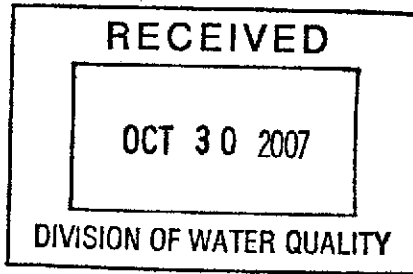


Nestlé USA
Legal Department

800 NORTH BRAND BLVD.
GLENDALE, CA 91203

TEL (818) 549-5633
FAX (818) 549-5640

noelia.marticolon@us.nestle.com



NOELIA MARTÍ-COLÓN
Senior Counsel

October 26, 2007

Via U.S. Mail, fax and email:
GLockwood@waterboards.ca.gov
Fax #: 916-341-5808

George Lockwood
State Water Resources Control Board
Division of Water Quality
P.O. Box 2231
Sacramento, CA 95812

Re: Petition for Site Closure
Fuel Leak Case No. RO0000018 – Alameda County Health Care Services
Geotracker Global ID TO600100262
Carnation Dairy, 1310 14th Street, Oakland, CA 94607

Dear Mr. Lockwood:

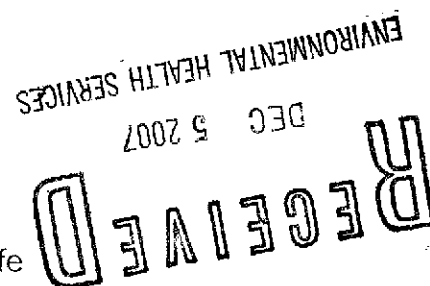
Please accept this petition for site closure for a site located at 1310 14th Street, in Oakland, California. By this petition, Nestlé USA, Inc. seeks review of a decision of the Alameda County Health Care Services Agency dated September 28, 2007, denying a closure request for this site. The State Water Resources Control Board has authority to review this decision as provided by Health and Safety Code §25296.40(a)(1) and 23 CCR §2814.6-2814.8

The name and address of the petitioner is:

Nestlé USA, Inc.
Noelia Martí-Colón, Senior Counsel
800 N. Brand Blvd.
Glendale, CA 91208

The address of the site is:

1310 14th Street, Oakland, CA 94607



Nestlé. Good Food, Good Life

Mr. George Lockwood
October 26, 2007

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The name and address of the current owner of the site is:

Encinal 14th Street, LLC
c/o Hall Equities – Ken Cheitlin
1855 Olympic Boulevard, Suite 250
Walnut Creek, CA 94596

The owners of adjacent properties that are across the street from the site:

Nestlé USA, Inc. is working to identify this information and will amend this petition when the information becomes available.

The name, address, and telephone number of all responsible parties.

Nestlé USA, Inc.
Noelia Martí-Colón, Senior Counsel
800 N. Brand Blvd.
Glendale, CA 91208
818-549-6220

Encinal 14th Street, LLC
c/o Hall Equities – Ken Cheitlin
1855 Olympic Boulevard, Suite 250
Walnut Creek, CA 94596
925-472-5289

A copy of the decision denying case closure by the regulatory agency overseeing corrective action at the site:

Attached to this petition is the denial of case closure from Alameda County Health Care Services Agency dated September 28, 2007.
(Attachment 1)

A statement of reasons why the case should be reviewed:

Nestlé removed free product to the maximum extent practicable at this site, as required for State Water Resources Control Board review of the local agency decision.

Remediation activities are detailed in several technical reports, including the "Comprehensive Site Characterization Report" by ETIC dated January 2001 and the "Request for Case Closure Report – Former Nestlé USA, Inc. Facility, 1310 14th Street, Oakland, California" prepared by ETIC Engineering, Inc. dated February 2, 2002.

Mr. George Lockwood
October 26, 2007

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These and other reports providing information on the remediation and environmental conditions of the northwest portion of the site are available on the Alameda County Health Care Services Agency website, on the link for LOP documents.

To summarize the remedial activities at the site:

- 1,200 cubic yard soils were excavated in the area of former tank locations (see Figure 2 of Comprehensive site Characterization Report (ETIC, January 24, 2001). The soil was treated onsite and placed back into the excavation;
- 1.5 million gallons of groundwater was extracted and treated removing 5,000 gallons of petroleum hydrocarbons following the removal of underground storage tanks;
- Product skimming between January and March 1989 removed approximately 1,800 gallons of liquid petroleum hydrocarbon;
- A soil vapor extraction system removed 5,200 gallons of hydrocarbon equivalent between January 1994 through December 1995;
- A multi-phase extraction system operated from August 1997 through June 2000, removed approximately 1,500 gallons of hydrocarbon;
- A total of 13,500 gallons of free product was removed from the site by various technologies.

Alameda County Health Care Services Agency directed Nestlé USA, Inc. to complete two years of semi-annual monitoring subsequent to the ETIC 2002 request for case closure. (See a letter dated November 14, 2002, included with this Petition as Attachment 2.) The agency stated that if the monitoring verified that the plume is not migrating, site closure would be approved. Nestlé USA, Inc. complied with this directive and confirmed that the plume is stable and not migrating off-site. Nestlé renewed its closure request on several occasions.

By letter dated September 28, 2007, the Alameda County Health Care Services Agency arbitrarily and capriciously denied the request for closure of the northwest portion of the site and required additional investigation. The agency established a clearly defined standard for closure in 2002, and then delayed action on the ensuing closure requests. Alameda County Health Care Services Agency now seeks to impose new assessment and investigation requirements, notwithstanding the fact monitoring shows that the plume is stable and not migrating off-site.

