



RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-831-5508

May 26, 2000

Alexandra K. Callam  
Hinckley, Allen and Snyder LLP  
1500 Fleet Center  
Providence, RI 02903-2393

RE: Metech International, Allens Avenue Facility, Providence, RI, Case # 99-060

Dear Ms. Callum:

The Rhode Island Department of Environmental Management Office of Waste Management (the Department; RIDEM OWM) has reviewed your letter and draft Environmental Land Use Restriction (ELUR) of January 18, 2000. The following comments are based primarily on that letter and on the April 6, 2000 site visit with yourself and Christian Jedson of Metech International.

As discussed on other occasions, the Department has required analysis for metals in groundwater in lieu of confirmatory soil analysis for metals that were detected previous to the PCB removal carried out separately for the U.S. Environmental Protection Agency. The permeable cap subsequently emplaced allows for potential leaching to groundwater and the Providence River. Please explain why the groundwater samples collected on December 13 and 14, 1999 via a low-flow technique were filtered. The Department requests that future samples be unfiltered.

In providing a more complete Site Investigation Report (SIR), please ensure that all information describing post PCB-removal soil and groundwater is submitted to the Department. For instance, the Department acknowledges the assertion that volatile organic compounds (VOCs) detected in onsite groundwater migrated from an adjoining property. Additional information is required, however, for the Department to be satisfied that the Metech Property is a downgradient receptor of the VOCs.

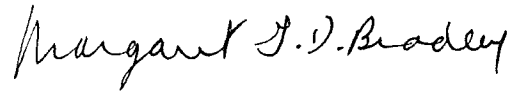
Please make the draft ELUR consistent with the enclosed, generic ELUR. A copy of the generic version is being sent via e-mail for your convenience.

To receive a Program Letter indicating completion of the site investigation requirements, three remedial alternatives, one of which is identified and justified

as the preferred remedial alternative, is required, pursuant to Rule 7.07 of the Remediation Regulations. The SIR is considered final after substantive public comment has been incorporated.

If further clarification is needed, please contact me at 222-2797, ext. 7105 or at [mbradley@doa.state.ri.us](mailto:mbradley@doa.state.ri.us).

Sincerely,



Margaret Dein Bradley, CPG  
Sr. Environmental Scientist

cc. W. Angell, RIDEM OWM (w/encl.)  
C. Jedson, Metech  
T. O'Connor, VHB

enclosure

## ENVIRONMENTAL LAND USAGE RESTRICTION

This Declaration of Environmental Land Usage Restriction ("Restriction") is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2000 by [property owner], a corporation qualified in Rhode Island, and its successors and/or assigns (the "Grantor").

### WITNESSETH:

WHEREAS, the Grantor is the owner in fee simple of certain real property [ specify Plat, Lot(s), address and Town or City] Rhode Island (the "Property"), more particularly described on Exhibit A (Legal Description) attached hereto and made a part hereof;

WHEREAS, the Property has been determined to be a [Contaminated Site (optional)] and contain soil which is contaminated with certain hazardous substances in excess of applicable [residential or industrial/commercial] direct exposure criteria pursuant to the Remediation Regulations;

WHEREAS, the Grantor has determined that the environmental land use restrictions set forth below are consistent with the regulations adopted by the Rhode Island Department of Environmental Management ("Department") pursuant to R.I.G.L. § 23-19.1-14;

WHEREAS, the Department's written approval of this Restriction is contained in the document entitled: [Remedial Decision Letter/Settlement Agreement/Order of Approval/Restriction Approval] issued pursuant to the Remediation Regulations; and

WHEREAS, the Property [or portion thereof identified in the Class I survey which is attached hereto as Exhibit B and is made a part hereof] has been determined to contain hazardous substances; and

WHEREAS, to prevent exposure to or migration of hazardous substances and to abate hazards to human health and/or the environment, and in accordance with the [Remedial Decision Letter/Settlement Agreement/Order of Approval], the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at the Contaminated-Site;

WHEREAS, the Grantor believes that this Restriction will effectively protect public health and the environment from such contamination; and

WHEREAS, the Grantor intends that such restrictions shall run with the land and be binding upon and enforceable against the Grantor.

NOW, THEREFORE, Grantor agrees as follows:

A. **Purpose:** In accordance with the [Remedial Decision Letter/Settlement Agreement/Order of Approval], the purpose of this Restriction is to assure that:

- i. the Property is not used for residential activities;
- ii. groundwater under the Property is not used for potable purposes;
- [iii. humans engaged in residential activity are not exposed to soils at the Contaminated-Site containing hazardous substances in concentrations exceeding the applicable Department approved residential direct exposure criteria pursuant to the Remediation Regulations];
- [iv. water does not infiltrate soils at the Contaminated-Site containing hazardous substances in concentrations exceeding the applicable Department approved leachability criteria pursuant to the Remediation Regulations];
- [v. subsurface structures are not constructed over groundwater at the Contaminated-Site containing hazardous substances in concentrations exceeding the applicable Department approved GB Groundwater Objectives pursuant to the Remediation Regulations];
- [vi. the engineered controls described in the[**Remedial Action Work Plan(RAWP) or Soil Management Plan(SMP)**] contained in Exhibit B attached hereto are not disturbed and are properly maintained to prevent humans engaged in commercial/industrial activity from being exposed to soils at the Site containing hazardous substances in concentrations exceeding the applicable Department-approved [**residential or industrial/commercial**]direct exposure criteria pursuant to the Remediation Regulations, and/or that water does not infiltrate soils at the Site containing hazardous substances in concentrations exceeding the applicable Department approved leachability criteria pursuant to the Remediation Regulations.

