

200600009322  
Filed for Record in  
ASHLAND COUNTY, OHIO  
BARBARA J. HARDING  
11-16-2006 At 12:19 pm.  
ENVIRON CDV 124.00  
DR Book 530 Page 144 - 157

To be recorded with Deed  
Records - ORC §. 317.08

**ENVIRONMENTAL COVENANT**

This Environmental Covenant is entered into by Ashland Inc., successor in interest to Ashland Chemical, Inc. ("Owner") and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Ohio Revised Code ("ORC") Sections 5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations set forth herein.

The Property is located at 1745 Cottage Street in Ashland, Ashland County, Ohio and as described in Exhibit A attached hereto ("Property"). The "Tank Farm Area" as referenced herein means that area of the Property delineated in the attached Exhibit B (Survey Map).

**BACKGROUND**

1. On December 30, 1993, Ashland Chemical Company, Owner's predecessor, signed consensual Director's Final Findings and Orders ("1993 DFFOs") with Ohio EPA to complete a remedial investigation and feasibility study (RI/FS) at the Property.
2. Ohio EPA approved the Owner's RI Report on September 19, 2002 and approved the FS Report on October 30, 2002. The RI revealed that the principal COCs being released to certain areas of surface and subsurface soil at the Property included toluene, ethylbenzene, xylenes, chloroform, trichlorofluoromethane, methylene chloride, trans-1,2- dichloroethene, 1,1,1-trichloroethane and trichloroethene. The ground water contaminants underlying portions of the Property consist of benzene, toluene, trichloroethene, 1,2- dichloroethene, 1,2-dichloroethane, vinyl chloride and perchloroethylene (PCE). Ohio EPA determined that threats at the Property include but are not limited to potential exposure to contaminated soils beneath a depth of five feet at the Property and potential exposure to contaminated groundwater at the Property as detailed in the RI.
3. On October 19, 2004, Ohio EPA notified the public of its Preferred Plan for remediation of the Property and solicited public comments. The Preferred Plan summarizes the information presented in the RI and FS prepared by Owner and identifies and explains Ohio EPA's preferred alternative for the remedial action at the Property. The

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preferred remedial alternative in this Preferred Plan includes the following elements:

- i. Implementation of institutional and engineering controls;
  - ii. Restriction of unauthorized access to Property and contaminated media through the maintenance of physical barriers;
  - iii. Abandonment of 19 existing monitoring wells in accordance with the Decision Document;
  - iv. Implement, when necessary, an Ohio EPA approved SMP for all subsurface activities at the Facility, including the Tank Farm Area and requiring, *inter alia*, compliance with all applicable environmental regulatory requirements, including protection of human health, safety and the environment from any future disturbance of contaminated soil. Additionally, any future excavation below five (5) feet in the Tank Farm Area will be prohibited without prior authorization from Ohio EPA and implementation of an approved SMP; and
  - v. Recording of an Environmental Covenant with the Ashland County Recorders office that prohibits construction of new ground-water wells for potable use at the Property, prohibits future use of ground-water for potable use at or underlying the Property, prohibits excavation at depths below five (5) feet in the Tank Farm Area without prior Ohio EPA authorization and without following an approved SMP, and limits the Property to commercial/industrial use.
4. On December 1, 2004, Ohio EPA held a public meeting on the Preferred Plan. The public comment period ended on December 10, 2004.
  5. On May 6, 2005, Ohio EPA issued a Decision Document, which selected the remedy for the Property. The appeal period for this final action of the director ended 30 days after publication of the public notice in the Ashland Times- Gazette on May 10, 2005.
  6. On September 25, 2006, consensual Director's Final Findings and Orders ("Orders") were issued under Ohio Revised Code ("ORC") §§ 3734.13, 3734.20, 6111.03, and 3745.01. The filing of this Environmental Covenant in the Ashland County Recorder's property

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records is a condition of the Orders, and Owner's filing of this Environmental Covenant will constitute fulfillment of that condition.