A Covenant and Environmental Restriction On Property was recorded on June 12, 2000 (Attachment 3). This deed restriction limits the development, use and conveyance of the property. It is enforceable by the California Regional Water Quality Control Board for the San Francisco Bay Region to protect public health and safety.

Mr. George Lockwood
October 26, 2007

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The continuing existence of this deed restriction renders the issues raised by Alameda County Health Care Services Agency in its directive dated in the September 28, 2007 relative to the northwest corner of the property moot.

Nestlé respectfully requests your favorable consideration of this request.

Very truly yours,

A handwritten signature in black ink that reads "Jennifer Costanza for". The signature is written in a cursive, flowing style.

Noelia Martí-Colón
Senior Counsel

Enclosures as indicated

cc: Alameda County Health Care Services Agency – attn: Jerry Wickham
Hall Equities – Ken Cheitlan

Attachment 1

September 28, 2007 letter from Alameda County Health Care Services Agency to Michael Desso, Nestlé and Mark Hall, Encinal 14th Street, LLC

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
FAX (510) 337-9335

September 28, 2007

Mr. Michael Desso
Nestle USA, Inc.
800 North Brand Blvd.
Glendale, CA 91203

Mr. Mark Hall
Encinal 14th Street, LLC
1855 Olympic Blvd., Suite 250
Walnut Creek, CA 94596

Subject: Fuel Leak Case No. R0000018 and Geotracker Global ID T0600100262, Carnation Dairy, 1310 14th Street, Oakland, CA 94607

Dear Mr. Desso and Mr. Hall:

Alameda County Environmental Health (ACEH) staff has reviewed the fuel leak case file for the above referenced site. Numerous technical reports are contained in the ACEH files for this case with the most recent technical report in the ACEH files entitled, "Second Semi-Annual Groundwater Monitoring Report, Former Nestle Facility, 1310 14th Street, Oakland, California," dated February 23, 2005. The site consists of a one-block area bounded on the north by 16th Street, on the west by Mandela Parkway, on the south by 14th Street, and on the east by Poplar Street. Covenants and environmental restrictions for the northwestern portion of the property were recorded against the deed for the property on June 12, 2000. The majority of site assessment and remediation activities have been conducted within the northwestern portion of the site in the area of former gasoline, diesel, and waste oil USTs and a former warehouse with service bays. Elevated concentrations of fuel hydrocarbons were detected in soil and groundwater in the area of the former USTs and piping and extending north-northwest to 16th Street. Gasoline apparently migrated as free phase product from the USTs and piping to the area beneath an L-shaped building former used as a warehouse with vehicle service bays. Soil and groundwater remediation was conducted at the site at various times from January 1994 to June 2000. Post-remediation groundwater monitoring was conducted at the site from June 2000 to November 2004.

We understand that you may wish to subdivide the site for consideration under separate regulatory cases. Although we have no objection to this proposal, please review the discussion in technical comment 1 below regarding separate regulatory cases.

Case closure was requested on behalf of Nestle in the report entitled, "Request for Case Closure for the Former Nestle Facility Located at 1310 14th Street, Oakland, CA," which was dated February 6, 2002 and prepared by ETIC Engineering, Inc. The technical comments below identify several areas of the site where additional information or investigation is required to evaluate whether the levels of residual contamination at the site pose a risk to human health or the environment. Specifically, the potential for indoor vapor intrusion within the building in the northwestern portion of the site must be evaluated. In addition, we have requested additional

Mr. Michael Desso
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information or additional investigation to address inconsistencies or data gaps regarding residual free product, hydraulic gradient, plume stability, and the site conceptual model in the northwestern portion of the site. In the remainder of the site, site characterization is incomplete for abandoned in place USTs, a former gas and oil pump, PCBs detected in groundwater, vinyl chloride detected in groundwater, and petroleum hydrocarbons detected beneath a building slab. Based on these factors and the items further discussed in the technical comments below, this leak case cannot be closed at this time.

This decision is subject to appeal to the State Water Resources Control Board (SWRCB), pursuant to Section 25299.39(b) of the Health and Safety Code (Thompson-Richter Underground Storage Tank Reform Act - Senate Bill 562). Please contact the SWRCB Underground Storage Tank Program at (916) 341-5851 for information regarding the appeal process

We request that you address the following technical comments, perform the proposed work, and send us the reports described below.

REQUEST FOR INFORMATION

The copy of the report entitled, "Phase I Environmental Site Assessment and Soil, Soil Vapor, and Groundwater Quality Evaluation," prepared by Lowney Associates and dated March 17, 2004 is an unsigned draft version of the report and does not include the appendices. Please submit the final signed version of the report with appendices.

TECHNICAL COMMENTS FOR NORTHWESTERN PORTION OF SITE

1. **Separate Cases.** We have no objection to establishing separate regulatory cases for the northwestern portion of the site and the remainder of the site to potentially facilitate restoring or changing land use within a portion of the site. If you would like to proceed with separate regulatory cases for the site, please make a written proposal that includes a description of the parcels, the rationale for the separation, and a map showing an outline of the proposed parcels to be included. However, establishing separate regulatory cases is normally proposed when closure of one area of the site is pending. Since case closure is currently not pending for either area of the site, you may wish to delay separating the site into separate regulatory cases until case closure becomes more imminent for one area of the site.
2. **Soil Vapor Sampling Results and Potential Indoor Vapor Intrusion.** Due to the highly elevated concentrations of petroleum hydrocarbons detected in soil and groundwater beneath the L-shaped building in the northwest corner of the site, the potential for vapor intrusion to indoor air must be evaluated in order to assess whether the building can be occupied in the future. Five soil vapor samples were collected in 2004 by Lowney Associates; however, none of the soil vapor samples were collected inside the building. In August 1999, 15 soil vapor samples were collected within the northwest portion of the site with four soil vapor samples collected inside the building. Since these soil vapor samples were collected during operation of the remediation system, it cannot be assumed that these results are representative of current conditions. A field soil vapor survey was conducted using a combustible gas indicator

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on June 7, 2001. The field survey included soil vapor results from several existing monitoring wells or vapor wells inside the building. Total petroleum hydrocarbons were detected in soil vapor at concentrations up to greater than 10,000 ppm at sampling locations within the building. We request that you present plans for soil vapor sampling within the northwest portion of the site in the Work Plan requested below.

