



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center  
122 S. Front Street  
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184  
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049  
Columbus, Ohio 43216-1049

**CERTIFIED MAIL**

October 16, 2006

**Re: Environmental Covenant**  
Degussa Initiators, Inc.  
(Aztec Peroxides, Inc.)  
Elyria, Lorain County, Ohio

Mr. Michael J. Barreca  
Degussa Initiators, Inc.  
555 Garden Street  
Elyria, Ohio 44035

Dear Mr. Barreca:

Enclosed please find the Environmental Covenant (Covenant) issued to Degussa Initiators, Inc., Lorain County, on October 6, 2006. This Covenant will become effective when filed with the deed records maintained by the Office of the Lorain County Recorder.

To that end, the second original copy of the Covenant has been returned to you. It is the obligation of Degussa Initiators, Inc. pursuant to Paragraph 10 of the Covenant, to complete the filing and, pursuant to paragraph 17 of the Covenant, to distribute copies of the recorded Covenant.

If you have any questions with this Covenant, do not hesitate to contact Elissa Miller, Ohio EPA Office of Legal Services, at (614) 644-3037.

Sincerely,

Pamela S. Allen, Manager  
Regulatory and Information Services  
Division of Hazardous Waste Management

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**Attachments**

cc: Michael A. Savage, Chief, DHWM  
Ed Lim, Mgr., ERAS, DHWM  
Elissa Miller, Legal  
Kurt Princic, DHWM, NEDO  
Heidi Greismer, PIC

Bob Taft, Governor  
Bruce Johnson, Lieutenant Governor  
Joseph P. Koncëlik, Director



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OCT -6 2006

To be recorded with Deed  
Records - ORC § 317.08

ENTERED DIRECTOR'S JOURNAL  
ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Degussa Initiators, Inc., formerly known as Aztec Peroxides, Inc. ("Owner"), having offices at 555 Garden Street, Elyria, Lorain County, Ohio 44035 and the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Ohio Revised Code ("ORC") §§ 5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations set forth herein.

Whereas, Owner is the owner and operator of certain real property consisting of parcels of land, located at 555 Garden Street, Elyria, Lorain County, Ohio, and legally described in Exhibit A hereto (collectively referred to herein as the "Property"); and

Whereas, the Administrative Record of the corrective action is maintained as the file titled "Degussa Initiators" in the Ohio EPA Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087; and

Whereas, Owner is a manufacturer of organic peroxides in solid and liquid form. These materials can possess several hazardous characteristics, including flammability, shock sensitivity, and temperature sensitivity. Hazardous wastes are created during the production of these materials primarily from purification processes and from cleaning of production tanks and lines between product runs; and

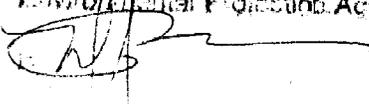
Whereas, pursuant to Owner's Resource Conservation and Recovery Act (RCRA) Permit and Owner's Ohio Hazardous Waste Installation and Operation Permit, Ohio Permit number 02-47-0580, Owner is required to implement corrective action at the Property; and

Whereas, the implementation of appropriate use restrictions that restrict land use on the Property is required to protect human health and the environment and to prevent conditions at the Property from constituting or threatening to cause or contribute to air or water pollution or soil contamination.

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 §§ 5301.80 to 5301.92.
2. Property. This Environmental Covenant concerns an approximately forty (40) acre tract of real property owned by Degussa Initiators, Inc., located at 555 Garden Street, Elyria, Lorain County, Ohio, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property").
3. Owner. Degussa Initiators, Inc., which is located at 555 Garden Street, Elyria, Lorain County, Ohio ("Owner") is the owner of the Property.

