

Ref - PQ CORPORATION
1700 KANSAS AVE
KCK 66015
ATTN: ERIC NELSON



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2011R-01695

REGISTER OF DEEDS
WYANDOTTE COUNTY, KS
RECORDED ON

02/10/2011 08:13:05AM

REC FEE: 24.00

TECHNOLOGY FEE: 20.00

PAGES: 10

DOCUMENT NUMBER: 06-EUC-0016
PROJECT NUMBER: C4-105-70011
PROPERTY CATEGORY: 2

BER SCANNED
FEB 21 2011

Bk:5745 Pg:347 356

ENVIRONMENTAL USE CONTROL AGREEMENT

PQ Corporation, a Pennsylvania corporation, having a mailing address of 1700 Kansas Avenue, Kansas City, Kansas 66105, hereinafter referred to as "the Owner", is the owner of real property in the County of Wyandotte, Kansas, as shown on the map attached hereto as Exhibit A, hereinafter referred to as "the Property", and more particularly described by the following legal description:

A tract of land in the Southwest quarter of Section 16, Township 11, Range 25 in Wyandotte County, Kansas, being more particularly described as follows:

Commencing at the Southwest corner of the Southwest quarter of Section 16; thence N02°45'03"W, along the West line of said section, a distance of 215.31 feet; thence N87°14'57"E, perpendicular to said West line, a distance of 33.20 feet, to the Point of Beginning of the tract of land being described; thence N11°20'15"W, a distance of 38.68 feet; thence N09°38'02"W, a distance of 31.23 feet; thence N05°32'44"W, a distance of 64.38 feet; thence N02°21'16"W, a distance of 556.76 feet; thence N87°40'33"E, a distance of 55.21 feet; thence N02°12'23"W, a distance of 336.09 feet; thence N56°42'46"E, a distance of 19.13 feet; thence N87°28'07"E, a distance of 51.40 feet; thence N17°42'14"W, a distance of 1.39 feet; thence N03°20'03"W, a distance of 24.31 feet; thence N13°29'58"W, a distance of 70.04 feet; thence S82°55'04"E, a distance of 482.51 feet; thence S42°15'16"E, a distance of 30.30 feet; thence N63°03'54"E, a distance of 34.04 feet; thence S82°23'02"E, a distance of 34.40 feet; thence S59°10'44"E, a distance of 38.18 feet; thence N39°38'06"E, a distance of 19.57 feet; thence S78°20'25"E, a distance of 124.46 feet; thence S02°23'46"E, a distance of 723.01 feet; thence S84°27'31"W, a distance of 9.89 feet; thence S61°12'59"W, a distance of 69.76 feet; thence S58°33'12"W, a distance of 44.91 feet; thence N76°30'11"W, a distance of 3.49 feet; thence N69°42'18"W, a distance of 25.21 feet; thence S49°35'57"W, a distance of 133.18 feet; thence N54°32'57"W, a distance of 2.86 feet; thence N64°10'32"W, a distance of 35.48 feet; thence S66°51'05"W, a distance of 71.85 feet; thence S83°59'57"W, a distance of 27.63 feet; thence S29°38'42"W, a distance of 28.77 feet; thence S31°04'05"W, a distance of 29.05 feet; thence N64°25'30"W, a distance of 82.23 feet; thence S16°12'05"W, a distance of 36.86 feet; thence S25°05'23"W, a distance of 30.34 feet; thence S35°29'25"W, a distance of 29.81 feet;

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thence S46°36'53"W, a distance of 30.45 feet; thence S53°32'04"W, 30.26 feet; thence S55°44'06"W, a distance of 60.20 feet; thence S59°44'16"W, a distance of 39.62 feet; thence S62°49'45"W, a distance of 44.20 feet; thence S87°09'12"W, a distance of 35.10 feet; thence N65°37'35"W, a distance of 27.70 feet; thence N49°33'27"W, a distance 27.77 feet; thence N55°00'43"W, a distance of 30.23 feet; thence N72°44'13"W, a distance of 26.11 feet to the Point of Beginning, having and area of 784,922 square feet or 18.02 acres.