3. **Free Phase Product.** Free phase product has been observed over an area extending from the former USTs to the former maintenance area in the northwest portion of the site. Free product recovery using multi-phase extraction was initiated in August 1997 and terminated in June 2000. The number of wells containing detectable amounts of free phase product decreased from August 1997 to June 2000 during the remediation. Free product measurements were conducted in several wells until the wells were decommissioned in August 2001. A review of free phase product thickness indicates that free product thickness increased in several wells (MW23, MW24, PR12, PR58, and PR64) between the termination of MPE in June 2000 and August 2001. Therefore, free product thickness appears to have rebounded in at least a portion of the area following the shut down of MPE remediation. One of the conclusions stated in the *"Request for Case Closure Report,"* dated January 2002, is that free product is not migrating. In order to evaluate the potential for future free phase product migration, we request that you conduct research or additional investigation to address the following issues and data gaps regarding free product migration. Free phase product appears to have migrated up to approximately 100 feet to the northwest and north from the former USTs and piping. Free product appears to have accumulated at thicknesses up to 5 feet along the northern edge of the building but was not observed beneath 16th Street. Please review the construction drawings for the building to identify the depth of the perimeter footings for the buildings. In addition, we request that you conduct a utility survey to identify any major utilities such as storm drains or sanitary sewers that could act either as preferential pathways for or obstructions to free product migration. Please present a map in the Work Plan requested below showing the locations and depths of utility lines and trenches within and near the site.
4. **Post-Remediation Groundwater Monitoring Results.** During the most recent groundwater monitoring events, the highest concentrations of dissolved phase hydrocarbons have been detected in well MW-26, which is immediately north of the source area. After shut down of the MPE system in June 2000, benzene was detected in groundwater collected from well MW-26 at a concentration of 6.8 µg/L and TPH as gasoline was not detected (during August 3, 2000 groundwater monitoring event). During the November 2002 monitoring event, the concentrations of benzene in groundwater from well MW-26 increased to 1,630 µg/L and the concentration of TPH as gasoline increased to 5,590 µg/L. Subsequently, from November 2002 to the most recent groundwater sampling event in November 2004, dissolved phase concentrations decreased to lower levels but remain higher than dissolved phase concentrations during August 2000. As discussed in technical comment 5, it is not clear whether the changes in groundwater concentrations are related to fluctuations in groundwater flow directions or a decreasing plume. We request that you present plans to conduct groundwater monitoring or additional investigation to verify the overall decrease in post-remediation dissolved phase concentrations.

5. **Hydraulic Gradient and Plume Stability.** There are significant inconsistencies in the hydraulic gradient shown on historic groundwater elevation contour maps, particularly along 16th Street, which lead to some uncertainties regarding interpretation of plume stability. As shown on the rose diagram on Figure 14 of the "Request for Case Closure Report," dated January 2002, the predominant groundwater flow direction for the northwest portion of the site appears to be to the north northwest. Wells MW25 through MW-29, which are located in 16th Street, appear to be downgradient from source areas where free product was observed. Since all but eleven monitoring wells at the site were decommissioned prior to August 2001, data from these downgradient wells have been used to evaluate plume stability. However, we note that the hydraulic gradient along 16th Street as estimated using wells MW25 through MW29 has been highly variable. During numerous water level gauging events, the apparent hydraulic gradient along 16th Street has been to the southwest or west. We also note that the hydraulic gradient shown on water level elevation contour maps from 1991 (Harding Lawson Associates, September 18, 1991, December 10, 1991, and March 12, 1992) were to the south southwest or west throughout the site. On water level contour maps from 1991 to 2004, water levels from wells MW-26 and MW-28 have frequently been discounted or ignored in drawing the water level contours (5/03, 4/01, 1/01, 8/00, 4/00, 2/00, 2/99, 4/97, 6/95, 1/95, 12/94 as examples). As a result, it is not clear whether changes in dissolved phased hydrocarbon concentrations indicate that the plume is stable or decreasing or whether the changes are due to variations in groundwater flow directions. Please see technical comment 4 regarding post-remediation groundwater monitoring results. We request that you review the apparent fluctuations in hydraulic gradient along the downgradient portion of the plume and address this issue in a Site Conceptual Model in the Work Plan requested below or propose monitoring or additional investigation to verify plume stability.
6. **Dairy Fat and Detergent.** Dairy fat and detergent were described in soil and groundwater beneath the site (*Remedial Action Plan* dated April 3, 1989 by Anania Geologic Engineering). The source of the dairy fat and detergent was speculated to be a sanitary sewer beneath abandoned Kirkham Street. Please indicate in the Work Plan requested below whether the extent and source of dairy fat and detergent in the subsurface was investigated. Please also indicate whether potential leakage from the sanitary sewer lines was considered in the site conceptual model.
7. **Risk-Based Corrective Action Analysis.** The document entitled, "*Risk-Based Corrective Action Analysis*," dated August 22, 2000 is rejected. The copy of this document in ACEH files is unsigned and it is questionable as to whether the individual who prepared the report has the credentials and professional licenses indicated in the report. Please do not cite findings, conclusions, or recommendations from "*Risk-Based Corrective Action Analysis*," dated August 22, 2000 in future reports.
8. **Site Conceptual Model.** As indicated in the "Request for Case Closure Report," dated January 2002, the source of petroleum hydrocarbon contamination in soil and groundwater in the northwestern portion of the site appears to be releases from former USTs and the associated dispensers and piping, which were located south of the L-shaped maintenance building. Free phase product appears to have migrated up to approximately 100 feet to the northwest and north. The greatest thickness of free product (more than 4 feet) appears to be