Official document as filed in the records of the Ohio  
Environmental Protection Agency



10/6/06

4. Holder. Owner, whose address is listed above, is the holder of this Environmental Covenant.
  
5. Activity and Use Limitations. As part of the corrective action at the Property, Owner hereby imposes and agrees to comply with the following activity and use limitations:
  - A. The Property shall not be used for residential, commercial (other than those associated with and incidental to industrial operations) or agricultural activities; but may be used for certain industrial activities. The term "residential activities" shall include, but not be limited to, the following:
    - (I) Single and multi-family dwelling and rental units;
    - (ii) Day care centers and preschools;
    - (iii) Hotels and motels;
    - (iv) Educational (except as a part of industrial activities within the Property) and religious facilities;
    - (v) Restaurants and other food and beverage service (except as a part of industrial activities within the Property);
    - (vi) Entertainment and recreational facilities (except as a part of industrial activities within the Property);
    - (vii) Hospitals and other extended care medical facilities (except as part of industrial activities within the Property); and
    - (viii) Transient or other residential facilities.

The term "industrial activities" shall include manufacturing, processing operations and office and warehouse use, including but not limited to production, storage and sales of durable goods and other non-food chain products and parking/driveway use.

- B. There shall be no use of ground water underlying the Subject Property within the ground water bearing zone during implementation of the remedy selected by the United States Environmental Protection Agency (U.S. EPA) and contained in Module E of the Facility's March 1, 2002 Ohio Hazardous Waste Installation and Operation Permit.
  
- C. In the event that any activity by the holder of an encumbrance on the Property, identified in paragraph 12 below, constitutes a violation of these activity and use restrictions, Owner or Transferee shall notify Ohio EPA within thirty (30) days of becoming aware of the event, and shall remedy the breach of the covenant within sixty (60) days of becoming aware of the event or action, or such other

time frame as may be agreed to by the Owner or Transferee and Ohio EPA.

6. Running with the Land. This Environmental Covenant shall be binding upon Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 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 § 5301.91 or other applicable law. 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 and to Holder(s), the right of access to the Property for implementation or enforcement of this Environmental Covenant.
9. Compliance Reporting. Owner and any Transferee shall submit to Ohio EPA and Holder(s) on an annual basis a written certification which complies with the requirements of Ohio Administrative Code rule 3745-50-42(B), (C), and (D) that the activity and use limitations remain in place and are being complied with.
10. Recordation of Environmental Covenant. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall record, in the office of the Lorain County Recorder, this Environmental Covenant in the same manner as a deed to the Property, pursuant to ORC § 5301.88. Owner shall certify to Ohio EPA that the Environmental Covenant has been filed for recording, and include with the certification a file and date-stamped copy of the Environmental Covenant.
11. 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 LORAIN COUNTY RECORDER ON \_\_\_\_\_, 200\_, IN [DOCUMENT \_\_\_\_\_, or BOOK\_\_\_\_, PAGE \_\_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

The Property shall not be used for residential, commercial (other than those associated with and incidental to industrial operations) or agricultural activities, but may be used for certain industrial activities. The term "residential activities" shall include, but not be limited to, the following:

- (a) Single and multi-family dwelling and rental units;
- (b) Day care centers and preschools;
- (c) Hotels and motels;
- (d) Educational (except as a part of industrial activities within the Property) and religious facilities;
- (e) Restaurants and other food and beverage service (except as a part of industrial activities within the Property);
- (f) Entertainment and recreational facilities (except as a part of industrial activities within the Property);
- (g) Hospitals and other extended care medical facilities; and
- (h) Transient or other residential facilities.

The term "industrial activities" shall include manufacturing, processing operations and office and warehouse use, including but not limited to production, storage and sales of durable goods and other non-food chain products and parking/driveway use.

There shall be no use of ground water underlying the Subject Property within the ground water bearing zone during implementation of the remedy selected by the United States Environmental Protection Agency (U.S. EPA) and contained in Module E of the Facility's March 1, 2002 Ohio Hazardous Waste Installation and Operation Permit.

In the event that any activity by the holder of an encumbrance on the Property constitutes a violation of these activity and use limitations, Owner or Transferee shall notify Ohio EPA within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the covenant within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA.

Owner shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, a legal description of the Property being transferred, a survey map of the Property being transferred, and the closing date of the transfer of ownership of the Property.