And which shall likewise include any and all parcels contained therein.

WHEREAS the Owner has requested, by application to the Kansas Department of Health and Environment, hereinafter referred to as "KDHE", to restrict, prohibit and/or limit certain uses of the Property in accordance with Kansas Statutes Annotated (K.S.A.) 2009 Supp. 65-1,221 *et seq.*

KDHE has approved the Owner's application to restrict, prohibit, and/or limit certain uses of the Property since residual contamination, which exceeds department standards for unrestricted residential use, remains on the Property.

The conditions at the Property as of the date of KDHE's approval of the application are as follows:

Investigations at the Property used for industrial purposes since the 1800s have identified nitrate and ammonia (nitrogen) impacts to soil above the corresponding soil cleanup guidelines as established by the *Risk-Based Standards for Kansas RSK Manual – 5th Version* (October 2010) and nitrate impacts to groundwater above the primary maximum contaminant level (MCL) as established by the federally promulgated Safe Drinking Water Act.

Soil impacts are located at two different locations on the Property; the former grain elevator area and a "Swale Area" in the west half and central portion of the Property, respectively. The Swale Area is currently capped with concrete thereby preventing additional leaching of nitrogen to the groundwater. Groundwater impacts appear to be contained to the Swale Area based on the latest groundwater sampling event (November 2007), where only one monitoring well had groundwater results exceeding the MCL for nitrate. Long-term groundwater monitoring will be conducted under the oversight of the Voluntary Cleanup and Property Redevelopment Program (VCPRP) until nitrate levels are consistently below the MCL. If the proposed strategy does not achieve remedial goals, the contingency plan identified in the Voluntary Cleanup Plan will be implemented.

KDHE has determined, based on conditions at the Property, the application and other information pertaining to the Property, that environmental use controls are appropriate to ensure future protection of public health and the environment, subject to the conditions herein. Therefore, in accordance with

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K.S.A. 2009 Supp. 65-1,226 and the rules and regulations promulgated thereunder, the Property is hereby designated by KDHE as a Category 2 property.

The Owner acknowledges that this Agreement runs with the land and is binding on all successors in interest in the Property pursuant to K.S.A. 2009 Supp. 65-1,227(b); and is enforceable by KDHE pursuant to K.S.A. 2009 Supp. 65-1,229, unless and/or until such requirements are mutually terminated in writing by KDHE and Owner or Owner's successor in interest. For purposes of the obligations set forth in this document, "Owner" shall be deemed to include the current Owner and any and all successors in interest.

This Agreement shall be recorded, by the Owner, with the Wyandotte County Register of Deeds for the purposes of providing notice of the environmental use controls, protecting public health and the environment, and to prevent interference with the operation, performance, and/or maintenance of any remedial actions on the Property.

RESTRICTIONS, PROHIBITIONS AND LIMITATIONS:

Due to the environmental conditions described above, it is the desire and intention of the Owner to restrict, prohibit, and/or limit the following uses of the Property:

- A. The Property shall not be used for residential purposes of any type including, but not limited to, a residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or public use area, including a school, educational center, day care center, playground or similar structure, unrestricted outdoor recreational area, or park unless prior authorization is granted in writing by KDHE.
- B. The Owner shall not allow water wells to be drilled, constructed, or used on the Property for domestic purposes which use involves or may involve human consumption and/or other possible human contact uses. This restriction does not prohibit drilling, construction or use of water wells for the purpose of containing product or contamination, or for contaminated ground water recovery, monitoring, or other remediation activities as approved in writing by KDHE.
- C. The Owner shall not file or petition to initiate re-zoning of the Property without fifteen (15) calendar days prior notification to KDHE.
- D. The Owner shall allow no operations or uses on the Property that will or likely will penetrate the concrete cap or jeopardize the concrete cap's functional integrity, including without limitation, excavation, drilling, scraping, or erosion unless prior authorization is granted in writing by KDHE.

