

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by GALION PARTNERS, LLC, an Ohio limited liability company ("Owner"), 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, as defined in Section 2 below, to the activity and use limitations set forth herein.

On November 1, 1993, Director's Final Findings and Orders were issued to Elf Atochem North America, Inc., now known as Arkema, Inc., the former owner/operator of the Property, and required the implementation of a remedial investigation and feasibility study of the Property. A Remedial Investigation was conducted between 1992 and 1995, and included investigation of soil, surface water, sediment and groundwater at the Property. Actual and threatened releases of chemicals and compounds associated with the historic operations at the Property were identified through surface and subsurface soil sample analyses, including acetone, cis-1,2-dichloroethene, tetrachloroethene, toluene, vinyl chloride, arsenic and lead.

The Feasibility Study was approved by Ohio EPA on April 12, 2002. A Preferred Plan describing Ohio EPA's proposed remedy for the Property was made available on August 25, 2003. Comments were solicited from the public and copies of the Preferred Plan were made available in the document repository at the local library. A public hearing to provide information and to take comments was held on September 23, 2003.

On January 15, 2004, a Decision Document, dated January 14, 2004, was signed by the Director of Ohio EPA. The remedy selected for the Property included: a shallow groundwater use restriction, prohibiting the withdrawal of overburden groundwater at the Property for any potable or other direct contact use (e.g., drinking, showering, bathing, cooking); and an industrial land use restriction, restricting the use of the Property to industrial purposes only.

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 26.857 acre tract of real property (Parcel number 17-008000.0600), owned by Owner, located on State Route 95, approximately one mile west of the City of Marion, in Marion County, Ohio, and more particularly described in Exhibit A attached hereto and incorporated by reference herein ("Property").

3. Owner. Owner, having offices at GALION PARTNERS, LLC, 3312 Columbus Court, Columbus, Ohio 43209, Attn.: Jorge Newbery, is the current owner of the Property at the time this Environmental Covenant was first executed.

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 dated January 14, 2004. Owner hereby imposes and agrees to comply with the following activity and use limitations on the Property:

- a. The overburden groundwater, as defined in the Remedial Investigation Report approved by Ohio EPA on August 20, 2003, underlying all or any portion of the Property shall not be withdrawn or used for any potable or other direct contact purpose. This restriction shall not preclude the extraction of overburden groundwater for any necessary investigational or remedial activities consistent with Ohio Revised Code Chapters 3734, 3746 and 6111, or as otherwise consistent with Ohio law.
- b. The Property shall be used only for industrial land use, as that term is defined in Ohio Administrative Code rule 3745-300-08(B)(2)(c)(iii) (effective October 21, 2002). A copy of Ohio Administrative Code rule 3745-300-08(B)(2)(c)(iii) is attached hereto as Exhibit B. As part of the industrial land use restriction, the existing facility fence shall be maintained to prohibit access to the Property by unauthorized personnel, and shall be promptly repaired or replaced, as needed, in order to ensure compliance with the industrial land use restriction.

If any event or action by or on behalf of a person who owns an interest in or holds an encumbrance on the Property constitutes a breach of the activity and use limitations, the current 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 activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the current

owner or Transferee and Ohio EPA.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner, as long as the Owner holds a fee simple or other interest in the Property, 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. At the time the Owner transfers fee simple title to the Property to any Transferee, the Owner shall have no further responsibility or liability hereunder, and all responsibility and liability for compliance with the terms of this Environmental Covenant shall vest in the subsequent owner of the Property and all other Transferees.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 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 and the Marion County Commissioners, their agents, contractors, and employees the right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. Compliance Reporting. The current owner of the Property, including any Transferees, shall submit to Ohio EPA and the Marion County Commissioners on an annual basis, 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 MAY 5, 2005, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE MARION COUNTY RECORDER ON 319, 2005, IN [DOCUMENT _____, or BOOK 843 / 881 ✓] PAGE 871 / 1397 THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- a. The overburden groundwater, as defined in the Remedial Investigation Report approved by Ohio EPA on August 20, 2003, underlying all or any portion of the Property shall not be withdrawn or used for any potable or other direct contact purpose. This restriction shall not preclude the extraction of overburden groundwater for any necessary investigational or remedial activities consistent with Ohio Revised Code Chapters 3734, 3746 and 6111, or as otherwise consistent with Ohio law.
- b. The Property shall be used only for industrial land use, as that term is defined in Ohio Administrative Code rule 3745-300-08(B)(2)(c)(iii) (effective October 21, 2002). As part of the industrial land use restriction, the existing facility fence shall be maintained to prohibit access to the Property by unauthorized personnel, and shall be promptly repaired or replaced, as needed, in order to ensure compliance with the industrial land use restriction.