in the area of wells MW22 and MW7. Downgradient well MW25 is approximately 45 feet north northwest from well MW22. Although more than 4 feet of free product was observed in well MW22, the dissolved phase concentrations of benzene and TPH as gasoline detected historically in groundwater from downgradient well MW25 have not exceeded 5 and 170 µg/L, respectively. The results observed in groundwater monitoring data from well MW25 do not appear to be consistent with a site conceptual model (SCM) for groundwater flow to the north northwest. We request that you review these data for MW25 along with the issues discussed in technical comments 3, 4, 5, and 6 to present an SCM for the northwestern portion of the site in the Work Plan requested below. At a minimum, the SCM must include one or more diagrams showing in a cross sectional view, the sources of contamination and types of releases (former USTs and piping), contaminant migration paths and contaminant distribution, site geology, maintenance building and foundation, 16th Street, utilities, free product extent, monitoring wells (including filter pack and screen intervals), the dissolved phase plume, and potential receptors for soil, soil vapor, and groundwater contamination. Please include a detailed discussion of the SCM diagram(s) in the Work Plan.

9. **Petroleum Hydrocarbons Detected in Soil and Soil Vapor at SB12.** Boring SB-12 is located southwest of the former USTs. TPH as gasoline was detected in a soil vapor sample collected from SB12 at a concentration of 750,000 parts per billion by volume. Petroleum hydrocarbons were also detected at elevated concentrations in soil samples collected from boring SB12. We request that you evaluate whether the contamination detected in SB12 is related to releases from the former USTs and piping or whether the contamination represents a release from a separate source. Please propose additional investigation activities as necessary in the Work Plan requested below to verify your conclusions.
10. **PCBs.** Polychlorinated biphenyls (PCBs) were detected in a groundwater sample collected from PR12 at a concentration of 0.06 mg/L. A free phase product sample collected from PR12 contained 66 mg/L of PCBs. In the Work Plan requested below, please indicate whether the source of the PCBs has been identified and whether the lateral and vertical extent of the PCBs has been defined. Please present plans to complete this investigation in the Work Plan requested below.

TECHNICAL COMMENTS FOR REMAINDER OF SITE

11. **Abandoned in Place USTs.** During drilling of soil borings in the eastern portion of the site, free phase product was observed in the area of two abandoned in place USTs and a former gas and oil pump. Groundwater sampling results from the 2005 soil borings indicated that groundwater has been impacted by gasoline, diesel, and motor oil range hydrocarbons at elevated concentrations. Possible methods for cleanup of soil and groundwater in the area of the closed in place USTs was discussed in the site investigation report (ACE Consultants October 7, 2005). We request that you present plans for further investigation or excavation and removal of the fuel hydrocarbons in the area of the closed in place USTs and former gas and oil pump in the eastern portion of the site.
12. **Former Gasoline UST near EB-11.** Please provide further information in the Work Plan requested below regarding the size, use, and removal of the former gasoline UST described in the southern portion of the site adjacent to boring EB-11 as described in the Lowney

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Associates report entitled, "Phase I and II Environmental Site Assessment," dated March 17, 2004.

13. **Vinyl Chloride in Groundwater.** Vinyl chloride was detected in groundwater samples collected from borings EB-14 and EB-15 in the eastern portion of the site (Lowney Associates 2004). The groundwater sample collected from boring EB-15 contained 120 µg/L of vinyl chloride, which exceeds the Environmental Screening Level for vapor intrusion from groundwater to indoor air (San Francisco Regional Water Quality Control Board, February 2005) of 13 µg/L for commercial land use. We request that you conduct further investigation to identify the source and lateral and vertical extent of vinyl chloride in soil, soil vapor, and groundwater. Please present plans for this investigation in the Work Plan requested below.
14. **Petroleum Hydrocarbons Detected in Boring EB-20.** TPH as motor oil was detected at a reported concentration of 11,000 ppm in a soil sample collected from boring EB-20 (Lowney Associates 2004). The location of the sample is inside a former cold storage room and is briefly described in the Lowney Associates 2004 report as a subslab layer between two concrete slabs. No additional information is provided to help evaluate these results. In the Work Plan requested below, please propose additional activities and investigation as necessary to evaluate the reported detection of elevated concentrations of TPH as motor oil in EB-20.

TECHNICAL REPORT REQUEST

Please submit technical reports to Alameda County Environmental Health (Attention: Jerry Wickham), according to the following schedule:

- **December 17, 2007** – Work Plan to Address Technical Comments

These reports are being requested pursuant to California Health and Safety Code Section 25296.10. 23 CCR Sections 2652 through 2654, and 2721 through 2728 outline the responsibilities of a responsible party in response to an unauthorized release from a petroleum UST system, and require your compliance with this request.

