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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In The Matter Of:

Borough of Downingtown
Municipal Government Center
4-10 West Lancaster Ave.
Downingtown, PA 19335-2800

Section 512 ORDER

For Institutional Controls:
Kardon Park Site
Downingtown, PA.

and

Chester County Recorder of Deeds
Chester County Courthouse
2 North High Street
P. O. Box 2048
West Chester, PA 19380-0991

UNOFFICIAL COPY

ORDER

The Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), hereby issues this Administrative Order pursuant to Sections 512(a) and 1102 of the Pennsylvania Hazardous Sites Cleanup Act ("HSCA"), 35 P.S. §§6020.512(a) and 6020.1102 based upon the following:

FINDINGS

A. The Department is the agency of the Commonwealth with the duty and authority to administer and implement the provisions of the Hazardous Sites Cleanup Act, the Act of October 18, 1988, P.L. 756, No. 108, 35 P.S. §§6020.101 et seq. ("HSCA"); Section 1917.A of the Administrative Code, the Act of April 9, 1929, P.L. 177, as amended, 71 P.S. §510-17A; and the rules and regulations promulgated thereunder.

B. The Borough of Downingtown is a local government agency and the record owner of an approximately fifty (50) acre property known as Kardon Park (the "Site"). The Site is comprised of several separate parcels acquired by Downingtown from November 1962 to June 1977. The individual tax map parcels comprising the Site are Lots 13, 14, 14.1, 14.2 and 23 of Block 11-4 located in Downingtown, and Lots 23 and 23.1 of Block 40-1 located in East Caln Township, all in Chester County, Pennsylvania.

C. The Site is currently used as a public park and for passive recreation, but was previously used for private, commercial and other purposes as several distinct parcels of land. Commercial uses of the Site were believed to include borrow excavations, paperboard manufacturing, and material/fill placement activities. Other uses included placement and grading of fill and upgrades of the Site to a public park. The Site has been used as a public park since 1984 and is primarily utilized for walking, jogging, and bicycling on the asphalt walking trail. The Site currently includes open grass covered areas, wooded areas, and a series of freshwater ponds.

D. A Site Characterization Investigation and Risk Assessment were conducted at the Site by the Borough of Downingtown under the supervision of the Department pursuant to the Pennsylvania Land Recycling and Environmental Remediation Standards Act ("Act 2"), 35 Pa. C.S.A. §§6026.101 *et seq.* The Site Characterization Investigation found that surface soils on portions of the Site contained concentrations of benzo(a)pyrene, arsenic, iron, lead, mercury, and vanadium exceeding their respective statewide Residential Direct Contact Medium Specific Concentrations (MSCs). Subsurface soils beneath portions of the Site were found to contain concentrations of antimony, arsenic, lead, mercury and zinc exceeding the MSC for Non-Residential In-Use Aquifers for the soil to groundwater pathway. Groundwater beneath portions of the Site were found to contain concentrations of lead exceeding the Non-Residential In-Use Aquifer MSCs. Fish tissue samples collected from ponds located within the Site were found to contain de minimus concentrations of mercury. A Human Health Risk Assessment for direct contact exposure to Site soils indicated that any risk to human health is within an acceptable range, as set forth in the Act 2 regulations. Constituent concentrations for the soils were demonstrated not to exceed site-specific specific media concentrations for the soil to groundwater pathway. Groundwater constituents were shown not to exceed the in-stream water quality criteria. An ecological risk assessment found no identifiable risk to ecologic receptors. A Cleanup Plan for the Site was submitted to the Department on or about June 4, 1999. It provided for additional groundwater monitoring to demonstrate attainment of the site specific groundwater standards approved for the Site. The second remedial action objective identified in the Cleanup Plan was to maintain a portion of the Site as parkland while allowing other portions to be used for commercial development. Those two areas of the Site are shown on the map attached hereto as Exhibit "A" and incorporated herein by reference.

E. The groundwater monitoring was completed and the results were submitted to PADEP on July 30, 1999 in a Final Report titled "Final Act 2 Report, Kardon Park Site, Downingtown, Pennsylvania.

F. In a letter dated October 21, 1999 the Department approved the Final Report and confirmed that the remedial action objectives had been attained, with the exception of required institutional controls restricting uses of the Site.

G. With the approval of the Final Act 2 Report by the Department, no further remedial action was required at the Site in order to provide current protection of human health and the environment except for the aforementioned restrictions on the uses of the Site as a public park and for commercial development.

H. Section 512(a) of HSCA states in pertinent part that:

The Department shall have the authority to issue an order precluding or requiring cessation of activity at a facility which the department finds would disturb or be inconsistent with the response action implemented. The department shall require the recorder of deeds to record an order under this subsection in a manner which will assure disclosure in the ordinary course of a title search of the subject property. An order under this subsection, when recorded, shall be binding upon subsequent purchasers.