The current owner shall notify Ohio EPA within ten (10) days after each conveyance of an interest in any portion of the Property. This notice shall include the name, address, *and 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 hereby represents and warrants to the other signatories hereto:

- a. that the 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;
- b. that the Owner is the sole owner of the Property and holds fee simple title which is free, clear and unencumbered except as otherwise disclosed on Exhibit C hereto and incorporated herein;
- c. that the Owner has identified all other parties that hold any interest in the Property and notified such parties of the Owner's intention to enter into this Environmental Covenant; and
- d. 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.

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, pursuant to ORC § 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 Marion 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 Marion 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 as a deed record for the Property with the Marion 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; **each person identified on Exhibit D; the Marion County Commissioners;** and Arkema, Inc.

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:

Manager, Remedial Response Program
Emergency and Remedial Response
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049

GALION PARTNERS, LLC
3312 Columbus Court
Columbus, Ohio 43209
Attn.: Jorge Newbery

The undersigned authorized representative of Owner represent[s] and certifi[y/ies] that [he/she/they] [is/are] authorized to execute this Environmental Covenant.

IT IS SO AGREED:

GALION PARTNERS, LLC,
an Ohio limited liability company

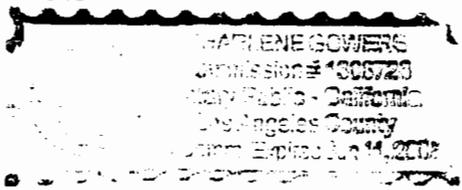
X _____
Signature of Owner

Jorge P. Newbery, Member
Printed Name and Title

3-11-05
Date

State of California)
County of Los Angeles)

ss:



Before me, a notary public, in and for said county and state, personally appeared Jorge P. Newbery, a duly authorized representative of Galion Partners, LLC, who acknowledged to me that he did execute the foregoing instrument on behalf of Galion Partners, LLC.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 11th day of March, 2005.

Charlene Gowers
Notary Public

Exhibit A Legal Description

Description of 26.857 Acres

City of Marion, County of Marion, State of Ohio:

Being Part of the Southeast Quarter of Section 19, Township 5 South, Range 15 East, and being the same 26.85 acre tract of land, now or formerly owned by Turco Purex Industrial Corp., O.R. Vo. 47, pages 985-988, Marion Township, Marion County, State of Ohio and being more particularly described as follows:

Commencing at an existing railroad spike located at the intersection of the centerline of County Road 101 (Campbell Rd.) with the South Right-of-Way Line of State Route 95 and North Right-of-Way Line of Conrail Railroad and South Line of Section 19;

Thence along said common Right-of-Way Line and Section Line South 89 deg. 02 min. 00 sec. West for a distance of 2610.98 feet to a 1 inch dia. iron pipe found at the Southeast corner of hereinafter described 26.859 acre tract and the point of beginning.

Thence continuing along said common Right-of-Way Line and Section Line South 89 deg. 02 min. 00 sec. West for a distance of 807.45 feet to a metal survey marker found stamped "Tozzer;"

Thence North 00 deg. 33 min. 00 sec. West for a distance of 1478.75 feet to an iron pin set (passing over a 5/8 inch dia. iron pin found at a distance of 60.00 feet);

Thence South 84 deg. 45 min. 36 sec. East for a distance of 827.80 feet to a 5/8 inch dia. iron pin found;

Thence South 00 deg. 07 min. 00 sec. West for a distance of 1389.70 feet to a 1 inch dia. iron pipe found on the South Line of State Route 95 (passing over a 5/8 inch dia. iron pin found at a distance of 1329.70 feet) and the place of beginning.

Containing 26.857 acres, more or less, and subject to legal highways, easements, restrictions and agreements of record. This description prepared from a survey performed by Steven A. Fox, Registered Professional Surveyor 7000, and dated June 28, 1993. All 5/8 inch dia. iron pins set have a plastic identity cap with the inscription "Fox P.S. 7000."

Prior Deed, O.R. Vo. 47, pages 985-988

Basis of Bearings, Survey by J. Tozzer, dated 1/10/63, South R/W S.R. 95 South 89 deg. 02 min. 00 sec. West

Marion County Auditor's Parcel No. 17-008000.0600

Exhibit B
Ohio Administrative Code rule 3745-300-08(B)(2)(c)(iii)

3745-300-08 GENERIC NUMERICAL STANDARDS

(B) Generic direct-contact soil standards.

(2) Assumptions

(c) Land use and activity categories

The generic direct-contact soil standards established in this rule are based upon the intended use of the property after the completion of a voluntary action. Land use and activity categories must be determined as follows:

(iii) Industrial land use category.

Industrial land use is land use with potential exposure of adult workers during a business day and potential exposures of adults and children who are visitors to industrial facilities during the business day. Industrial land use has potential exposure of adults to dermal contact with soil, inhalation of vapors and particles from soil and ingestion of soil. Examples of industrial land uses include, but are not limited to: lumberyards; power plants; manufacturing facilities such as metal-working 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.

[Comment: For the majority of applicable standards under this chapter, the generic direct-contact soil standards derived for the commercial land use category and the industrial land use category are equivalent. As an example, the generic direct-contact soil standards listed in table iii of this rule apply to both commercial land use and industrial land use. The distinction between commercial and industrial land use is maintained for application of paragraph (B)(3)(a) of this rule and application of paragraph (C)(1)(b) of rule 3745-300-09 of the Administrative Code.]

[*** indicates where there is language that has been omitted]

Exhibit C
Title issues per Paragraph 11(b) hereinabove

Easement to Ohio Edison Company filed in Volume 395, Page 398 of the Marion County Records.

Agreement with the City of Marion filed in Volume 532, Page 553 of the Marion County Records.

Subject to the rights of the public and others in and to that portion of the Premises described in Schedule A that lies within the bounds of County Road 101 (Campbell Road) and State Route 95, dedicated highways.

Exhibit D
List of Distributees per Paragraph 17 hereinabove

OHIO EDISON COMPANY
76 South Main Street
Akron, Ohio 44308

CITY OF MARION
233 West Center Street
Marion, Ohio 43301

MARION TOWNSHIP
129 South Main Street
Marion, Ohio 43302

MARION County Recording Page



MARION COUNTY RECORDER
Mary Jo Osmun
222 West Center Street
Marion, Oh 43302
(740) 223-4100

File Number : **2005-00008872**

Book : **881** Page : **397**

On (Recorded Date) : **8/31/2005**
At (Recorded Time) : **9:43:58 AM**

Recording Pages : **12**

Recording Fee : **\$104.00**

(Fee Excludes Cover Page)



Doc ID - 001576550012



Please keep this Cover Page with the Original Document
Use this Book and Page number for all future references

Index Type : OFFICIAL RECORDS

Instrument Type : Miscellaneous Recordings

First INDEXED NAME

GALION PARTNERS L L C

First OTHER NAME

OHIO ENVIRONMENTAL PROTECTION AGENCY

Received From :

DECKER VONAU
620 E BROAD ST
COLUMBUS, OH 43215

Return To :

DECKER VONAU
620 E BROAD ST
COLUMBUS, OH 43215



DECKER VONAU

Decker, Vonau, Seguin, Lackey & Viets Co., LPA
A Legal Professional Association

Michael S. Probst
of counsel:
Robert J. Morje

Mark Decker
James M. Vonau
David L. Lackey
James D. Viets
James P. Seguin

Mr. Vonau's Direct Line: (614) 744-4102

September 12, 2005

Mark Navarre, Esquire
Ohio Environmental Protection Agency
Lazarus Gov. Ctr., Legal Dept.
122 South Front Street
P.O. Box 1049
Columbus OH 43216-1049

Stephen P. Samuels
Schottenstein Zox & Dunn
L-2461
Columbus Ohio 43260-2461

RECEIVED
OHIO EPA
2005 SEP 14 AM 11:24
LEGAL OFFICE

Re: Galion Partners, LLC
Marion County Property

Dear Mr. Navarre and Mr. Samuels:

Enclosed please find a copy of the Environmental Covenant regarding the property known as approximately 26.857 acre tract located on State Route 95, Parcel Number 17-008000.0600 that was recorded with the Marion County Recorder's office on August 31, 2005.

Please do not hesitate to call if you have any questions or concerns regarding the enclosed.

Sincerely,

James M. Vonau

JMV/pl
Enclosure

RECEIVED
DIV. OF CLERK OF COURT & PUBLIC DEFENSE
2005 SEP 15 PM 2:19