12. Representations and Warranties. Owner hereby represents and warrants 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 and encumbrances listed and described in Exhibit B attached hereto, which is fully 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 Owner has identified all other persons, identified in Exhibit B, described above, that hold any interest (e.g. encumbrance) in the Property and notified such persons of Owner's intention to enter into this Environmental Covenant; and
  - 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 of by which Owner may be bound or affected.
13. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee, the Holder, and Ohio EPA, pursuant to ORC § 5301.90 and other applicable law. Amendment means 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. Termination means 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 Owner or Transferee and the Holder 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, Owner or Transferee shall file such instrument for recording with the Lorain County Recorder's Office, and shall provide a true copy of the recorded instrument to Ohio EPA.

14. 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.
15. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.
16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Lorain County Recorder.
17. Distribution of Environmental Covenant. Owner shall distribute copies of the recorded Environmental Covenant to: Ohio EPA, any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property, each unit of local government in which the property is located, and any other person designated by Ohio EPA.
18. Notice. Any document or communication required by this Environmental Covenant shall be submitted to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Hazardous Waste Management  
P.O. Box 1049  
Columbus, Ohio 43216-1049

and

Ohio Environmental Protection Agency  
Northeast District Office  
Division of Hazardous Waste Management  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: DHWM Manager

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



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/she did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 4<sup>th</sup> day of OCT., 2006.

*Charma Diane Casteel*  
Notary Public

This instrument was prepared by:

Elissa B. Miller  
Ohio Environmental Protection Agency  
122 South Front Street  
Columbus, OH 43215

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

EXHIBIT "A"

PARCEL NO. 1: Situated in the City of Elyria, County of Lorain and State of Ohio, being known as parts of Original Elyria Township Lot Nos. 10, 100, 101 and 102 West of the West Branch of Black River, now within the corporate limits of the City of Elyria and more definitely described as follows:  
Beginning at the intersection of the South line of Woodford Avenue and the West line of Garden Street;  
Thence South 08 degrees 04' 17" East in the West line of Garden Street, a distance of 516.50 feet to an iron pin found set in the Southeast corner of lands conveyed to Aztec Peroxides Inc. and referred to as Parcel No. 2 as described in Official Record Volume 839, Page 047 of the Lorain County Record of Deeds;  
Thence South 81 degrees 55' 43" West in the South line of lands so conveyed to Aztec Peroxides Inc., a distance of 300.00 feet to the principal place of beginning;  
Thence continuing in the South line of lands so conveyed to Aztec Peroxides Inc., South 81 degrees 55' 43" West, a distance of 340.69 feet to a point; Said point is the P.C. of a curve;  
Thence in the arc of a curve that deflects to the right a distance of 633.53 feet to a point in the West line of lands so conveyed to Aztec Peroxides Inc. as aforementioned; Said curve has a radius of 396.78 feet, a central angle of 91 degrees 29' 00" and a chord bearing North 52 degrees 19' 47" West, a distance of 568.35 feet;  
Thence North 06 degrees 35' 17" West in the West line of lands so conveyed to Aztec Peroxides Inc. and the West line of lands conveyed to The Drake Family General Partnership as described in Official Record Volume 134, Page 384 of the Lorain County Record of Deeds, a distance of 924.77 feet to the P.C. of a curve;  
Thence continuing in the West line of lands so conveyed to The Drake Family General Partnership in the arc of a curve that deflects to the right, a distance of 137.80 feet to a point in the Northwesterly line of said Drake Family General Partnership lands; Said curve has a radius of 396.78 feet, a central angle of 19 degrees 53' 55" and a chord bearing North 03 degrees 21' 41" East, a distance of 137.11 feet;  
Thence South 29 degrees 36' 22" West, a distance of 107.86 feet to a point in the East line of lands conveyed to John J. Lasco Jr., Trustee, as described in Official Record Volume 659, Page 226 of the Lorain County Record of Deeds;  
Thence South 06 degrees 35' 17" East in the East line of lands so conveyed to John J. Lasco Jr., Trustee, also being the East line of Original Elyria Township Lot No. 11, West of the West branch of Black River, and the East line of lands conveyed to Robert W. and Erma Grobe as described in Volume 735, Page 441 of the Lorain County Records of Deeds and referred to as Parcel No. 5, a distance of 972.78 feet to a point; Said point is the P.C. of a curve;  
Thence in the North line of lands conveyed to John and Susie Szewczyk as described in Volume 333, Page 277 of the Lorain County Record of Deeds and the Northwesterly line of lands conveyed to Aztec Peroxides Inc. as described in Official Record Volume 909, Page 812 of the Lorain County Record of Deeds, in the arc of a curve that deflects to the left, a distance of 697.40 feet to a point; Said curve has a radius of 436.78 feet, a central angle of 91 degrees 29' 00" and a chord bearing South 52 degrees 19' 47" East, a distance of 625.64 feet;  
Thence North 81 degrees 55' 43" East in the North line of lands so conveyed to Aztec Peroxides Inc., a distance of 340.69 feet to a point in the East line of said Aztec Peroxides premises;  
Thence North 08 degrees 04' 17" West in said East line, a distance of 40.00 feet to the principal place of beginning, containing within said bounds 1.858 acres of land, of which 0.9600 acres is in Original Lot No. 10, 0.236 acres is in Original Lot No. 100, 0.310 acres is in Original Lot No. 101, and 0.3520 acres is in Original Lot No. 102, be the same more or less, but subject to all legal highways and easements of record, as was surveyed by Norman R. Hura, Registered Surveyor No. 5208.  
Permanent Parcel No. 06-24-010-101-009

