
(ABOVE SPACE RESERVED FOR RECORDER'S USE)

Document Title: Environmental Covenant

Document Date:

Grantor/Owner: Nestlé Purina PetCare Company
One Checkerboard Square, St. Louis, Missouri 63164

Grantee/Holder: Nestlé Purina PetCare Company
One Checkerboard Square, St. Louis, Missouri 63164

Department: Missouri Department of Natural Resources
P.O. Box 176, 1101 Riverside Drive, Jefferson City, Missouri 65102

Legal Description: See Attached Exhibit B.

ENVIRONMENTAL COVENANT

This Environmental Covenant (“Covenant”) is entered into by and between the Grantor, Nestlé Purina PetCare Company (“Owner”), the Grantee, Nestlé Purina PetCare Company (“Holder”), and the Missouri Department of Natural Resources (“Department”) pursuant to the Missouri Environmental Covenants Act, Sections 260.1000 through 260.1039, RSMo. Owner, Holder, and the Department may collectively be referred to as the “Parties” herein.

RECITALS

WHEREAS, Owner is the owner in fee simple of certain real property commonly known and numbered as Nestlé Purina PetCare Company (Nestlé Purina), One Checkerboard Square, St. Louis, MO 63164, and a portion thereof commonly known as the former Grain Elevator/Storage Bins (Area of Concern “AOC 2”), shown on the site map attached hereto as Exhibit A, and legally described in Exhibit B as the “Property”;

WHEREAS, the Property is situated in the City of St. Louis, Missouri;

WHEREAS, Owner desires to grant to the Holder this Covenant for the purpose of subjecting the Property to certain activity and use limitations as provided in the Missouri Environmental Covenants Act;

WHEREAS, the Department enters into this Covenant as a “Department” pursuant to the Missouri Environmental Covenants Act, Sections 260.1000 through 260.1039 RSMo, with all the attendant rights of a “Department” under such Act, which include, but are not limited to, having a right to enforce this Covenant;

WHEREAS, Holder enters into this Covenant as a “Holder” pursuant to the Missouri Environmental Covenants Act, with all the attendant rights of a “Holder” under such Act, which include, but are not limited to, acquiring an interest in the Property and a right to enforce this Covenant;

WHEREAS, the former Resource Conservation and Recovery Act (RCRA) interim status hazardous waste storage area is subject to closure requirements and the contiguous Nestlé Purina facility property is subject to corrective action requirements as a former RCRA interim status hazardous waste facility pursuant 40 CFR Part 265, as incorporated by reference in 10 CSR 25-7.265, and the corrective action final remedy requires Nestlé Purina to file an Environmental Covenant for the Property legally described in Exhibit B with the appropriate recorder of deeds establishing certain activity and use limitations based on the presence of facility-specific contaminants of concern that remain above levels that allow for unrestricted land use.

WHEREAS, the environmental response project conducted at the Property included the following activities:

Robinson-Danforth Commission Co. began the company 1894 and produced horse and mule feed. In 1902, the company changed its name to Ralston Purina Company, which merged with Nestlé in 2001 to become Nestlé Purina PetCare. The property is zoned industrial and occupies approximately 50 acres. Land use of the adjacent property is primarily industrial and commercial. The company currently manufactures and sells pet care products.

Nestlé Purina's predecessor, Ralston Purina Company ("Ralston Purina") submitted a RCRA Part A permit application in November 1980, and RCRA Part B permit application on October 24, 1988, related to pre-existing waste management activities at the Property. Thereafter, Ralston Purina decided not to pursue a hazardous waste permit and to close the unit that would otherwise be subject to permitting. In January 1996, the Department accepted the facility's closure certification for its hazardous container storage room.

A RCRA Facility Assessment (RFA) for Ralston Purina was finalized on May 4, 1993, and prepared in two separate phases. The Preliminary Assessment, dated March 10, 1992, was prepared by CDM Federal Programs Corporation on behalf of the United States Environmental Protection Agency (EPA) Region 7. The RFA, dated April 20, 1993, was prepared by PRC Environmental Management, Inc., on behalf of EPA Region 7. The RFA recommended four Areas of Concern (AOCs) for additional investigation.