ELECTRONIC SUBMITTAL OF REPORTS

The Alameda County Environmental Cleanup Oversight Programs (LOP and SLIC) require submission of all reports in electronic form to the county's ftp site. Paper copies of reports will no longer be accepted. The electronic copy replaces the paper copy and will be used for all public information requests, regulatory review, and compliance/enforcement activities. Instructions for submission of electronic documents to the Alameda County Environmental Cleanup Oversight Program ftp site are provided on the attached "Electronic Report Upload (ftp) Instructions." Please do not submit reports as attachments to electronic mail.

Submission of reports to the Alameda County ftp site is an addition to existing requirements for electronic submittal of information to the State Water Resources Control Board (SWRCB) Geotracker website. Submission of reports to the Geotracker website does not fulfill the requirement to submit documents to the Alameda County ftp site. In September 2004, the

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SWRCB adopted regulations that require electronic submittal of information for groundwater cleanup programs. For several years, responsible parties for cleanup of leaks from underground storage tanks (USTs) have been required to submit groundwater analytical data, surveyed locations of monitor wells, and other data to the Geotracker database over the Internet. Beginning July 1, 2005, electronic submittal of a complete copy of all necessary reports was required in Geotracker (in PDF format). Please visit the SWRCB website for more information on these requirements (http://www.swrcb.ca.gov/ust/cleanup/electronic_reporting).

PERJURY STATEMENT

All work plans, technical reports, or technical documents submitted to ACEH must be accompanied by a cover letter from the responsible party that states, at a minimum, the following: "I declare, under penalty of perjury, that the information and/or recommendations contained in the attached document or report is true and correct to the best of my knowledge." This letter must be signed by an officer or legally authorized representative of your company. Please include a cover letter satisfying these requirements with all future reports and technical documents submitted for this fuel leak case.

PROFESSIONAL CERTIFICATION & CONCLUSIONS/RECOMMENDATIONS

The California Business and Professions Code (Sections 6735, 6835, and 7835.1) requires that work plans and technical or implementation reports containing geologic or engineering evaluations and/or judgments be performed under the direction of an appropriately registered or certified professional. For your submittal to be considered a valid technical report, you are to present site specific data, data interpretations, and recommendations prepared by an appropriately licensed professional and include the professional registration stamp, signature, and statement of professional certification. Please ensure all that all technical reports submitted for this fuel leak case meet this requirement.

UNDERGROUND STORAGE TANK CLEANUP FUND

Please note that delays in investigation, later reports, or enforcement actions may result in your becoming ineligible to receive grant money from the state's Underground Storage Tank Cleanup Fund (Senate Bill 2004) to reimburse you for the cost of cleanup.

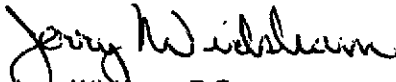
AGENCY OVERSIGHT

If it appears as though significant delays are occurring or reports are not submitted as requested, we will consider referring your case to the Regional Board or other appropriate agency, including the County District Attorney, for possible enforcement actions. California Health and Safety Code, Section 25299.76 authorizes enforcement including administrative action or monetary penalties of up to \$10,000 per day for each day of violation.

Mr. Michael Desso
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If you have any questions, please call me at (510) 567-6791.

Sincerely,



Jerry Wickham, P.G.
Hazardous Materials Specialist

Enclosure: ACEH Electronic Report Upload (ftp) Instructions

cc: Kenneth Cheitlin
Hall Equities Group
1855 Olympic Blvd., Suite 250
Walnut Creek, CA 94596

Binayak Acharya
Environmental Cost Management
52830 Quilla Road
Valencia, CA 91355

Robert Flory
AEI Consultants
2500 Camino Diablo Blvd., Suite 200
Walnut Creek, CA 94597

Donna Drogos, ACEH
Jerry Wickham, ACEH
File

Attachment 2

November 14, 2002 letter from Alameda County Health Care Services
Agency to Binayak Acharya, Nestlé USA

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



ENVIRONMENTAL HEALTH SERVICES
ENVIRONMENTAL PROTECTION
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577
(510) 567-6700
FAX (510) 337-9335

November 14, 2002

Mr. Binayak Acharya
Nestle' USA
800 North Brand Blvd.
Glendale, CA 91203

Dear Mr. Acharya:

Subject: Fuel Leak Case RO0000018, 1310 14th St., Oakland CA 94607

Alameda County Environmental Health, Local Oversight Program (LOP), has discussed the current and future status of the referenced site with Mr. Roger Brewer of the SFRWQCB. As you are aware, we have concurred with the destruction of all but eleven (11) wells required to monitor the stability of the petroleum plume. These wells should be monitored semi-annually for a period of two years. Should the plume be verified as not migrating, with concentrations of contaminants not migrating off-site above MCLs, you may request site closure after completing the requested monitoring. The City of Oakland will be required to ensure that the requirements of the deed restriction on this property are maintained in the future.

You may contact me at (510) 567-6765 if you have any questions.