PARCEL NO. 2: Situated in the Township Of Elyria and City of Elyria, County of Lorain and State of Ohio, and known as being part of Original Elyria Township Lot No. 4 and part of Original Lot No. 10 in the City of Elyria, all being West of the River and more definitely described as follows:  
Beginning at an iron pin set at the intersection of the Northerly line of Original Lot No. 10, West of Black River and the Easterly line of the New York Central Railroad Company Land, Norwalk Division;  
Thence South 88 degrees 21' 30" East in the North line of Original Lot No. 10, a distance of 678.08 feet to an iron pin, said iron pin being at the Northeast corner of the Grantors land as recorded in Volume 905, Page 535 of Lorain County Records of Deeds;

## EXHIBIT B

### ENCUMBRANCES ON PROPERTY

Taxes for the last half of 2004, amounting to \$13,187.10, are a lien, but are not yet due. Subject to special taxes and assessments, if any. Taxes for the year 2005 are a lien, but are not yet due and payable. Caption listed to Aztec Peroxides LLC. Permanent Parcel Nos. 06-24-010-101-009; 06-24-004-000-021; 06-24-010-101-006; 06-24-010-101-003; 06-24-010-101-008.

Reservations and Conditions recorded in Deed Volume 1226, Page 492; corrected in Deed Volume 1312, Page 415 of the Lorain County Records.

Reservations and Conditions recorded in O.R. Volume 1355, Page 842 of the Lorain County Records.

Conditions recorded in Document No. 970491739 of the Lorain County Records.

Right of Way recorded in Miscellaneous Volume 12, Page 341 of the Lorain County Records.

Easement recorded in Deed Volume 866, Page 79; refiled in Deed Volume 869, Page 75 of the Lorain County Records.

Easement recorded in Deed Volume 920, Page 381 of the Lorain County Records.

Easement recorded in Deed Volume 1241, Page 714 of the Lorain County Records.

Restrictions recorded in Deed Volume 140, Page 586 of the Lorain County Records.

Right of Way recorded in Deed Volume 285, Page 361 of the Lorain County Records.

Conditions recorded in Deed Volume 940, Page 847 of the Lorain County Records.

Easement recorded in O.R. Volume 376; Page 910 of the Lorain County Records.

Mechanic's Lien recorded in Document No. 20030944291 of the Lorain County Records.