In a letter dated December 23, 2004, the Department notified Nestlé Purina of its corrective action obligations under RCRA and Missouri's hazardous waste law and regulations, including addressing the remaining Solid Waste Management Units (SWMUs) and AOCs on the facility Property. Nestlé Purina notified the Department of their intent to prepare an updated RFA in a letter dated May 3, 2005. The updated RFA was submitted on July 28, 2006, by Owner's consultant, Burns & McDonnell, on behalf of Nestlé Purina. The updated RFA included additional information on nine AOCs. The Department responded to Nestlé Purina in a letter dated November 13, 2007, regarding the findings in the updated RFA Report. The Department agreed with Nestlé Purina's conclusions that six of the nine AOCs did not require further action. The Department's response letter also requested that Nestlé Purina present a scope of work for conducting additional investigation for the three remaining AOCs. Nestlé Purina submitted additional information on the three remaining AOCs and a Scope of Work for additional investigation activities at the former Grain Elevator/Storage Bins and Magic Chef AOCs in a letter dated March 17, 2008. In a letter dated April 2, 2008, the Department approved the Scope of Work for the former Grain Elevator/Storage Bins and Magic Chef AOCs and determined that the additional information regarding the former Truck Service Center was acceptable, and no further investigation was necessary for this AOC.

Nestlé Purina investigated the Magic Chef and former Grain Elevator/Storage Bins AOCs in July 2008. Soil samples collected from the former Magic Chef AOC were analyzed for volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), RCRA metals, and mercury. There were no detections of VOCs, SVOCs, and mercury above analytical detection limits in either of the two subsurface soil samples. Both soil samples did contain measureable concentrations of arsenic, barium, chromium, and lead. The barium, chromium, and lead concentrations were below EPA's May 2013 Regional Screening Levels (RSLs) for residential

use. Arsenic concentrations were above the May 2013 RSLs, however, the arsenic concentrations were below regional background concentrations as presented in the publication Geochemical Survey of Missouri; Geological Survey Professional Paper 954-H, I (Tidball, 1984). Based on the analytical results and data screening, no further action was determined to be necessary for this AOC. Sampling results are summarized in the attached Exhibit C.

Soil samples collected from the Grain Elevator/Storage Bins AOC were collected and analyzed for VOCs, SVOCs, herbicides, and pesticides. VOCs and herbicides were not detected above analytical detection limits in both surface and subsurface soil samples from the boring locations. Toxaphene was the only pesticide detected above the May 2013 RSLs and was found in all three surface soil samples at concentrations above both residential and industrial use. Benz(a)anthracene, benzo(b)fluoranthene, benzo(a)pyrene and dibenz(a,h)anthracene were the only SVOCs detected in the soil samples above the May 2013 RSLs for industrial use. Sampling results for the Grain Elevator/Storage Bins AOC are summarized in the attached Exhibit D. Asphalt was documented as being present in the samples during collection. The presence of crushed asphalt within the fill beneath the surface of the current parking lot was determined to be the likely source for the presence of the SVOCs. This AOC will remain capped with concrete/asphalt.

On July 25, 2013, Nestlé Purina notified the Department of a heating oil underground storage tank (UST) that was properly removed July 11 and 12, 2013, during renovations of Nestlé Purina's C-Research Building. Nestlé Purina removed the heating oil UST, which fueled the old boilers for the C-Research building, from a narrow space between the C-Research building and the Zappi Warehouse. The UST had a capacity of approximately 1700 gallons. According to Missouri Revised Statutes Section 319.100, tanks used for storing heating oil for consumptive use on the premises where stored are exempt from the definition and regulations of USTs. Nestlé Purina removed and properly disposed of the UST, all residual materials/sludge, and associated piping. The area surrounding the UST was over excavated to the extent practical, without compromising the C-Research Building foundation.

Soil samples were collected and analyzed for total petroleum hydrocarbons-diesel range organics, polycyclic aromatic hydrocarbons, benzene, toluene, ethylbenzene, and xylenes. All constituents were present below EPA's May 2013 RSLs for industrial use. No groundwater was observed during UST removal activities; therefore, no groundwater samples were collected. Concrete will cover the UST area and act as a cap over the impacted material left in-place. A stairwell will be built over the excavation area.

WHEREAS, upon completion of the environmental response project described above, contaminants of concern, which include, but may not be limited to benz(a)anthracene, benzo(b)fluoranthene, benzo(a)pyrene, dibenz(a,h)anthracene, and toxaphene, will remain on the Property above levels that allow for the unrestricted use of the Property; and

WHEREAS, the environmental response project described above is deemed protective if, and only if, the activity and use limitations described in this Covenant remain in place for as long

as the contaminants of concern remain at the Property above levels that allow for the unrestricted use of the Property.

NOW THEREFORE, Owner, Holder, and the Department agree to the following:

1. Parties.

The Owner, Holder, and the Department are parties to this Covenant, and may enforce it as provided in Section 260.1030, RSMo.

2. Activity and Use Limitations.

Owner hereby subjects the Property to, and agrees to comply with, the following activity and use limitations:

No Residential Land Use:

Based on reports on file at the Department's office in Jefferson City, Missouri, and EPA's office in Lenexa, Kansas, the Property currently meets the Department's and EPA's standards for non-residential use. Therefore, contaminants of concern remaining at the Property do not pose a significant current or future risk to human health or the environment so long as the restrictions below remain in place.

The Property shall **not** be used for residential purposes, which for purposes of this Covenant include but are not limited to: single family homes, duplexes, multi-plexes, apartments, condominiums, schools, retirement or senior/child-care facilities, or any land use where persons can be expected to reside.

No Disturbance of Soil:

Based on reports on file at the Department's office in Jefferson City, Missouri, and EPA's office in Lenexa, Kansas, the contaminants of concern remaining at the Property exceed the Department's and EPA's standards for non-residential use and construction worker exposure, but do not pose a significant current or future risk to human health or the environment with respect to non-residential uses of the property so long as the soil is not disturbed such that exposure may result.

Therefore, soil on the Property shall not be excavated or otherwise disturbed in any manner without the prior written approval of the Department. If an Owner/Transferee desires to disturb soil at the Property in the designated area, then such Owner/Transferee shall request permission to do so from the Department at least 30 days before the soil disturbance activities are scheduled to begin. Based on the potential hazards associated with the soil disturbance activities, the Department may deny the request to disturb the soils or may require specific protective or remedial actions before allowing such soil disturbance activities to occur.

Contaminated soil may be disturbed if necessary during an emergency (such as water or gas main break, fire, explosion or natural disaster) or for routine maintenance and repairs of the asphalt covering, in which case the Owner/Transferee shall ensure that notification is provided to the Department and Holder verbally or in writing as soon as practicable, but no later than 48 hours after the disturbance begins. Any contaminated soil disturbed as part of an emergency response action must be returned to its original location and depth, or properly characterized, managed and disposed of, in accordance with all applicable local, state, and federal requirements. Within 30 days after such emergency has been abated, the Owner/Transferee shall provide a written report to the Department describing such emergency and any response actions.

Construction Worker Notice

In the event that construction or excavation work is to be performed that may expose workers to contaminated soil on the Property Owner/Transferee shall ensure that actual notice is provided in advance, both verbally and in writing, to any person or entity performing any work that will or is likely to result in exposure to such soil, so that appropriate protective measures are taken to protect such workers' health and safety in accordance with applicable health and safety laws and regulations. Such notice shall include, but not be limited to, providing a copy of this Covenant to any individuals conducting or otherwise responsible for the work. Owner/Transferee shall maintain copies of any such written notice for a period of at least three years, and shall provide copies of such records to the Department and/or Holder upon request.

Engineered Controls for Soil:

Based on reports on file at the Department's offices in Jefferson City, Missouri, and EPA's offices in Lenexa, Kansas, the contaminants of concern remaining in the soil at the Property do not pose a significant current or future risk to human health or the environment so long as the engineered control(s) described below is/are maintained so as to prevent exposure, release, or migration of contaminants from the soil.

Therefore, the following engineered controls must remain in place and remain effective in accordance with the RFA Site Investigation Report, which has been approved by the Department, unless the Department provides written approval for any modifications:

The asphalt cap covering the contaminated soil in the area shown in Exhibit B must be effectively maintained as an exposure barrier to prevent exposure to surface and subsurface soil.

Compliance with City of St. Louis Groundwater Ordinance:

The Property is located within the limits of the City of St. Louis and must comply with The City of St Louis Ordinance #66777. This Ordinance prohibits the use or

attempted use of groundwater as a potable water supply and the drilling or installation of wells to be used for a potable water supply within the corporate limits of the City of St. Louis.

Compliance with Other City of St. Louis Ordinances:

The property is subject to the provisions of City of St. Louis Ordinances in effect, including those associated with the LaSalle-Park Urban Renewal Plan.

If any person desires in the future to use the Property for any purpose or in any manner that is prohibited by this Covenant, the Department and the Holder must be notified in advance so that a Modification, Temporary Deviation, or Termination request can be considered as described below. Further analyses and/or response actions may be required prior to any such use.