Sincerely,

Barney M. Chan
Hazardous Materials Specialist

/ C: B. Chan, files

Mr. B. Searcy, ETIC Engineering, 2285 Morello Ave., Pleasant Hill, CA 94523
Mr. R. Brewer, SFRWQCB

Stat1310 14thSt

Attachment 3

COVENANT AND ENVIRONMENTAL RESTRICTION ON PROPERTY
Recorded in Alameda County, June 12, 2000

RECORDING REQUESTED BY
FIRST AMERICAN TITLE
158558

Recording Requested By:

Nestle USA Inc.
800 North Brand Blvd.
Glendale, California 91203

When Recorded, Mail To:

Leroy Griffin
Hazardous Materials Program Supervisor
City of Oakland Fire Services
1605 Martin Luther King Jr. Way
Oakland, California 94612

This is to certify that this is a true
and correct copy _____

_____ recorded
in the Office of the Recorder of
Alameda County,
California, as Instrument No.
2000 175664 on the
12th day of June, 2000
FIRST AMERICAN TITLE GUARANTY COMPANY
By: _____

**COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY**

Northeast Portion of the Former Carnation Dairy Facility which Occupies
1315-1372 14th Street and 1315-1385 16th Street

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 8th day of JUNE, 2000 by Nestle USA ("Covenantor") who is the Owner of record of that certain property situated at 1315-1372 14th Street and 1315-1385 16th Street, in the City of Oakland, County of Alameda, State of California, which contains a contaminated area which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such contaminated area hereinafter referred to as the "Burdened Property"), for the benefit of the City of Oakland Fire Services (COFS), with reference to the following facts:

A. The Burdened Property and groundwater underlying the property contains hazardous materials.

B. Contamination of the Burdened Property. Soil at the Burdened Property was contaminated by releases from petroleum underground storage tanks. These releases resulted in contamination of soil and groundwater with organic chemicals including benzene, toluene, ethylbenzene, xylenes, and 1,2-dichloroethane, which are hazardous materials as that term is defined in Health & Safety Code Section 25260. Removal of underground storage tanks and remediation of the petroleum hydrocarbons was initiated in January 1988 and is summarized below:

Tank, Line, and Dispenser Removal

Four (4) underground fuel storage tanks and associated piping were removed in December 1988. One (1) 1,000 gallon used-oil tank was removed in January 1989.

Remedial Actions

Soil Excavation: Between January and March 1989, 1,200 cubic yards of soil were removed in the area of the former underground storage tanks and associated piping. This soil was treated on-site and replaced back in the excavated area.

Liquid Petroleum Hydrocarbon Removal: Liquid petroleum hydrocarbons were removed using a product skimming system from the subsurface during January through March 1989. Approximately 1,800 gallons were removed during this time period.

Soil Vapor Extraction: A soil vapor extraction system operated from January 1994 to December 1995 and removed an estimated 5,200 gallons of hydrocarbon.

Multi-phase Extraction: A multi-phase extraction system has been operating at the site since August 1997. Approximately 10,500 pounds of hydrocarbons have been removed using this system. Thickness of petroleum hydrocarbons decreased since August 1997.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater on the Burdened Property. Without the mitigation measures which have been performed on the Burdened Property, exposure to these contaminants could take place via the following pathways (onsite workers only):

- Ingestion and dermal contact with surface soils;
- Inhalation of volatile emissions from subsurface soils and groundwater

The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described in part B.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is currently an unused industrial facility and is adjacent to industrial, commercial, and residential land uses.

E. Full and voluntary disclosure to the COFS of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted.

F. Covenantor desires and intends that in order to benefit the COFS, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Burdened Property.

ARTICLE I
GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence of hazardous materials in the subsurface below the Burdened Property. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the COFS and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the California Regional Water Quality Control Board for the San Francisco Bay Region (the "Board").

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the COFS and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Apportionment of Burden Among Multiple Owners. Where ownership of the Burdened Property is held by multiple persons, holding by several titles, the burdens imposed by this Covenant shall be apportioned between them proportionate to the value of the property held by each owner, if such value can be ascertained, and if not, then according to their respective interests in point of quantity. (Cal. Civ. Code, § 1467.)

1.4 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

1.5 Purpose. It is the purpose of this instrument to convey to the COFS real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II
DEFINITIONS

2.1 COFS. "COFS" shall mean the City of Oakland Fire Services and shall include its successor agencies, if any.

2.2 Board. "Board" shall mean the California Regional Water Quality Control Board for the San Francisco Bay Region and shall include its successor agencies, if any.

2.3 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.

2.4 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.

2.5 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property.

ARTICLE III
DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

a. Development of the Burdened Property shall be restricted to industrial, commercial or office space;

b. No residence for human habitation shall be permitted on the Burdened Property;

c. No hospitals shall be permitted on the Burdened Property;

d. No schools for persons under 21 years of age shall be permitted on the Burdened Property;

e. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Burdened Property;

f. No Owners or Occupants of the Burdened Property or any portion thereof shall conduct any excavation work on the Burdened Property, unless expressly permitted in writing by the COFS. Any contaminated soils brought to the surface by grading, excavation, trenching, or

backfilling shall be managed by Covenantor or his agent in accordance with all applicable provisions of local, state and federal law;

g. All uses and development of the Burdened Property shall be consistent with any applicable Board Order or Risk Management Plan, each of which is hereby incorporated by reference including future amendments thereto. All uses and development shall preserve the integrity of any cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the COFS, unless otherwise expressly permitted in writing by the COFS. Any development of the Burdened Property will maintain a surface cap of the soil, exclusive of minor landscape areas, by buildings or paved surfaces.

h. No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the Board.

