

COVENANT OF DEED RESTRICTION

Recording Requested By:
Melvin Curtaccio
2470 Pulgas
East Palo Alto, California

ORIGINAL DOCUMENT RECORDED

THIS COPY HAS NOT BEEN COMPARED
WITH THE ORIGINAL DOCUMENT.
San Mateo County Recorder

When Recorded, Mail To:
Steven Ritchie, Executive Officer
California Regional Water Quality
Control Board
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, California 94612

COVENANT AND AGREEMENT
TO RESTRICT USE OF PROPERTY

Melvin Curtaccio
2470 Pulgas
East Palo Alto, California

This Covenant and Agreement to Restrict Use of Property (this "Covenant") is made as of the 26th day of October, 1993 by Melvin Curtaccio, ("Covenantor") who is the Owner of record of that certain property situated in the City of East Palo Alto, County of San Mateo, State of California, which is described in Exhibit A attached hereto and incorporated herein by this reference (such portion hereinafter referred to as the "Burdened Property"), for the benefit of that certain property situated in the City of East Palo Alto, County of San Mateo, State of California, which is described in Exhibit B attached hereto and incorporated herein by this reference (hereinafter referred to as the "Benefitted Property"), and by the California Regional Water

Quality Control Board for the San Francisco Bay Region (the "Board") with reference to the following facts:

A. The Burdened Property contains hazardous substances.

B. Description of Facts.

B.1. Contamination of the Burdened Property. Soil and groundwater at the Burdened Property were contaminated by herbicide formulation operations conducted by prior owners of the adjacent property located at 1990 Bay Road, East Palo Alto. These operations resulted in contamination of soil and groundwater with inorganic chemicals including arsenic, lead, cadmium, mercury, and selenium which are believed to have migrated onto the Burdened Property. Contaminated soil containing concentrations of arsenic in excess of 500 parts per million ("ppm") was excavated and removed from the Burdened Property in 1992.

B.2. 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 in-place contact, surface-water runoff, and wind dispersal, resulting in dermal contact, inhalation, or ingestion by humans. The risk of public exposure to the contaminants has been substantially lessened by placement of an impermeable asphalt cap over the buried soils. The purpose of the restrictions on the use of the Burdened Property contained in this Covenant is to eliminate any significant risks to human

health and beneficial uses of waters of the State posed by high exposure levels. If exposure pathways are not mitigated, potential human health effects resulting from exposure to arsenic, lead, cadmium, mercury and selenium include birth defects and fetotoxicity; Central Nervous System (CNS) damage including convulsions and permanent brain damage; kidney damage; hepatic injury; blood dysplasia and anemia; and gastro-intestinal disorders.

B.3. Adjacent Land Uses and Population Potentially Affected.

The Burdened Property is used for the J & B Wrecking Yard, and is adjacent to other industrial land uses.

C. Full and voluntary disclosure to the Board of the presence of hazardous substances on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted by a third party.

D. Covenantor desires and intends that in order to benefit the Benefitted Property, 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 which may result from hazardous substances which 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. 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 Benefitted Property, and the successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions are imposed pursuant to Civil Code Section 1468 and Health and Safety Code Section 25356.1 and the Water Code and run with the land pursuant to Health and Safety Code Section 25356.1. All terms, time periods, and provisions not otherwise defined herein shall take the meaning ascribed to them in Health & Safety Code Sections 25233 and 25234 as of the date of this Covenant. Each and all of the Restrictions are enforceable by the Board, and the owner or owners, from time to time, of the Benefitted Property.

1.2 Concurrence of Owners 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 Benefitted Property and the owners and successive owners thereof, and the future Owners and Occupants of the Burdened Property and that the interest of the future Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 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 any given deed or lease.

ARTICLE II

DEFINITIONS

2.1 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.

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

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

2.4 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. The Burdened Property shall be posted with a bilingual sign in English and Spanish warning against undertaking of any excavation activities on the Burdened Property, and that the Owner and the Board should be contacted for further information;
- g. 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 state and federal law;

h. All uses and development of the Burdened Property shall be consistent with the Record of Decision issued by the U.S. Environmental Protection Agency, and shall preserve the integrity of any cap, any remedial measures taken or remedial equipment installed, and the groundwater monitoring system installed on the Burdened Property pursuant to the requirements of the Board, unless otherwise expressly permitted in writing by the Board.

i. The Owner shall notify the Board 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 Board, 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 Board shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs;

j. The Covenantor agrees that the Board, and/or any persons acting pursuant to Board orders, shall have access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Chapter 4 of Division 7 of the Water Code.

k. No Owners or Occupants of the Burdened Property or any portion thereof shall drill, bore, excavate or otherwise construct any well, boring or excavation on or into the Burdened Property for any purpose, except that it shall be permissible to construct wells, borings, or excavations which are (i) required by or reasonably necessary to implement a plan for remediation of groundwater contamination approved by the Board, or (ii) specifically approved in a written decision by the Board or the San Mateo County Department of Health Services. All borings and excavations shall be performed and all wells constructed in conformance with the standards of the San Mateo County Department of Health Services, and shall incorporate practicable efforts to minimize: (a) any significant threat to humans and animals and (b) any significant transfer of contaminants from the lithosphere to the atmosphere or between water-bearing, or potentially water-bearing, soil or rock zones.