3. Running with the Land.

This Covenant shall be binding upon Owner and Owner's heirs, successors, assigns, and other transferees in interest (collectively referred to as "Transferees") during their period of ownership (except that the obligation described below in paragraph 17 to re-direct any misdirected communication shall continue beyond an Owner/Transferee's period of ownership), and shall run with the land, as provided in Section 260.1012, RSMo, subject to amendment or termination as set forth herein. The term "Transferee(s)," as used in this Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees (subject to applicable lender liability protections prescribed by law), easement holders, and/or lessees.

4. Location of Files and Records.

Records of this environmental response project for the Property are currently located in the Department's offices in Jefferson City, Missouri and EPA's offices in Lenexa, Kansas. Information regarding the environmental response project may be obtained by making a request to the Department pursuant to the Missouri "Sunshine Law," Chapter 610, RSMo, and/or to EPA pursuant to the United States Freedom of Information Act, 5 U.S.C. § 552, and referencing the site identification name of Nestlé Purina PetCare Company, St. Louis, Missouri, EPA ID# MOD000320281.

5. Enforcement.

Compliance with this Covenant may be enforced as provided in Section 260.1030, RSMo. The EPA (and any successor agencies) is expressly granted the power to enforce this Covenant. Failure to timely enforce compliance with this Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this

Covenant shall restrict any person from exercising any authority or rights under any other applicable law.

In addition to or in lieu of any other remedy authorized by law, prior to taking legal action to enforce this Covenant, the Department may require Owner/Transferee to submit a plan to investigate and/or correct any alleged violation of this Covenant, in which case the Department shall provide written notification to EPA and the Holder. If such Owner/Transferee fails to act within the required timeframe or if the Department finds a proposed remedy unacceptable, the Department may pursue any remedy authorized by law. Any party seeking to enforce this Covenant shall provide written notification to the Department and the Holder prior to or contemporaneously with any legal action taken to enforce this Covenant. In the event that EPA is the party seeking to enforce the terms of this Covenant, such notification must be made at least 30 days prior to the commencement of any legal action and must disclose the alleged violation of this Covenant. Nothing in this Section shall be construed to prohibit a party authorized by law to take action necessary to address an imminent and substantial threat.

6. Right of Access.

Owner, on behalf of itself and any Transferees, hereby grants to the Holder, Department, and EPA and their respectively authorized agents, contractors, and employees, the right to access the Property at all reasonable times for implementation, monitoring, inspection, or enforcement of this Covenant and the related environmental response project. Nothing herein shall be deemed to limit or otherwise impede the Department's or EPA's rights of access and entry under federal or state law or other agreement.

7. Compliance Reporting.

Owner/Transferee shall submit to the Holder, Department and EPA, by no later than January 31st of each year, documentation verifying that the activity and use limitations imposed hereby were in place and complied with during the preceding calendar year. The Compliance Report shall include the following statement, signed by Owner/Transferee:

I certify that to the best of my knowledge, after thorough evaluation of appropriate facts and information, the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

In the event that an Owner, Transferee, or Holder becomes aware of any noncompliance with the activity and use limitations described in paragraph 2 above, such person or entity shall notify all other Parties to this Covenant, and

EPA, in writing as soon as possible, but no later than ten (10) business days thereafter.

8. Additional Rights.

None Specified

9. Notice upon Conveyance.

Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Covenant, and provide the recording reference for this Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 20____, RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF _____ COUNTY, _____, ON _____, 20____, AS DOCUMENT _____, BOOK____, PAGE _____.

Owner/Transferee shall notify the Holder, Department and EPA within ten (10) days following each conveyance of an interest in any portion of the Property. The notice shall include the name, address, and telephone number of the Transferee, and a copy of the deed or other documentation evidencing the conveyance.

10. Representations and Warranties.

Owner hereby represents and warrants to the Holder and Department that:

- a) Owner has the power and authority to enter into this Covenant, to grant the rights and interests herein provided and to carry out all of Owner's obligations hereunder;
- b) this Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected; and
- c) Owner is the sole owner of the Property and holds fee simple title, which is free, clear and unencumbered.

11. Amendments, Termination, and Temporary Deviations.

This Covenant may be amended or terminated by approval of the Department, Holder, and the current Owner/Transferee of record at the time of such amendment or termination, pursuant to section 260.1027 RSMo. Any other Parties to this Covenant hereby waive the right to consent to any amendment to, or termination of, this Covenant. Following signature by all requisite persons or entities on any amendment or termination of this Covenant, Owner/Transferee shall record and distribute such documents as described below.

Temporary deviations from the obligations or restrictions specified in this Covenant may be approved by the Department in lieu of a permanent amendment

to this Covenant. Owner/Transferee may submit a written request to the Department to temporarily deviate from specified requirements described herein for a specific purpose and timeframe, which shall not exceed ninety (90) days. Any such request shall be transmitted to the Holder and the Department as described below. The request must specifically invoke this paragraph of this Covenant, fully explain the basis for such temporary deviation, and demonstrate that protection of human health and the environment will be maintained. The Department will evaluate the request and convey approval or denial in writing. Owner/Transferee may not deviate from the requirements of this Covenant unless and until such approval has been obtained.

12. Severability.

If any provision of this Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. Governing Law.

This Covenant shall be governed by and interpreted in accordance with the laws of the State of Missouri.

14. Recordation.

Within thirty (30) days after the date of the final required signature upon this Covenant or any amendment or termination thereof, Owner shall record this Covenant with the appropriate recorder of deeds for each county in which any portion of the Property is situated. Owner shall be responsible for any costs associated with recording this Covenant.

15. Effective Date.

The effective date of this Covenant shall be the date upon which the fully executed Covenant has been recorded with the office of the recorder of each county in which the Property is situated.

16. Distribution of Covenant.

Within thirty (30) days following the recording of this Covenant, or any amendment or termination of this Covenant, Owner/Transferee shall, in accordance with Section 260.1018, RSMo, distribute a file- and date-stamped copy of the Covenant as recorded with the appropriate recorder of deeds (including book and page numbers) to: (a) each of the Parties hereto; (b) each person holding a recorded interest in the Property, including any mortgagees or easement holders; (c) each person in possession of the Property; (d) each municipality or other unit of local government in which the Property is located; (e) EPA; and (f) any other person designated herein.

17. Contact Information.

Any document or other item required by this Covenant to be given to another party hereto shall be sent to:

If to Owner/Transferee/Holder:

CT Corporation System
120 South Central Avenue
Clayton, MO 63105

And to:

Director of Site Services
Nestlé Purina PetCare Company
One Checkerboard Square
St. Louis, MO 63164

If to the Department:

Project Manager – Nestlé Purina PetCare Company
Missouri Department of Natural Resources
Hazardous Waste Program, Permits Section
P.O. Box 176
Jefferson City, MO 65102-0176

If to EPA:

Director, Air and Waste Management Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, KS 66219

The Owner/Transferee, Holder, Department, or EPA may change their designated recipient of such notices by providing written notice of the same to each other. If any notice or other submittal under this Covenant is received by a former Owner/Transferee who no longer has an interest in the Property, then such former Owner/Transferee shall notify the Department, EPA, Holder, and the current Owner/Transferee of the Property regarding the misdirected communication.

18. Reservation of Rights.

This Covenant is a necessary component of the environmental response project described above. Nothing in this Covenant shall be construed so as to relieve any Owner/Transferee from the obligation to comply with this Covenant during their period of ownership, or the obligation to comply with any other source of law. This Covenant is not a permit, nor does it modify any permit, order, agreement, decree, or judgment issued under any federal, State, or local laws or regulations, and the Department does not warrant or aver in any manner that an Owner/Transferee's compliance with this Covenant will constitute compliance

with any such requirements. The Department and EPA reserve all legal and equitable remedies available to enforce this Covenant or any other legal requirement, and/or to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Property. Nothing herein shall be construed so as to prevent the Department, EPA, or Holder from taking any independent actions as allowed by law.

DRAFT

FOR HOLDER:

By: _____ Date: _____

Gene McCoskey, Group Director
Site Services
Nestlé Purina PetCare Company
Checkerboard Square
St. Louis, MO 63164

STATE OF _____)

COUNTY OF _____)

On this ___ day of _____, 20___, before me a Notary Public in and for said state, personally appeared _____ (*Name*), _____ (*Title*) of _____ (*Corporate Name*), known to me to be the person who executed the within Covenant on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public

FOR THE DEPARTMENT:

By: _____

Date: _____

David J. Lamb, Director
Missouri Department of Natural Resources
Hazardous Waste Program
PO Box 176
Jefferson City, MO 65102-0176

STATE OF _____)

COUNTY OF _____)

On this ___ day of _____, 20___, before me a Notary Public in and for said state, personally appeared David J. Lamb, Director of the Hazardous Waste Program of the Missouri Department of Natural Resources, a state agency, known to me to be the person who executed the within Covenant on behalf of said agency by authority of its Director and acknowledged to me that he executed the same for the purposes therein stated.

Notary Public