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SCHEDULE 2

Regulation 4

REMEDIATION NOTICE

[ENFORCING AUTHORITY]

ENVIRONMENTAL PROTECTION ACT 1990 (“The 1990 Act”)

THE CONTAMINATED LAND (SCOTLAND) REGULATIONS 2000 (“The 2000 Regulations”)

REMEDIATION NOTICE

To: **[Name]**.....

[Address].....

.....

.....

.....

[Enforcing Authority], being the enforcing authority for the purposes of Part IIA of the 1990 Act in relation to **[insert details of the location and extent of the contaminated land to which the notice relates sufficient to enable it to be identified whether by reference to a plan or otherwise]** (“the site”) which has been identified as contaminated land under Part IIA of the 1990 Act, considers that you are an appropriate person within the meaning of Part IIA of the 1990 Act by reason of the fact that you **[insert here either: “caused or knowingly permitted the substances, by reason of which the site is contaminated land within the meaning of Part IIA of the 1990 Act, to be in, on or under the site” or “are the owner of the contaminated land in question” or “are the occupier of the contaminated land in question”]**.

Pursuant to section 78E of the 1990 Act, [Enforcing Authority] does hereby require you to carry out, by way of remediation, the works listed in Schedule 2 annexed to this Notice within the corresponding periods listed in said Schedule.

[Insert this para where more than one appropriate person] [Enforcing Authority] has determined that there are **[insert number]** appropriate persons in relation to **[insert the particular thing which has to be done by way of remediation for which there are at least two appropriate persons]**. The details of the other appropriate persons are given in Schedule 1. [Enforcing Authority] has determined that the costs of doing the work stated above should be borne in the following proportion: **[Insert here the names of all appropriate persons (including the recipient of this notice) and the respective proportion of costs to be borne by each appropriate person]**. The reasons for the apportionment of costs are provided in Schedule 1.

Signed:

Name:

Position:

Date:**[insert date of notice]**

[Enforcing Authority’s] address is:..... **[insert address of [Enforcing Authority] office dealing with notice]**....

Your contact within [Enforcing Authority] in connection with this notice is:.....**[insert name and telephone number of officer dealing with the notice]**....

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REMEDICATION NOTICE SCHEDULE 1

Your attention is drawn to the following information which [Enforcing Authority] is obliged to include in this notice:

The determination that the site is contaminated land

[The date of any notice which was given under section 78B of the 1990 Act to the person on which the remediation notice is served identifying the contaminated land in question as contaminated land]

[Particulars of the significant harm or pollution of controlled waters by reason of which the contaminated land in question is contaminated land]

[The substances by reason of which the contaminated land in question is contaminated land and, if any of the substances have escaped from other land, the location of that other land]

[The current use of the land]

The determination of remediation requirements

[The [Enforcing Authority's] reasons for its decisions as to the things by way of remediation that the appropriate person is required to do, which shall show how any guidance issued by the Scottish Ministers under section 78E(5) of the 1990 Act has been applied]

The determination of liability and the apportionment of remediation costs

[Where two or more persons would, apart from Section 78F(6), be appropriate persons in relation to any particular thing which is to be done by way of remediation] particulars of the [Enforcing Authority's] reasons for its determination as to whether any, and if so which, of them is to be treated as not being an appropriate person in relation to that thing, which shall show how any guidance issued by the Scottish Ministers under Section 78F (6) has been applied.

[Where the remediation notice is required by section 78E(3) to state the proportion of the cost of a thing which is to be done by way of remediation which each of the appropriate persons in relation to that thing is liable to bear] particulars of the [Enforcing Authority's] reasons for the proportion which it has determined, which shall show how any guidance issued by the Scottish Ministers under section 78F(7) has been applied.

[Where two or more persons are appropriate persons in relation to the contaminated land in question] a statement that this is the case, the name and address of each such person and the thing by way of remediation for which each such person bears responsibility.

[Where known to the [Enforcing Authority]] the name and address of the owner of the contaminated land in question and the name and address of any person who appears to the [Enforcing Authority] to be in occupation of the whole or any part of the contaminated land in question.