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- E. KDHE may require sampling of soils prior to any excavation activities. Based on the potential hazards associated with the soil disturbance activities, KDHE may require specific protective or remedial actions before allowing such soil disturbance activities to occur on the Property.
- F. The Owner shall inform all easement holders, contractors and/or other workers performing any excavation activities on the Property, prior to such activities, of the potential hazards associated with the transport of any potentially contaminated and/or hazardous soil or other material from the Property. Easement holders, contractors and/or workers shall also be informed by the Owner of any potential hazards associated with releases from contaminated media located on the Property.
- G. The Owner shall preserve, protect and replace, as necessary, all permanent survey markers and benchmarks and all environmental monitoring stations that may be installed on the Property.

LOCAL ORDINANCES AND ZONING:

The Owner and KDHE acknowledge that the following local ordinances and zoning requirements in place at the time of recording this Agreement shall be used in addition to the restrictions, prohibitions and limitations set forth in this Agreement.

The Property is zoned M-3 Heavy Industrial by the Urban Planning and Land Use Department of the Unified Government of Wyandotte County/Kansas City, Kansas.

ACCESS:

The Owner hereby agrees and conveys to KDHE, its agents, contractors, and employees, access to the Property for the term of this Agreement to enter or come upon the Property to inspect the Property and perform any required action (i.e., monitoring, sampling, etc.) KDHE deems necessary for any one or more of the following purposes:

1. Ensuring that use, occupancy, and activities of and at the Property are consistent with this Agreement;
2. Inspecting protective structures and any other remedial systems to ensure their designed operation, performance and structural integrity;
3. Documenting environmental conditions of and at the Property;
4. Ensuring implementation and enforcement of the requirements, restrictions, prohibitions, and other limitations described in this Agreement; and/or

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5. Performing any additional investigations or remediation deemed necessary by KDHE to protect public health and the environment.

DURATION:

The Owner hereby agrees that this Agreement extends in perpetuity unless and/or until removal following approval by KDHE pursuant to K.S.A. 2009 Supp. 65-1,227.

MONITORING AND INSPECTION REQUIREMENTS:

Groundwater monitoring at the Property, currently overseen by KDHE’s Bureau of Environmental Remediation under the auspices of the VCPRP, is conducted under Voluntary Agreement No. 00VCP0027 with the Owner.

The Owner shall visually inspect the Property and the integrity of the concrete cap at least once every five (5) years. The Owner shall submit once every five (5) years to KDHE, a written report documenting information on the current uses of the Property, condition of the concrete cap, inspection findings, photo documentation and any other information required to verify the restrictions and terms of this Agreement are being fulfilled. Subsequent written reports shall be submitted once every five (5) years thereafter within the same month as established by the initial written report.

The Owner may submit and KDHE shall consider modifications of the frequency of inspection and reporting if warranted by technical data. Written approval from KDHE must be obtained for modification of frequency of inspection and reporting requirements throughout the term of this Agreement.

MAINTENANCE REQUIREMENTS:

The Owner hereby agrees to provide post-construction maintenance of the concrete cap and correct deficiencies as outlined by KDHE to prevent exposure to human health and the environment. Maintenance includes, but is not limited to, inspection and repairs to the concrete cap. Repairs may be necessary to correct the effects of settlement, subsidence, erosion, or other events including widening of cracks or other openings, which may provide potential exposure to or migration of contaminated subsurface soils.

FUNDING:

The Owner hereby agrees to submit to KDHE a one-time payment of \$6,000 to compensate KDHE for costs incurred to perform inspections and tracking of the terms and requirements of this Agreement. The Owner acknowledges that the funding requirement for this Agreement is based on

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the size of the Property, physical properties of residual contamination, types of protective structures at the Property, frequency of KDHE's anticipated inspections and anticipated inspection costs.

OTHER TERMS AND CONDITIONS:

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any sale, lease, conveyance or other transfer of the Property. The notice shall include the name and business address (if applicable) of the transferee and the expected date of transfer.

The Owner shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee or transferee to comply with the terms of this Agreement. The failure to include such a provision shall not affect the validity or applicability to the Property of this Agreement.