Whereas, the administrative record for this project is on file with Ohio EPA at its Northwest District Office, 347 North Dunbridge Road, Bowling Green, Ohio and is maintained under the file name Ashland Specialty Chemical, Ashland, Ohio Specialty Polymers & Adhesives Manufacturing Facility ;

Now therefore, Owner and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC Secs. 5301.80 to 5301.92.
2. Property. This Environmental Covenant concerns the approximately 21.5 acre portion of real property and attached buildings located at 1745 Cottage Street in the City of Ashland, Ashland County, Ohio currently owned and operated by Owner and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property").
3. Owner. Owner, which is located at 5200 Blazer Parkway, Dublin Ohio 43017 is the owner of the Property.
4. Holder. Owner, whose address is listed above, is the holder of this Environmental Covenant.
5. Activity and Use Limitations. As part of the remedial action described in the Decision Document, Owner hereby imposes and agrees to comply with the following activity and use limitations:
  - a. The Property may be used only for commercial and/or industrial use only. Commercial land uses include, but are not limited to but are not limited to warehouses; building supply facilities; retail gasoline stations; automobile service stations; automobile dealerships; retail warehouses; repair and service establishments for appliances and other goods; professional offices; banks and credit unions; office buildings; retail businesses selling food or merchandise; golf courses; hospitals and clinics; religious institutions; hotels; motels; and parking facilities. Industrial land uses include, but are not limited to: lumberyards; power plants; manufacturing facilities such as metalworking shops, plating shops, blast furnaces, coke

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plants, oil refineries, brick factories, chemical plants and plastics plants; assembly plants; non-public airport areas; limited access highways; railroad switching yards; and marine port facilities.

- b. Groundwater underlying all or any portion of the Property shall not be withdrawn or used for any potable or nonpotable purpose. This restriction shall not preclude the extraction of groundwater for the following purposes:
  - i. for any necessary investigational or remedial activities consistent with Ohio Revised Code Chapters 3734, 3746 and 6111; or
  - ii. for dewatering associated with construction or excavation activities or maintenance of subsurface facilities.
- c. No new ground-water wells for potable use may be constructed at the Property.
- d. Excavation is prohibited at depths below five (5) feet in the Tank Farm Area delineated in Attachment A to this Environmental Covenant without prior authorization from Ohio EPA and without following an approved Soil Management Plan (SMP).

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner[s] and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC Sec. 5301.85, 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.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC Sec. 5301.91. 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 the Director of Ohio EPA from exercising any authority under applicable law.

8. Rights of Access. Owner hereby grants to Ohio EPA, its agents, contractors, and employees, the City of Ashland, Ohio and Ashland County, Ohio the

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right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. Compliance Reporting. Owner or any Transferee shall submit to Ohio EPA the City of Ashland and Ashland County, Ohio on a semi-annual basis (or such other period as is approved by Ohio EPA in writing) written documentation verifying that the activity and use limitations remain in place and are being complied with.

10. 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 recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 200\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE ASHLANDCOUNTY RECORDER ON \_\_\_\_\_, 200\_, IN [DOCUMENT \_\_\_\_, or BOOK \_\_\_\_, PAGE \_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- a. The Property may be used only for commercial and/or industrial use only. Commercial land uses include, but are not limited to but are not limited to warehouses; building supply facilities; retail gasoline stations; automobile service stations; automobile dealerships; retail warehouses; repair and service establishments for appliances and other goods; professional offices; banks and credit unions; office buildings; retail businesses selling food or merchandise; golf courses; hospitals and clinics; religious institutions; hotels; motels; and parking facilities. Industrial land uses include, but are not limited to: lumberyards; power plants; manufacturing facilities such as metalworking shops, plating shops, blast furnaces, coke plants, oil refineries, brick factories, chemical plants and plastics plants; assembly plants; non-public airport areas; limited access highways; railroad switching yards; and marine port facilities.
- b. Groundwater underlying all or any portion of the Property shall not be withdrawn or used for any potable or nonpotable purpose. This restriction shall not preclude the extraction of groundwater for the

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following purposes:

- i. for any necessary investigational or remedial activities consistent with Ohio Revised Code Chapters 3734, 3746 and 6111; or
  - ii. for dewatering associated with construction or excavation activities or maintenance of subsurface facilities.
- c. No new ground-water wells for potable use may be constructed at the Property.
  - d. Excavation is prohibited at depths below five (5) feet in the Tank Farm Area delineated in Attachment A to this Environmental Covenant without prior authorization from Ohio EPA and without following an approved Soil Management Plan (SMP).