[Where known to the [Enforcing Authority]] the name and address of any person whose consent is required under section 78G(2) before anything required by the remediation notice may be done.

[Where the notice is to be served in reliance on section 78H(4), a statement that it appears to the [Enforcing Authority] that the contaminated land in question is in such a condition, by reason of substances in, on or under the land, that there is imminent danger of serious harm, or serious pollution of controlled waters being caused.

Offences and penalties

- It is an offence to fail, without reasonable excuse, to comply with any of the requirements of this notice.
- A person who commits such an offence is liable to the following penalties:
 - where the contaminated land to which the notice relates is “industrial, trade or business premises” as defined in section 78M(6) of the 1990 Act, on summary conviction, to a fine not exceeding £20000 or such greater sum as the Scottish Ministers may from time to time by order substitute and to a further fine of an amount equal to one-tenth of that sum for each day on which the failure continues after conviction of the offence and before the [Enforcing Authority] has begun to exercise its powers by virtue of section 78N(3)(c) of the 1990 Act.
 - where the contaminated land to which the notice relates is not “industrial, trade or business premises”, on summary conviction, to a fine not exceeding level 5 on the standard scale and to a further fine of an amount equal to one-tenth of level 5 on the standard scale for each day on which the failure continues after conviction of the offence and before the [Enforcing Authority] has begun to exercise its powers by virtue of section 78N(3)(c).

Right of Appeal

You do have a right of appeal against this notice under section 78L of the 1990 Act. If you wish to appeal you must do so within the period of twenty-one days beginning with the day on which the notice is served.

[If this notice is served by a local authority] appeals are to the sheriff by way of summary application. The standard rules governing the procedure for summary applications shall apply in such cases.

[If this notice is served by the Scottish Environment Protection Agency (SEPA)] appeals are made by submitting a “notice of appeal” to the Scottish Ministers at [insert address] which shall state: the name and address of the appellant; the grounds on which the appeal is made, including particulars of the matters relied upon in support; whether the appellant wishes to be heard or to have his appeal decided on the basis of written representations; and the names and addresses of all persons served with a copy of the notice of appeal. At the same time as a notice of appeal is served on the Scottish Ministers, the appellant shall also serve copies of it on: SEPA; any person named in the remediation notice as an appropriate person; any person named in the notice of appeal as an appropriate person; any person named in the remediation notice as the owner or occupier of the whole or any part of the land to which the notice relates. A copy of the remediation notice to which the appeal relates shall be served on the Scottish Ministers and on any person named in the notice of appeal as an appropriate person who is not so named in the remediation notice.

Where an appeal is duly made, a notice is suspended until the final determination or abandonment of the appeal.

Grounds of Appeal

(1) The grounds of appeal against a remediation notice pursuant to section 78L of the 1990 Act are any of the following:

- (a) that, in determining whether any land to which the notice relates appears to be contaminated land, the local authority—
 - (i) failed to act in accordance with guidance issued by the Scottish Ministers under section 78A(2), (5) or (6); or
 - (ii) whether, by reason of such a failure or otherwise, unreasonably identified all or any of the land to which the notice relates as contaminated land;
- (b) that, in determining a requirement of the notice, the enforcing authority—
 - (i) failed to have regard to guidance issued by the Scottish Ministers under section 78E(5); or