Thence South 0 degrees 53' West in the Grantors East line, a distance of 803.36 feet to an iron pin set on the South line of Original Lot No. 10;  
Thence due West in the South line of Original Lot No. 10 and in the South line of Original Lot No. 4, a distance of 1299.27 feet to an iron pin set in the Easterly line of the New York Central Railroad Company Land, Norwalk Division;  
Thence North 37 degrees 36' 30" East in the Easterly line of said Railroad Company Land, a distance of 1038.73 feet to an iron pin and the place of beginning, enclosing a parcel of land containing 18.5205 acres, of which 16.1405 acres are in Original Lot No. 10 and 2.3800 acres are in Original Lot No. 4, as surveyed by William B. Barton, Registered Surveyor, December 16, 1967, be the same more or less, but subject to all legal highways.  
Permanent Parcel Nos. 06-24-004-000-021 and 06-24-010-101-006

PARCEL NO. 3: Situated in the City of Elyria, County of Lorain and State of Ohio, and known as being a part of Original Elyria Township Lot Nos. 10 and 102, West of Black River, and bounded and described as follows:  
Beginning at an iron pin on the Southerly line of Woodford Avenue, 60 feet in width, and on the Westerly line of Garden Avenue, 60.00 feet in width;  
Thence from this point South 0 degrees 16' West along the Westerly line of Garden Avenue, a distance of 516.60 feet to an iron pin; Thence North 89 degrees 44' West along the Northerly line of the New York Central Railroad right-of-way, a distance of 626.70 feet to an iron pin;  
Thence on a curve Northwesterly, the radius of which is 369.78 feet and the arc of said curve being 633.53 feet to an iron pin;  
Thence North 1 degree 45' East and along the Easterly line of the New York Railroad right-of-way, a distance of 108.60 feet to an iron pin on the Southerly line of Woodford Avenue;  
Thence South 89 degrees 44' East and along the Southerly line of Woodford Avenue, a distance of 1035.35 feet to an iron pin and the place of beginning of the premises herein described, containing within said bounds 12.330 acres of land, divided as follows: 10.688 acres in Lot No. 10 and 1.642 acres in Lot No. 102, as surveyed by J.W. Warden and Associates, Registered Surveyors, but subject to all legal highways.  
Permanent Parcel No. 06-24-010-101-003

PARCEL NO. 4: Situated in the Township of Elyria, City of Elyria, County of Lorain and State of Ohio, and being a part of Original Lot No. 10, West of the Black River of said Township, bounded and described as follows:  
Beginning at an iron pin found on the Western right-of-way line of Garden Street (a 60 foot right-of-way) located 516.50 feet South along said Western right-of-way line from the point formed by the intersection of said Western right-of-way line of Garden Street and the Southern right-of-way line of Woodford Avenue (undisclosed right-of-way width);  
Thence along said Western right-of-way line of Garden Street 00 degrees 36' 15" East 359.39 feet to an iron pin found; Thence leaving said Western right-of-way line of Garden Street and running thence along the dividing line of Original Lot No. 10 and Original Lot No. 9, said Township, South 89 degrees 38' 39" West 1057.99 feet to an iron pin set;  
Thence leaving said dividing line North 00 degrees 53' 00" East 580.24 feet to a pin set on this Southern right-of-way line of the Conrail Railroad (40 foot right-of-way);  
Thence running along said Southern right-of-way line of Conrail Railroad the following course and distances: along the arc of a curve turning to the left (said curve having a radius of 437.61 feet and a chord bearing of South 57 degrees 12' 11" East and a chord distance of 481.80 feet) an arc distance of 510.22 feet to an iron pin found and North 89 degrees 23' 45" East 340.69 feet to a drill hole set;  
Thence leaving said Southern right-of-way line of Conrail Railroad and running thence North 00 degrees 36' 15" West 40.00 feet across said right-of-way line to an iron pin set on the Northern right-of-way line of said Conrail Railroad; Thence leaving said Northern right-of-way line of said Conrail Railroad and running thence North 89 degrees 23' 45" East 300.00 feet to an iron pin found on the aforesaid Western right-of-way line of Garden Street and the place of beginning;  
Said tract containing 8.6506 acres as shown on the survey for E+E (US) Inc., dated October 12, 1988 by Laundon, Simon, Cahl & Assoc., bearing the seal and certification of Rodger G. Simon, State of Ohio Registered Surveyor No. 5101, which said plat of survey is incorporated herein by this reference and made a part of the description.  
Permanent Parcel No. 06-24-010-101-008