B. **Restrictions Applicable to the Property.** In furtherance of the purposes of this Restriction, the Grantor shall assure that the use, occupancy and activity of and at the Property are restricted as follows:

- i. No residential use of the Property shall be permitted.
- ii. No groundwater at the Property shall be used as potable water.

iii. Soil at the Site shall not be disturbed in any manner without written permission of the Department's Office of Waste Management, except as permitted in the [RAWP or SMP] approved by the Department in a written approval letter (date) described in Exhibit B and attached hereto.

[iv. No subsurface structure shall be constructed on the Contaminated-Site].

[v. The engineered control described in Exhibit C attached hereto shall not be disturbed and shall be properly maintained to prevent exposure to soils at the Contaminated-Site containing hazardous substances in concentrations exceeding the applicable Department-approved direct exposure criteria pursuant to the Remediation Regulations, and/or to prevent water from infiltrating soils at the Contaminated-Site containing hazardous substances in concentrations exceeding the applicable Department-approved leachability criteria pursuant to the Remediation Regulations].

**C. No action shall be taken, allowed suffered, or omitted if such action or omission is reasonably likely to:**

i. Create a risk of migration of hazardous substances or potential hazard to human health or the environment; or

ii. Result in a disturbance of the structural integrity of any engineering controls designed or utilized at the Site to contain hazardous substances or limit human exposure to hazardous substances, except as permitted in the Department-approved [RAWP or SMP] contained in Exhibit B.

**D. Emergencies:** In the event of any emergency which presents a significant risk to human health or to the environment, including but not limited to maintenance and repair of utility lines or a reponse to emergencies such as fire or flood, the application of paragraphs B and C above may be suspended, provided such risk cannot be abated without suspending such Paragraphs and the Grantor complies with the following:

i. Notifies in writing the RIDEM Office of Waste Management (the Department) of the emergency as soon as possible but no more than three (3) business days after having learned of the emergency. (This does not remove Grantor's obligation to notify any other necessary state, local or federal agencies.);

ii. Limits both the extent and duration of the suspension to the minimum reasonable and necessary to adequately respond to the emergency;

- iii. Implements reasonable measures necessary, at that time, to prevent actual, potential, present and future risk to human health and the environment resulting from such suspension;
  - iv. Communicates at the time of written notification to RIDEM his or her intentions to conduct the emergency reponse actions and provides a schedule to complete the emergency reponse actions;
  - v. Continues to implement the emergency reponse actions, on the schedule submitted to the Department, to ensure that the Property is remediated in accordance with the Remediation Regulations (and/or applicable variance) or restored to its condition prior to such emergency. Based upon information available to the Department at the time of execution pertaining to environmental conditions at the Property, maintenance and repair of utility lines shall only require restoration of the Property to its condition prior to the maintenance and repair of the utility lines.
  - vi. Submits to the Department, at the completion of the emergency response action, a status report describing the emergency activities that have been completed.
- E. Release of Restriction; Alterations of Subject Area:** The Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of the Property inconsistent with this Restriction unless the Grantor has first received the Department's written approval of such alteration. If the Department determines that the proposed alteration is significant, it may require the amendment of this Restriction. Insignificant alterations will be approved by the Department via a letter from the Department. The Department shall not approve any such alteration and shall not release the Property from the provisions of this Restriction unless the Grantor demonstrates to the Department's satisfaction that Grantor has managed the Property in accordance with applicable regulations.
- F. Notice of Lessees and Other Holders of Interests in the Property:** The Grantor, or any future holder of any interest in the Property, shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this Restriction. The failure to include such provision shall not affect the validity or applicability to the Property of this Restriction.
- G. Severability and Termination:** If any court of competent jurisdiction determines that any provision of this Restriction is invalid or unenforceable, the Grantor shall notify the Department in writing within 14 days of such determination.

H. **Binding Effect:** All of the terms, covenants, and conditions of this Restriction shall run with the land and shall be binding on the Grantor and each owner and any other party entitled to possession or use of the Property during such period of ownership or possession.

I. **Inspection & Non-Compliance:** It is the obligation of the Grantor, or any future holder of any interest in the Property, to provide for annual, independent inspections of the Property for compliance with the ELUR.

[An officer or director of the company with direct knowledge of past and present conditions of the Property (the "Company Representative"), or] A qualified environmental professional will, on behalf of the Grantor or future holder of any interest in the Property, evaluate the compliance status of the Property on an annual basis. Upon completion of the evaluation, the [Company Representative or] environmental professional will prepare and simultaneously submit to the Department and to the Grantor or future holder of any interest in the Property an evaluation report detailing the findings of the inspection and noting any compliance violations at the Property. If the Property is determined to be out of compliance with the terms of the ELUR, the Grantor or future holder of any interest in the Property will submit a corrective action plan in writing to the Department within ten (10) days of receipt of the evaluation report, indicating the plans to bring the Property into compliance with the ELUR, including, at a minimum, a schedule for implementation of the plan.

In the event that the Grantor or future holder of any interest in the Property commits a substantial violation of the terms of this Restriction which remains uncured more than 90 days after written notice of violation, this Restriction and all other approvals and agreements relating to the Property shall be null and void at the option of the Department upon recording such notice in the land evidence records of the [City or Town of ]\_\_\_\_\_.

J. **Terms Used Herein:** The definitions of terms used herein shall be the same as the definitions contained in Section 3 (DEFINITIONS) of the Remediation Regulations.

It is so agreed:

**[Name of person(s), company, LLC or LLP]**  
Grantor

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2000

So Sworn Before me:

\_\_\_\_\_  
Notary Public

Date: \_\_\_\_\_, 2000

My Commission Expires: