
(ABOVE SPACE RESERVED FOR RECORDER'S USE)

Document Title: Environmental Covenant
Document Date:
First Party: Missouri Department of Natural Resources, P.O. Box 176, 1101 Riverside Drive, Jefferson City, Missouri 65102
Second Party: _____
[address]
Legal Description:

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by and between _____ (“Owner(s)”), and the Missouri Department of Natural Resources (“Department”) as “Holder,” pursuant to the Missouri Environmental Covenants Act, Sections 260.1000 through 260.1039, RSMo.

RECITALS

WHEREAS,

Owner, whose mailing address is _____, is the owner in fee simple of certain real property commonly known and numbered as _____ [site name and address] _____, shown on the site map attached hereto as Exhibit A, and legally described as:

[insert “legal description of the real property” OR See Exhibit B, attached hereto.]

the “Property;”

WHEREAS,

Owner desires to grant to the Department, whose mailing address is P.O. Box 176, Jefferson City, Missouri 65102-0176, this Environmental Covenant for the purpose of subjecting the Property to certain activity and use limitations as provided in the Missouri Environmental Covenants Act;

WHEREAS,

_____[Voluntary Party]_____ entered into a Letter of Agreement (Agreement) pursuant to the Brownfields/Voluntary Cleanup Program (BVCP), § 260.565, *et seq.*, RSMo, with the Department for the Property. The Agreement requires [Voluntary Party] to file an Environmental Covenant with the _____ County Recorder of Deeds for the Property in the event that chemicals of concern remain at the site above unrestricted land use levels, as determined by the Department, for any reason following the investigation and remediation of the site under the BVCP.

WHEREAS,

Pursuant to the Agreement, [Voluntary Party] implemented certain response activities at the Property, including the following:

[Provide background including a “brief narrative description of the contamination and remedy, including any contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination.” Describe site investigative

history, authority under which the environmental response project is being administered, NPL listing (if any), health assessment results, and response actions taken, i.e. soil removal to remediate xyz chemicals in whatever area of the site; placement of engineered cap; remediation of groundwater; asbestos or lead paint abatement, etc.]

For the purposes of this Environmental Covenant, the term “Residential Land Use” refers to property whose use is unrestricted as determined by the Department and that is either being used for residential use, or is zoned for residential use, or access to the Property is not restricted and children under 18 years of age are on the Property more than 250 days per year. “Non-residential Land Use” refers to property not included in “Residential Land Use”, which is publicly accessible with public access limited to non-routine visits, and where visitors are not supervised while on the property, commonly referred to as “commercial use,” and to property which is not publicly accessible, and where visitors are supervised while on the property, commonly referred to as “industrial use.”

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

1. Parties.

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

2. Activity and Use Limitations.

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

[insert appropriate paragraph(s) here from Attachment “AULs” to include Use Restrictions, Disturbance Restrictions, and/or Construction Restrictions]

3. Running with the Land.

This Environmental Covenant shall be binding upon Owner and his/her/its heirs, successors, assigns, and Transferees in interest, 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,” as used in this Environmental 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, easement holders, and/or lessees.

4. Location of File for the Environmental Response Project.

Further information regarding the environmental response project for the Property may be obtained from the Department through a written request under the Missouri Open Records Law, Chapter 610 RSMo, by providing the Department with the site identification name of **(name of site per DNR’s record keeping system)** to Missouri Department of Natural Resources, Attn: Custodian of Records, P.O. Box 176, Jefferson City, Missouri 65102-0176.

5. Enforcement.

Compliance with this Environmental Covenant may be enforced as provided in Section 260.1030, RSMo. Failure to timely enforce compliance with this Environmental 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 Environmental Covenant shall restrict any person from exercising any authority under any other applicable law.

6. Right of Access.

Owner hereby grants to the Department and its respective agents, contractors, and employees, the right of access at all reasonable times to the Property for implementation, monitoring or enforcement of this Environmental Covenant. Nothing herein shall be deemed to limit or otherwise affect the Department's rights of access and entry under federal or state law.

7. Compliance Reporting.

Owner/Transferee shall submit to the Department, 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. Such reports shall be sent to the Department at the address that appears in paragraph 19 (Notice) below. The Department may change its mailing address by written notice to Owner/Transferee. The Compliance Report shall include the following statement, signed by Owner/Transferee:

To the best of my knowledge, after thorough investigation, I certify that 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.

8. Additional Rights.

[Section 260.1009.2(6), RSMo provides that the Environmental Covenant may include rights of the Holder in addition to the right to enforce the Covenant. Please insert any such additional rights here.]

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 Environmental Covenant, and provide the recording reference for this Environmental 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 Department 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. (Optional) Notification Requirement.

Owner shall notify the Department following transfer of any interest in the Property, of any changes in use of the Property, of any applications for building permits for site work on the Property, or proposals for site work affecting the contamination on the Property.

11. Representations and Warranties.

Owner hereby represents and warrants to the Department that Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all of Owner's obligations hereunder;

[insert the following, as appropriate]

- that Owner is the sole owner of the Property and holds fee simple title, which is free, clear and unencumbered;
- to the extent that other interests in the Property exist, Owner [and any other person who holds an interest] has agreed to subordinate such interest to this Environmental Covenant, pursuant to Section 260.1006.4, RSMo, and the subordination agreement (attached hereto as Exhibit __ or recorded at _____);
- that Owner has identified all other parties who hold any interest (e.g., encumbrance) in the Property and notified such parties of Owner's intention to enter into this Environmental Covenant; and
- that this Environmental 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.

12. Amendment or Termination.

This Environmental Covenant may be amended or terminated by consent signed by the Department. Signatories to this Environmental Covenant other than Department hereby waive the right to consent to any amendment to, or termination of, this Environmental Covenant. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, Owner/Transferee shall file such instrument for recording with the office of the recorder of the county in which the Property is situated, and within thirty (30) days of the date of such recording, Owner/Transferee shall provide a file- and date-stamped copy of the recorded instrument to the Department.

13. Severability.

If any provision of this Environmental 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.

14. Governing Law.

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

15. Recordation.

Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall record this Environmental Covenant with the office of the recorder of the county in which the Property is situated.

16. Effective Date.

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

17. Distribution of Environmental Covenant.

Within thirty (30) days following the recording of this Environmental Covenant, or any amendment or termination of this Environmental Covenant, Owner/Transferee shall, in accordance with Section 260.1018, RSMo, distribute a file- and date-stamped copy of the recorded Environmental Covenant to: (a) each signatory hereto; (b) each person holding a recorded interest in the Property; (c) each person in possession of the Property; (d) each municipality or other unit of local government in which the Property is located; and (e) any other person designated by the Department.

18. Notice.

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

If to Owner:

[title]

[address]

If to Department:

Project Manager – [site name]

Brownfields/Voluntary Cleanup Program

Hazardous Waste Program

PO Box 176

Jefferson City, MO 65102-0176

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The undersigned represent and certify that they are authorized to execute this Environmental Covenant.

IT IS SO AGREED:

FOR [OWNER(S)]

By: _____ Date: _____
 Name (print): _____
 Title: _____
 Address: _____

STATE OF _____)
)
 COUNTY OF _____)

On this ___ day of _____, 200__, 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 Environmental Covenant in behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.

 Notary Public

FOR DEPARTMENT

By: _____ Date: _____

Jim Belcher, Chief
Brownfields/Voluntary Cleanup Program
Hazardous Waste Program
Missouri Department of Natural Resources
PO Box 176
Jefferson City, MO 65102-0176

STATE OF MISSOURI)

)

COUNTY OF _____)

On this ___ day of _____, 200__, before me a Notary Public in and for said state, personally appeared Jim Belcher, Section Chief of the Brownfields/Voluntary Cleanup Program of the Missouri Department of Natural Resources, a state agency, known to me to be the person who executed the within Environmental Covenant in 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

MODEL PARAGRAPHS FOR USE IN ENVIRONMENTAL COVENANT

AULs

AULs fall into several categories including land use restrictions, groundwater, disturbance, and construction. Depending on site-specific conditions, restrictions other than those listed here may be appropriate, and will be negotiated between the property owner and the Department.

USE RESTRICTIONS:

- A. Restricted Residential Land Use:** The Property currently meets the Department standards for restricted residential use and, based on reports on file at the Department offices in Jefferson City, Missouri, the chemicals present pose no significant present or future risk to human health or the environment based on restricted use of the Property. The Property may be used for multi-family residential uses such as apartments or condominiums. No further response action for the Property is required by the Department as long as the Property is not used for single-family residential (Residential Land Use) or other purposes constituting unrestricted use. Since cleanup standards for Non-residential Land Use (commercial or industrial use) are less stringent than Restricted Residential Land Use, the Property also meets or exceeds Non-residential Land Use standards and may be used for commercial or industrial uses.
- B. Non-Residential Land Use:** The Property currently meets the Department standards for restricted use (Non-residential Land Use) and, based on reports on file at the Department offices in Jefferson City, Missouri, the chemicals present pose no significant present or future risk to human health or the environment based on restricted use of the Property. No further response action for the Property is required by the Department as long as the Property is not to be used for Residential Land Use or other purposes constituting unrestricted use. The Property shall not be used for purposes other than commercial or industrial uses. If any person desires in the future to use the Property for residential or other purposes constituting unrestricted use, the Department must be notified 120 days in advance and further analyses and, as necessary, response actions will be necessary prior to such use. The Property may not be used in a manner such that the definition of Residential Land Use would define the use of the site.
- C. Non-residential Land Use With Engineered Controls:** The Property currently meets the Department standards for restricted use (Non-residential Land Use) and, based on reports on file at the Department offices in Jefferson City, Missouri, the chemicals present pose no significant present or future risk to human health or the environment based on restricted use of the Property. No further response action for the Property is required by the Department as long as the Property is not to be used for Residential Land Use or other purposes constituting unrestricted use. The Property is protective for restricted use as long as the **(insert engineering or other physical controls in place)** is/are maintained to prevent exposure. The Property shall not be used for purposes other than commercial or industrial uses. If any person desires in

the future to use the Property for residential or other purposes constituting unrestricted use, the Department must be notified 120 days in advance and further analyses and, as necessary, response actions will be necessary prior to such use. The Property may not be used in a manner such that the definition of Residential Land Use would define the use of the site.

GROUNDWATER RESTRICTIONS:

- D. No Drilling or Use of Groundwater:** The groundwater beneath the Property contains chemicals at concentrations exceeding applicable cleanup standards. The owner and operator of the Property shall prevent: use of and exposure to the groundwater; any artificial penetration of the groundwater-bearing unit(s) containing chemicals which could result in cross-contamination of clean groundwater-bearing units; installation of any new groundwater wells on the Property, except those used for investigative purposes; use of groundwater for drinking or other domestic purposes and the use of groundwater for purposes other than domestic purposes; release of groundwater to surface water bodies, whether such release is the result of human activities or is naturally occurring. Should a release of contaminated groundwater occur, the owner must take action to contain and properly dispose of such groundwater. [OPTIONAL IF NEEDED: Groundwater beneath the Property shall be monitored by the owner in accordance with specific requirements of the Department-approved monitoring plan unless or until the Department approves any modifications].
- E. No Drilling or Use of Groundwater; Engineered Controls for Groundwater:** The groundwater beneath the Property contains chemicals identified in reports on file at the Department offices in Jefferson City, Missouri at concentrations that exceed the cleanup standards of the Department, and (**insert physical or engineering controls**) have been constructed in the area located on the map attached as “**Exhibit ____.**” The physical or engineering controls must remain in place and effective in accordance with the Department-approved (**insert name of plan**) unless or until the Department approves any modifications. Additionally, the owner and operator of the Property must prevent: use of and exposure to the groundwater; any artificial penetration of the groundwater-bearing unit(s) containing chemicals which could result in cross-contamination of clean groundwater-bearing units; the installation of any new groundwater wells on the Property, except those used for investigative purposes; the use of groundwater for drinking or other domestic purposes and the use of groundwater for purposes other than domestic purposes; and release of groundwater to surface water bodies, whether such release is the result of anthropic activities or is naturally occurring. Should a release of contaminated groundwater occur, the owner must take action to contain and properly dispose of such groundwater. [Groundwater beneath the Property shall be monitored by the owner in accordance with specific requirements of the Department-approved monitoring plan unless or until the Department approves any modifications].

DISTURBANCE RESTRICTIONS:

- F. No Disturbance of Soil:** Soil at the Property contains chemicals, as identified in reports on file at the Department offices in Jefferson City, Missouri, at concentrations exceeding the Department's cleanup standards for **Non-residential Land Use [in the areas shown on the map at Exhibit ___ attached hereto]**. Therefore, soil at the Property **[in the areas shown on the map at Exhibit ___ attached hereto]** shall not be excavated or otherwise disturbed in any manner without the written permission of the Department. Should the owner or operator desire to disturb soil at the Property **[in one or more of the areas shown on the map at Exhibit ___ attached hereto]**, they shall request permission to do so from the Department at least 30 days before the soil disturbance activities are 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.
- G. Disturbance of Soil Permitted Under Approved Soil Management Plan:** Soil at the Property contains chemicals, as identified in reports on file at the Department offices in Jefferson City, Missouri, at concentrations exceeding the Department's cleanup standards for **Non-Residential Land use [in the areas shown on the map at Exhibit ___ attached hereto]**. Therefore, soil at the Property **[in the areas shown on the map at Exhibit ___ attached hereto]** shall not be excavated or otherwise disturbed in any manner unless under the provisions of the Department-approved Soil Management Plan attached hereto as Exhibit ____.

CONSTRUCTION RESTRICTIONS:

- H.** Soil at the Property contains chemicals, as identified in reports on file at the Department offices in Jefferson City, Missouri, at concentrations exceeding the Department's cleanup standards for **Non-Residential Land use [in the areas shown on the map at Exhibit ___ attached hereto]**. Therefore, no buildings may be constructed on the Property **[in the areas shown on the map at Exhibit ___ attached hereto]** except with the written permission of the Department. Should the owner or operator desire to construct a building on the Property **[in one or more of the areas shown on the map at Exhibit ___ attached hereto]**, they shall request permission to do so from the Department at least 30 days before construction is anticipated to begin. Based on the potential hazards associated with the construction activities, the Department may deny the request to construct or may require specific protective or remedial actions before allowing such construction activities to occur.