3.1.1 Notifications/Access/Non Aggravation

a. The Owner shall notify the COFS of each of the following: (1) The type, cause, location and date of any disturbance to any cap, any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the COFS, which could affect the ability of such cap or remedial measures, remedial equipment, or monitoring system to perform their respective functions and (2) the type and date of repair of such disturbance. Notification to the COFS shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs;

b. The Covenantor agrees that the COFS, and/or any persons acting pursuant to COFS orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.

c. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property. All use and development of the Burdened Property shall preserve the integrity of any capped areas.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the COFS, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the COFS to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument which shall accompany all purchase agreements or leases relating to the property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the ground water under the property, and is subject to a deed restriction dated as of June 8, 2000, and recorded ~~on~~ Concurrently herewith ~~200~~, in the Official Records of Alameda County, California, ~~and the~~ ~~Restriction~~ which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE IV VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the COFS for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the COFS for a termination of the Restrictions as they apply to all or any portion of the Burdened Property which consent to termination shall not be unreasonably withheld.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

If To: "Covenantor"
Nestlé USA, Inc.
Legal Department
800 North Brand Boulevard
Glendale, Ca. 91203

If To: "COFS"
City of Oakland Fire Services
Attention: Hazardous Materials Program Supervisor
1605 Martin Luther King Jr. Way
Oakland, California 94612

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

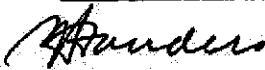
5.5 Recordation. This instrument shall be executed by the Hazardous Materials Program Supervisor of the COFS. This instrument shall be recorded by the Covenantor in the County of Alameda within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

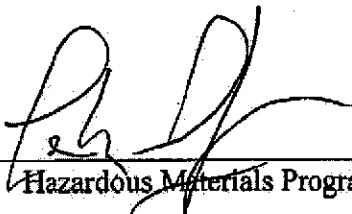
Covenantor: NESTLE USA, INC.

By:  Robert H. Sanders

Title: V.P.

Date: 6.8.00

Agency: City of Oakland Fire Services

By:  LeRoy Griffin
Title: Hazardous Materials Program Supervisor

APPENDIX A

**LEGAL DESCRIPTION
DEED RESTRICTION AREA**

ROBERT BEIN, WILLIAM FROST & ASSOCIATES
1981 N. Broadway, Suite 235
Walnut Creek, California 94596

LEGAL DESCRIPTION
DEED RESTRICTION AREA

That certain parcel of land situated in the City of Oakland, County of Alameda, State of California described as follows:

Being a portion of Lots 4 through 23 and a portion Kirkham Street of the Scotchler Tract and Vicinity, Oakland, as shown on a map thereof filed in Book 7 of Maps at Page 21 on December 10, 1874 in the Office of the County Recorder of Alameda County more particularly described as follows:

BEGINNING at the intersection of said Kirkham Street and the northwest corner of lot 17, in block 584, as shown on the map of "Re-division of Blocks 584, 585, 601, 153 and 580-A, City of Oakland, County of Alameda, California", filed May 1, 1885, in Book 4 of Maps, at Page 25, in said office of the County Recorder;

Thence, along the northerly line of said Kirkham Street and said lots 13, 12, 11, 10, 9, 8, 7, 6 and 5, North $72^{\circ}53'28''$ West 292.25 feet to the northwest corner of said lot 5, said point also being the northeasterly corner of that certain parcel of land described in the deed to the State of California, recorded May 12, 1955 in Volume 7658, of Official Records at Page 299, in said office of the County Recorder;

Thence, continuing along said northerly line of Kirkham Street, North $72^{\circ}53'28''$ West 8.64 feet;

Thence, along said State of California parcel, along a non-tangent 1240 foot radius curve to the right, through a central angle of $2^{\circ}59'04''$ to the easterly line of the parcel of land described in the deed to the State of California, recorded August 12, 1955 in Book 7749, of Official Records at Page 447, as Instrument Number AK-86901, in said office of the County Recorder;

Thence, along last said State of California parcel (7749 OR 447), along a non-tangent 1240 foot radius curve to the right from a tangent that bears South $10^{\circ}54'36''$ West to the south line of said lot 22, said southerly line also being the north line of 15th Street, as shown on said map of the Scotchler Tract (7 M 21);

Thence, along said northerly line of 15th Street and the easterly prolongation of said north line, South $74^{\circ}03'30''$ East 285.05 feet to the easterly line of said Kirkham Street;

Thence, along said easterly line, North $15^{\circ}56'30''$ West 209.50 feet to the **POINT OF BEGINNING**.

EXHIBIT attached and by this reference made a part hereof.