Within fifteen (15) calendar days of real property conveyance, the Owner hereby agrees to provide KDHE a copy of the recorded deed with legal description and corresponding survey map for which this Agreement applies.

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any land use changes at the Property.

The Owner acknowledges that the requirements in this Agreement may not be extinguished, limited or impaired through adverse possession, abandonment, waiver, lack of enforcement, or other common law principles, pursuant to K.S.A. 2009 Supp. 65-1,227(e).

This Agreement may be modified by mutual written agreement by the Owner and KDHE. Within thirty (30) calendar days of executing an amendment, modification, or termination of this Agreement, the Owner shall record such amendment, modification, or termination with the Wyandotte County Register of Deeds, and within thirty (30) calendar days thereafter, the Owner shall provide a copy of the recorded amendment, modification, or termination to KDHE that bears the seal and/or notarized signature of the Register of Deeds.

ENFORCEABILITY:

If the terms of this Agreement are not being implemented by the Owner or contamination at the Property presents a hazard to public health or the environment, KDHE may take such action as authorized by K.S.A. 2009 Supp. 65-1,229, including:

- A. Issue an order directing the Owner to correct any deficiencies and fully implement the terms of this Agreement.

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- B. Issue an order retracting this Agreement and any remedial action at the Property and requiring the Owner to implement a remedial action at the Property to attain a cleanup standard that will allow for unrestricted use of the Property.

EFFECTIVE DATE OF AGREEMENT:

The Owner shall provide to KDHE a copy of this Agreement bearing the seal or notarization of the Register of Deeds in **Wyandotte County** within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

The Owner shall provide KDHE with funding as determined by KDHE in accordance with K.S.A. 2009 Supp. 65-1,226 within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

Proper recording of all necessary documents and submission of required funding shall be conditions precedent to the effectiveness of this Agreement.

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IN WITNESS WHEREOF, KDHE and the Owner have entered into and executed this Environmental Use Control Agreement through their duly authorized representatives as of this 7th day of December, 2010.

Kansas Department of Health and Environment

By: *John W. Mitchell*
 John Mitchell, Acting Secretary

ACKNOWLEDGMENT:

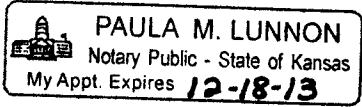
STATE OF KANSAS)
)ss:
 COUNTY OF SHAWNEE)

BE IT REMEMBERED, on this 7th day of December, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came John Mitchell, Acting Secretary and authorized representative of KDHE, who is personally known to be such person who executed the above document on behalf of KDHE, and such person duly acknowledged the execution of the same to be his/her act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Shawnee County, Kansas, the day and year last written above.

Paula M. Lunnon, Shawnee, Kansas
 Notary Public in and for said County and State

My Term Expires: 12-18-13



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Corporation: PQ Corporation

By: WJ Sichko

Date: 21 Dec 2010

Print Name: William J Sichko, Jr.

Title: Chief Administrative Officer

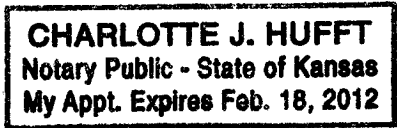
ACKNOWLEDGMENT:

STATE OF KANSAS)
)ss:
 COUNTY OF Johnson)

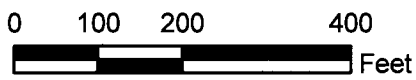
BE IT REMEMBERED, on this 21 day of December, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came William J Sichko, Jr., authorized representative of PQ Corporation, who is personally known to be such person who executed the above document on behalf of said corporation, and such person duly acknowledged the execution of the same to be his/her act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Johnson County, KANSAS, the day and year last written above.

Charlotte J Hufft
 Notary Public in and for said County and State



My Term Expires: 18 Feb 2012



Map Prepared by KDHE

LEGEND



-  Local Roads
-  EUCA Area Boundary (approximate)

Exhibit A

PQ Corporation
Kansas City, Kansas
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In Sec. 16, T11S, R25E