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- (ii) whether by reason of such a failure or otherwise, unreasonably required the appellant to do anything by way of remediation;
- (c) that the enforcing authority wrongly determined the appellant to be the appropriate person who is to bear responsibility for anything required by the notice to be done by way of remediation;
- (d) subject to paragraph (2) below, that the enforcing authority failed to determine that some person in addition to the appellant is an appropriate person in relation to anything required by the notice to be done by way of remediation;
- (e) that, in respect of anything required by the notice to be done by way of remediation, the enforcing authority failed to act in accordance with guidance issued by the Scottish Ministers under section 78F(6);
- (f) that, where two or more persons are appropriate persons in relation to anything required by the notice to be done by way of remediation, the enforcing authority—
 - (i) failed to determine the proportion of the cost stated in the notice to be the liability of the appellant in accordance with guidance issued by the Scottish Ministers under section 78F(7); or
 - (ii) whether, by reason of such a failure or otherwise, unreasonably determined the proportion of the cost that the appellant is to bear;
- (g) that service of the notice contravened a provision of subsection (1) or (3) of section 78H (restrictions and prohibitions on serving remediation notices) other than in circumstances where section 78H(4) applies;
- (h) that, where the notice was served in reliance on section 78H(4) without compliance with section 78H(1) or (3), the enforcing authority could not reasonably have taken the view that the contaminated land in question was in such a condition by reason of substances in, on or under the land, that there was imminent danger of serious harm, or serious pollution of controlled waters, being caused;
- (i) that the enforcing authority has unreasonably failed to be satisfied, in accordance with section 78H(5)(b), that appropriate things are being, or will be, done by way of remediation without service of a notice;
- (j) that anything required by the notice to be done by way of remediation was required in contravention of a provision of section 78J (restrictions on liability relating to the pollution of controlled waters);
- (k) that anything required by the notice to be done by way of remediation was required in contravention of a provision of section 78K (liability in respect of contaminating substances which escape to other land);
- (l) that the enforcing authority itself has power, in a case falling within section 78N(3)(b), to do what is appropriate by way of remediation;
- (m) that the enforcing authority itself has power, in a case falling within section 78N(3)(e), to do what is appropriate by way of remediation;
- (n) that the enforcing authority, in considering for the purposes of section 78N(3)(e), whether it would seek to recover all or a portion of the cost incurred by it in doing some particular thing by way of remediation—
 - (i) failed to have regard to any hardship which the recovery may cause to the person from whom the cost is recoverable or to any guidance issued by the Scottish Ministers for the purposes of section 78P(2); or
 - (ii) whether by reason of such a failure or otherwise, unreasonably determined that it would decide to seek to recover all of the cost;
- (o) that, in determining a requirement of the notice, the enforcing authority failed to have regard to guidance issued by SEPA under section 78V(1);
- (p) that a period specified in the notice within which the appellant is required to do anything is not reasonably sufficient for the purpose;
- (q) that the notice provides for a person acting in a relevant capacity (section 78X(4)) to be personally liable to bear the whole or part of the cost of doing anything by way of remediation, contrary to the provisions of section 78X(3)(a);
- (r) that service of the notice contravened a provision of section 78YB (interaction of Part IIA of the 1990 Act with other enactments), and—
 - (i) in a case where subsection (1) of that section is relied on, that it ought reasonably to have appeared to the enforcing authority that the powers of SEPA under section 27 might be exercised;

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- (ii) in a case where subsection (3) of section 78YB is relied on, that it ought reasonably to have appeared to the enforcing authority that the powers of SEPA or a local authority under section 59 might be exercised; or
 - (s) that there has been some informality, defect or error in, or in connection with, the notice, in respect of which there is no right of appeal under the grounds set out in subparagraphs (a) to (r) above.
- (2) A person may only appeal on the ground specified in paragraph (1)(d) above in a case where—
- (a) the enforcing authority has determined that that person is an appropriate person by virtue of section 78F(2) and that person claims to have found some other person who is an appropriate person by virtue of that subsection;
 - (b) the notice is served on that person as the owner or occupier for the time being of the contaminated land in question and that person claims to have found some other person who is an appropriate person by virtue of section 78F(2); or
 - (c) the notice is served on that person as the owner or occupier for the time being of the contaminated land in question, and that person claims that some other person is also an owner or occupier for the time being of the whole or part of that land.
- (3) If and insofar as an appeal against a remediation notice is based on the ground of some informality, defect or error in, or in connection with, the notice, the appellate authority shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

REMEDICATION NOTICE SCHEDULE 2

[Details of what is required to be done by way of remediation]

[Time period within which each of the things required by way of remediation shall be carried out]

[Where the Enforcing Authority considers that there is some risk that the remediation might damage the environment that can be sufficiently reduced by including particular precautions in the notice] particulars of the precautions required to prevent the occurrence of damage to the environment.