compliance by the Owner with all applicable laws, rules, and regulations regarding soil management and disposition; and
  - ii. Submission by the Owner of an annual compliance letter to EPA and MassDEP, no later than June 1 of each calendar year, which shall (a) describe generally the permitted activities and uses that have occurred on the property subject to the Notice during the past calendar year and (b) certify that all activities and uses that have occurred at the property subject to the Notice in the previous year are consistent with the Notice and with any approvals or plans issued or prepared in connection with the Notice, such certification to include any supporting information upon which such certifications are based.

#### 4. Implementation of Notices

For the reasons described above and in relevant EPA decision documents, a Notice of Activity and Use Limitation should be implemented and recorded at the Site pursuant to CERCLA, the NCP, and regulations set forth in the Massachusetts Contingency Plan at 310 Code of Massachusetts Regulations Sections 40.0111(8), 40.1070(4), and (as applicable) 40.1074.

Date: 1/9/17

  
\_\_\_\_\_  
Bryan Olson  
Director, Office of Site Remediation and Restoration  
Environmental Protection Agency, Region I