These areas are shown in attached Exhibit "A"

I. As used herein, "inconsistent" uses of the Site shall be limited to installation of wells for use as a drinking water supply without further treatment and residential use of any kind, and any other uses except to the following:

Non-residential commercial use on portions of the Site bounded by Pennsylvania Avenue on the south, the East Caln Township/Borough of Downingtown limits to the north, the Kardon Park property line to the west, and the asphalt walking path to the east; and the remainder of the Site within the Borough of Downingtown east of the asphalt waking path and that portion of the Site outside the Borough limits and situated within East Caln Township will be limited to the current (1999) non-residential park uses.

J. Pursuant to Section 1102 of HSCA, 35 P.S. §6020.1102, the Department is authorized to issue orders to persons as it deems necessary to aid in the enforcement of the provisions of this Act. In addition, "[t]he power of the department to issue an order under this section is in addition to any other remedy which may be afforded to the department under this act or any other statute."

NOW THEREFORE, this 14th day of January, 2000, pursuant to the authority of Sections 512(a) and 1102 of HSCA, 35 P.S. §§6020.512(a) and 6020.1102, the Department hereby issues the following:

NON-RESIDENTIAL
COMMERCIAL USE
ON BORO SIDE ONLY
(above 2 pp)
BORO side 2 pp
2 pp
to be
NON-RESIDENTIAL
THRU USE

ORDER

1. Pursuant to Section 512(a) of HSCA, 35 P.S. §6020.512(a), the Borough of Downingtown, owner of the "Site" (as described in paragraph "B" of the Findings herein, and depicted in the attached Exhibit "A"), its agents or assigns, shall not from the date of this ORDER, put the Site or any portion thereof to any use which the Department finds would disturb or be "inconsistent" (as defined in Paragraph "I" herein) with the response action now implemented at the Site.

2. This Order is also issued pursuant to the Department's general enforcement authority under Section 1102(a) of HSCA, 35 P.S. §1102(a), where issuance of an order is "necessary to aid in the enforcement of the provisions of this act".

3. This Order shall be binding upon all subsequent purchasers of the Site when recorded.

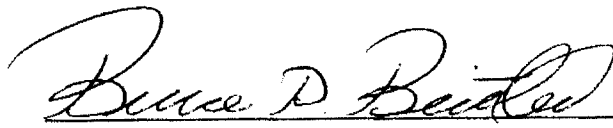
4. The Recorder of Deeds of the County of Chester is hereby required to record this Order in a manner which will assure its disclosure in the ordinary course of a title search of the subject property.

5. The Borough of Downingtown shall provide the Department's Southeast Regional Environmental Cleanup Program Manager with written notification (via certified mail) of any conveyance, transfer or assignment of title to the Site within twenty (20) days of such transfer.

6. This Order shall take effect upon filing with the Recorder of Deeds, Chester County, Pennsylvania.

7. The Borough of Downingtown, as owner of the Site, may apply to the Department for an amendment of this Order to allow other uses of the Site provided that the Borough demonstrates compliance with Act 2.

**FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION:**



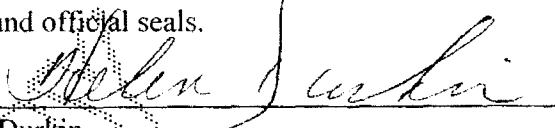
Bruce D. Beitler, Manager
Environmental Cleanup Program

1-14-2000
Date

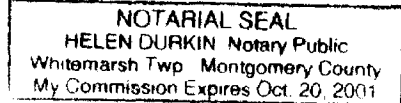
State of Pennsylvania
County of Montgomery

On this, the 14th day of January, 2000, before me, **Helen Durkin**, the undersigned officer, personally appeared **Bruce D. Beitler, Environmental Cleanup Program Manager**, of the Commonwealth of Pennsylvania, Department of Environmental Protection, known to me to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purpose therein contained.

In witness whereof, I hereunto set my hand and official seals.


Helen Durkin
Notary Public

SEAL



APPEAL NOTICE

Any person aggrieved by this action may make an appeal pursuant to Sections 512(a) and 1102 of the Hazardous Sites cleanup Act, 35 P.S. §6020.512(a), Section 4 of the Environmental Hearing Board Act, 35 P.S. §7514, and Chapter 5A of the Administrative Agency Law, 2 Pa. C.S. Chapter 5A, to the Environmental Hearing Board. TDD users may contact the Board through the Pennsylvania Relay Service at (800) 654-5984. Copies of the appeal form and the Board's Rules of Practice and Procedure may be obtained from the Board. The appeal form and the Board's Rules of Practice and Procedure are also available in braille or on audiotape from the Secretary to the Board at (717) 787-0483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

Nothing contained in the Order shall be construed to relieve or limit the obligation of the recipient of this Order to comply with the terms and conditions of any permit or order issued hereafter by the Department or to limit the civil or criminal liability of any person, including the recipient of this Order. Additional requirements may be imposed in the future by subsequent Department orders, cost recovery or other actions. Your prompt compliance with this Order will be considered in any potential civil penalty assessment related to the findings contained herein.

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EXHIBIT - A

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