Owner shall notify Ohio EPA, The City of Ashland, Ohio, and Ashland County, Ohio within thirty (30) days after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and, if available, telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

11. Representations and Warranties. Owner[s] hereby represent[s] and warrant[s] to the other signatories hereto:

- a. that Owner is the sole owner of the Property;
- b. that Owner holds fee simple title to the Property which is subject to the interests or encumbrances identified in Exhibit C attached hereto and incorporated by reference herein;
- c. 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 obligations hereunder;
- d. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and

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- e. 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 of all of the following: the Owner or a Transferee; and the Ohio EPA,<sup>1</sup> pursuant to ORC Sec. 5301.90 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Owner or Transferee of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee shall file such instrument for recording with the Ashland County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA.

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 Ohio.

15. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Ashland County Recorder's Office.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded

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<sup>1</sup> See ORC ' 5301.82 (B) (3), which allow for limitations on amendment or termination.

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as a deed record for the Property with the Ashland County Recorder.

17. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA; the City of Ashland, Ohio, Ashland County, Ohio, and any other person designated by Ohio EPA; see ORC ' 5301.83.

18. Notice. Unless otherwise notified in writing by or on behalf of the current owner or Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

Ghassan Talfa, Site Coordinator  
Division of Emergency and Remedial Response  
Ohio EPA  
347 North Dunbridge Road  
Bowling Green, Ohio 43402-9398

Vice President, Environmental Health & Safety  
Ashland Inc.  
5200 Blazer Parkway  
Dublin, Ohio 43017

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The undersigned representative of Owner represents and certifies that she is authorized to execute this Environmental Covenant.

**IT IS SO AGREED:**

**Ashland Inc.**

By: Karen T. Murphy  
Karen T. Murphy  
Vice President, Environmental Health & Safety

Date: 10/25/06

State of Ohio )  
County of Franklin ) ss:

Before me, a notary public, in and for said county and state, personally appeared Karen T. Murphy, a duly authorized representative of Ashland Inc., who acknowledged to me that she did execute the foregoing instrument on behalf of Ashland Inc..

25<sup>th</sup> IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this day of Oct., 2006.

Deborah L. Matthaes  
Notary Public

**DEBORAH L. MATTHAES**  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES AUG. 13, 2008

Joseph P. Koncelik  
Joseph P. Koncelik, Director

11/6/06  
Date

State of Ohio )  
County of Franklin ) ss:

Before me, a notary public, in and for said county and state, personally appeared Joseph P. Koncelik, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 6<sup>th</sup> day of Nov., 2006.

Charma Diane Casteel  
Notary Public

**CHARMA DIANE CASTEEL**  
NOTARY PUBLIC  
STATE OF OHIO  
MY COMMISSION EXPIRES  
MAY 10, 2009

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This instrument prepared by:

*Kristina M. Woods*  
*Senior Environmental Counsel*  
*Ashland Inc.*  
*5200 Blazer Parkway*  
*Dublin, OH 43017*



This conveyance has been examined and the Grantor has complied with Section 519.202 of the Revised Code

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DESCRIPTION of SURVEY OF TANK FARM AREA for ASHLAND INC.

O.K. NOV 16 2006 C.A.F. Number Philip H. Leibolt Ashland County Auditor

Not transfer necessary

Situate in the State of Ohio, County of Ashland, Township of Montgomery, City of Ashland, being part of the Northeast Quarter of Section 7, Township 22, Range 16, Congress Lands, within the 22.617 acres conveyed to Ashland Chemical, Inc., as recorded in Deed Book Volume 566, Page 797, this and all further references being to the records of the Recorder's Office, Ashland County, Ohio, and being more particularly described as follows:

Beginning for reference at Coastal Geodetic Survey Monument "E-244" as located in the east Right of Way of Cottage Street (60 ft. wide), City of Ashland, near a southeast corner of said 22.617 acre parcel;

Thence east, South 61° 54' 50" East a distance of 11.14 feet to an iron pipe found on the east right of way line of said Cottage Street and the south line of said 22.617 acre parcel;

Thence, northeasterly across said 22.617 acre parcel North 55° 29' 44" East a distance of 582.14 feet to a MAG nail set north of the Tank Farm Area, referenced by a second MAG nail set to the east North 89° 23' 30" East, 51.25 feet;

Thence, South 00° 49' 57" East a distance of 26.36 feet to the northwest inside corner of the Tank Farm Dike, being the true point of beginning:

Thence with said inside corners of the concrete Tank Farm Wall the following seven (7) courses:

- (1) East, North 89° 39' 30" East, a distance of 49.40 feet to an inside corner;
(2) Southeast, South 44° 36' 52" East, a distance of 0.95 foot to an inside corner;
(3) South, South 00° 09' 01" West, a distance of 94.60 feet to an inside corner;
(4) Southwest, South 45° 39' 24" West, a distance of 1.05 feet to an inside corner;
(5) West, North 89° 56' 53" West, a distance of 48.53 feet to an inside corner;
(6) Northwest, North 44° 55' 08" West, a distance of 1.00 foot to an inside corner;
(7) North, North 00° 06' 18" East, a distance of 94.96 feet to the true point of beginning containing 4,793.55 square feet or 0.11 acre of land.

The basis of bearing is a line from Ohio Department of Transportation (ODOT) Monument "District 3" at the ODOT Ashland Co. Garage Maintenance Bldg. to Coastal Geodetic Survey (CGS) Monument "E-244" in the east Right of Way of Cottage St. near the southeast corner of the Ashland Inc. property: North 77° 41' 16" West, 7642.08 ft., NAD83 (1995) HARN in Ohio State Plane Coordinates, North Zone (3401). This description was prepared from a field survey performed by URS Corp. in June 2006 under my direct supervision.

A plat of this description is attached to this document as Exhibit A and made a permanent part thereof.



Signature of Jeffrey C. Spontak dated 7/21/06, Jeffrey C. Spontak, P.S., Ohio Registered Surveyor, RS-7856

J:\3767\... 7/21/2006... Desc.doc

## EXHIBIT C ENCUMBRANCES

1. Easement to The Ohio Public Service Company dated April 21, 1936 and recorded at Deed Volume 180, Page 585.
2. Easement from Frank Masters to City of Ashland, Ohio, granting right of way to construct and maintain a trunk sewer for sewage and drainage purposes, dated October 17, 1938 and recorded at Deed Volume 190, Page 114.
3. Pipeline roadside right of way from Advance Ashland Inc. to Columbia Gas of Ohio, Inc., dated November 23, 1971 filed at Deed Volume 369, Page 525.
4. Easements as contained in the deed from Advance Ashland, Inc. to Atlas Bolt & Screw Company, dated September 27, 1977, filed at Deed Volume 505, Page 650.
5. Easement from Ashland Inc., (formerly known as Ashland Oil., Inc. successor by merger to Ashland Chemical, Inc.) by Michael Billow, Plant Manager to City of Ashland easement for storm sewer purposes recorded February 2, 2005 in Ashland County Official Records Volume 440, Page 676.
6. Easement from Ashland Oil, Inc, to Ohio Edison Company, an Ohio Corporation recorded June 9, 1986 in Ashland County Deed Volume 543, Page 923.
7. Easement from Ashland Chemical, Inc. to Ohio Edison Company, an Ohio Corporation recorded August 13, 1990 in Ashland County Deed Records Volume 564, Page 360.
8. Easement from W.T. McWilliams, et al to The Ohio Fuel Gas Company recorded August 14, 1995 in Ashland County Volume 251, Page 529.
9. Easement from Frank Masters and Ida Masters to The Ohio Public Service Company recorded May 15, 1936 in Ashland County Volume 180, Page 585.

10. Easement from Frank Masters and Ida Master to City of Ashland, Ohio recorded December 22, 1938 in Ashland County Volume 190, Page 114.
11. Easement from Charles L. Masters and Besse Masters to The Ohio Edison Company recorded November 19, 1953 in Ashland County Volume 241, Page 353.
12. Right of way from Charles S. Masters and Bess S. Masters to the City of Ashland, Ohio recorded November 29, 1955 in Ashland County Volume 259, Page 28.
13. Easement from The Goodyear Tire and Rubber Company to Ohio Edison Company recorded January 31, 1960 in Ashland County Volume 341, Page 222.
14. Easement from the Goodyear Tire & Rubber Company to Ohio Edison Company recorded June 29, 1971 in Ashland County Volume 363, page 209.
15. Easement from The Goodyear Tire & Rubber Company to Ohio Edison Company recorded May 4, 1978 in Ashland County Volume 508, Page 482.