Patrick J. Tami

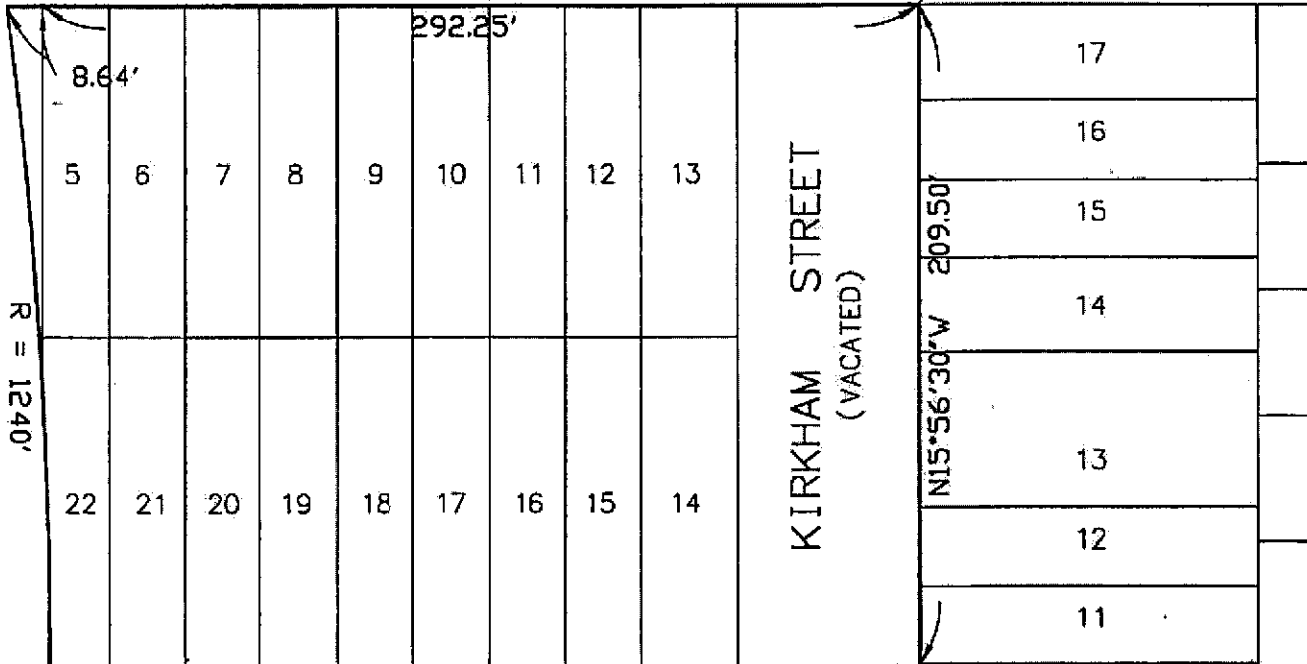
Patrick J. Tami, L.S. 5816

DEED RESTRICTION AREA

16TH STREET

N74°53'28"W 300.89'

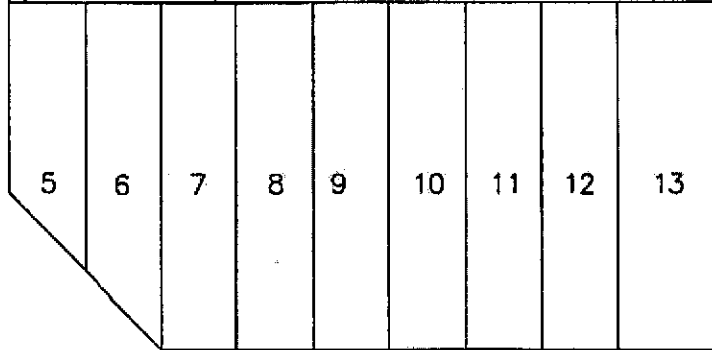
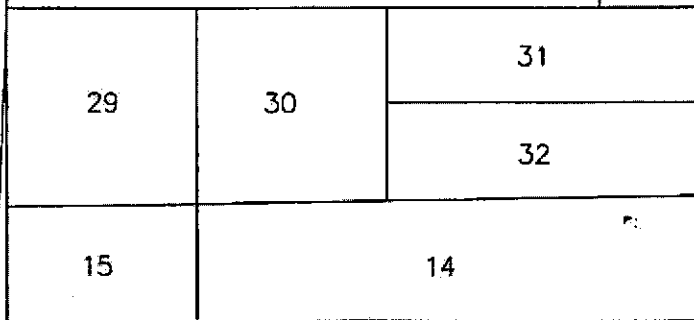
P.O.B.



S74°03'30"E 285.05'

15TH STREET

(VACATED)



17TH STREET



Robert Bein, William Frost & Associates
 PROFESSIONAL ENGINEERS, PLANNERS & SURVEYORS
 1981 NORTH BROADWAY SUITE 235, WALNUT CREEK, CALIFORNIA 94598
 (925) 906-1460 FAX (925) 906-1485 WWW.RBF.COM

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

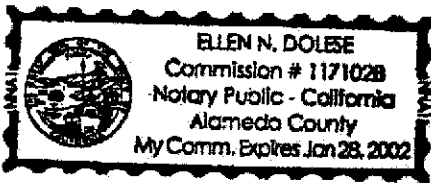
County of Alameda

On 6-7-00 before me, Ellen N. Dolese
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared LeRoy Griffin
Name(s) of Signer(s)

personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Ellen N. Dolese
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Covenant & Environmental Restriction on Property

Document Date: 5-25-00 Number of Pages: 12

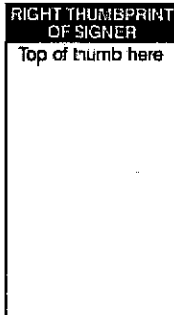
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: LeRoy Griffin

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

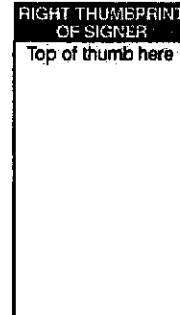
Signer Is Representing:



Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing:



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of LOS ANGELES } ss.

On JUNE 8, 2000 before me, MARIA HAZEL PERRI, NOTARY PUBLIC
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared ROBERT H. SANDERS
Name(s) of Signer(s)

personally known to me
 ~~proved to me on the basis of satisfactory evidence~~



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
Maria Hazel Perri
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

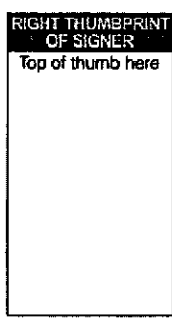
Description of Attached Document
Title or Type of Document: COVENANT & ENVIRONMENTAL RESTRICTION ON PROPERTY

Document Date: MAY 25, 2000 Number of Pages: TWELVE (12)

Signer(s) Other Than Named Above: LEROY GRIFFIN

Capacity(ies) Claimed by Signer

Signer's Name: ROBERT H. SANDERS
 Individual
 Corporate Officer — Title(s): VICE PRESIDENT
 Partner — Limited General
 Attorney in Fact
 Trustee
 Guardian or Conservator
 Other: _____



Signer Is Representing: NESTLE USA, INC.