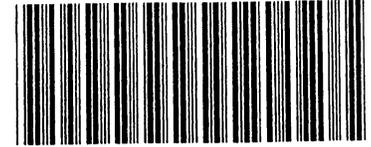


This property is subject to an Environmental Covenant held by the Colorado Department of Public Health and Environment pursuant to section 25-15-321, C.R.S.

OFFICIAL RECORDS
DOUGLAS COUNTY CO
JACK ARROWSMITH
CLERK & RECORDER
RECORDING FEE: \$41.00
7 PGS

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ENVIRONMENTAL COVENANT



2007044523 7 PGS

Dyno Nobel Inc. (DNI) grants an Environmental Covenant ("Covenant") this 30th day of May, 2007 to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department") pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-15-101, *et seq.* The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, DNI is the owner of certain property commonly referred to as the DNI Louviers Facility, located at 7800 North Moore Road, Louviers, Douglas County, Colorado. The portion of the facility that is subject to this environmental covenant is described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as "the Property"); and

WHEREAS, pursuant to the RCRA Corrective Action Plan Application, dated April 2003, and approved by the Department on April 29, 2003, the Property is the subject of remedial action pursuant to the Colorado Hazardous Waste Act, § 25-15-301, *et seq.* ("CHWA") and the Resource Conservation and Recovery Act, 42 U.S.C. § § 6926, *et seq.* ("RCRA"); and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by prohibiting residential use of the Property, restricting irrigation and certain other water uses, and restricting use of shallow groundwater; and

WHEREAS, DNI desires to subject the Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes, which covenants and restrictions shall burden the Property and bind DNI and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein, for the benefit of the Owner and the Department.

NOW, THEREFORE, DNI hereby grants this Environmental Covenant to the Department, and declares that the Property as described in Attachment A shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 13, below, which shall run with the Property in perpetuity and be binding on DNI and all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns, and any persons using the land, as described herein. As used in this Environmental Covenant, the term "Owner" means the record owner

of the Property and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

- 1) **Prohibition on Residential and Public Use.** Owner shall not allow, permit any residential or any public use (including, but not limited to, playgrounds, parks or recreational facilities for children, schools, daycare centers, whether independent or ancillary to a permitted use), or construct any residential structures (including, but not limited to, any single family or multi-family residential dwelling or living unit, or community centers with outdoor uses, whether permanent or temporary), in the areas of the Property that exceed residential, direct-exposure human-health criteria, as set forth in Attachment A.
- 2) **Prohibition on Use of Water and Well Construction.** Owner shall make no use of the shallow groundwater on the Property or allow such waters to be developed for any purpose. Owner shall not dig, bore or drill any well into shallow groundwater for the production of water or from which water is produced on the Property, except for those wells used for groundwater monitoring. For the purposes of this covenant, the term “shallow groundwater” shall be defined as the saturated subsurface zones within the Covenant area described in Attachment A at depths less than 200 feet below the ground surface.
- 3) **Prohibition on Irrigated Cultivation** Owner shall not allow or conduct irrigated cultivation of vegetation or landscaping on the Property.
- 4) **Prohibition on Construction of Surface Water Containment Structures.** Owner shall not allow, permit or construct any surface water or stormwater detention ponds or man made lakes or ponds on the Property.
- 5) **Modifications** This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. Owner may request that the Department approve a modification or termination of the Covenant. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information, and may request additional information. If the Department determines that the proposal to modify or terminate the Covenant will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Covenant shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:
 - a) a proposal to perform additional remedial work;
 - b) new information regarding the risks posed by the residual contamination;
 - c) information demonstrating that residual contamination has diminished;
 - d) information demonstrating that an engineered feature or structure is no longer necessary;

- e) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and
 - f) other appropriate supporting information.
- 6) **Conveyances** Owner shall notify the Department at least fifteen (15) days in advance of any proposed grant, transfer or conveyance of any interest in any or all of the Property.
 - 7) **Notice to Lessees** Owner agrees to incorporate either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Property.
 - 8) **Notification for proposed construction and land use** Owner shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use.
 - 9) **Inspections** The Department shall have the right of entry to the Property at reasonable times with prior notice for the purpose of determining compliance with the terms of this Covenant. Nothing in this Covenant shall impair any other authority the Department may otherwise have to enter and inspect the Property.
 - 10) **No Liability** The Department does not acquire any liability under State law by virtue of accepting this Covenant.
 - 11) **Enforcement** The Department may enforce the terms of this Covenant pursuant to §25-15-322 C.R.S. DNI may file suit in district court to enjoin actual or threatened violations of this Covenant.
 - 12) **Owner's Compliance Certification** Owner shall execute and return a certification form provided by the Department, on an annual basis, detailing Owner 's compliance, and any lack of compliance, with the terms of this Covenant.
 - 13) **Notices** Any document or communication required under this Covenant shall be sent or directed to:

Hazardous Waste Corrective Action Unit Leader
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Dyno Nobel Inc. has caused this instrument to be executed this 30th day of May, 2007.

Dyno Nobel Inc.

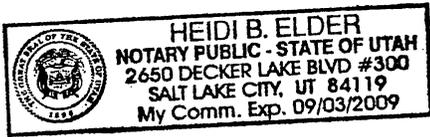
By: [Signature]

Title: Vice President

STATE OF UTAH)
) SS:
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 30th day of May, 2007 by Robert A. Bingham on behalf of Dyno Nobel Inc.

[Signature]
Notary Public



2650 Decker Lake Blvd. #300
Address

Salt Lake City, UT 84119

My commission expires: 9/3/09

Accepted by the Colorado Department of Public Health and Environment this 23rd day of May, 2007.

By: [Signature]

Title: Director, HMA/MD

STATE OF COLORADO)
) SS:
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 23 day of MAY, 2007 by GARY BAUSHMAN on behalf of the Colorado Department of Public Health and Environment.

Claudette M. Ferris
Notary Public
4300 Cherry Creek Dr So
Denver, CO 80246
Address

My commission expires: October 21, 2007

Environmental Covenant

Dyno Nobel Inc., Louviers, Colorado Property

Attachment A