3.2 Conveyance of Burdened Property. The Owner or Owners shall provide thirty (30) days advance notice to the Board and the owner or owners, from time to time, of the Benefitted Property, of any sale, lease, or other conveyance of the Burdened Property or an interest in the Burdened Property to a third person. Neither the Board nor the owner or owners, from time to time, of the Benefitted Property shall, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Burdened

Property except as otherwise provided by law or by reason of this Covenant.

3.3 Enforcement. Failure of the Owner to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Board or the owner or owners, from time to time, of the Benefitted Property, 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 Board, or the owner or owners, from time to time, of the Benefitted Property, to file civil actions against the Owner as provided by law.

3.4 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the Burdened Property. The instrument shall contain the following statement: "The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions and liabilities of Division 7 of the California Water Code and Chapters 6.5 and 6.8 of Division 20 of the California Health and Safety Code, and their successor provisions. 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 Board for a written variance from the provisions of this Covenant, after having obtained the prior written consent of the owner or owners, from time to time, of the Benefitted Property.

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 Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property, after having obtained the prior written consent of the owner or owners, from time to time, of the Benefitted Property.

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"

Melvin Curtaccio
1925 Bay Road
East Palo Alto, California 94303

and

Pamela Kurtz, Esq.
Courthouse Plaza
260 Sheridan Avenue
Suite 302
Palo Alto, California 94306

If To: "Board"

Regional Water Quality Control Board
San Francisco Bay Region
Attention: East Palo Alto Protection Officer
2101 Webster Street
Oakland, California 94612

If To: Owner or Owners of the Benefitted Property:

Sandoz Agro, Inc.
Attention: Robin DeMuth, Esq.
General Counsel
1300 East Touhy Avenue
Des Plaines, Illinois 60018

and

Anthony O. Garvin, Esq.
Brobeck, Phleger & Harrison
Spear Street Tower - 23rd Floor
One Market Plaza
San Francisco, California 94105

If notice is not initiated by the Covenantor or by the
Board, copies of such notice shall be sent, in accordance with
instructions of this paragraph, to both the Covenantor and the

Board. Copies of all notices, regardless of the identity of the party initiating such notice, shall also be sent to:

General Counsel
Rhone-Poulenc Inc.
Black Horse Lane
Monmouth Junction, N.J. 08852 and to

and

W. Reece Bader, Esq.
Orrick, Herrington & Sutcliffe
400 Sansome Street
San Francisco, CA 94111-3143

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 Covenantor, the Owner of the Burdened Property, and by the Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of San Mateo within ten (10) days of the date of execution.

///

///

///

///

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

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

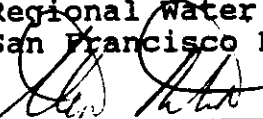
Covenantor: Melvin Curtaccio

By: _____
Date: _____

Owner of the
Benefitted Property: Sandoz Agro, Inc.

By: _____
Title: _____
Date: _____

Agency: State of California
Environmental Protection Agency
Regional Water Quality Board,
San Francisco Bay Region

By:  _____
Title: Steven Ritchie
Date: Executive Officer
10/26/93

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

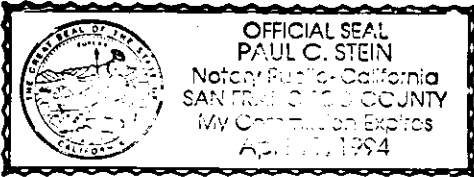
No. 5193

State of California
County of Alameda

On October 26 1993 before me, Paul C. Stein, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Steven Ritchie
NAME(S) OF SIGNER(S)

personally known to me - OR - 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.

Paul C. Stein
SIGNATURE OF NOTARY

OPTIONAL SECTION

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- INDIVIDUAL
- CORPORATE OFFICER(S)
- TITLE(S)
- PARTNER(S) LIMITED GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: Executive
Other

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)
State of Calif EPA

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

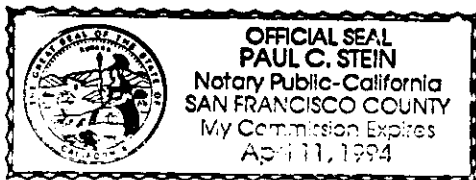
TITLE OR TYPE OF DOCUMENT Covenant and Agreement to Restrict Use of Property
NUMBER OF PAGES 22 DATE OF DOCUMENT 10/26/93
SIGNER(S) OTHER THAN NAMED ABOVE _____

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

On October 26, 1993 before me, the undersigned a Notary Public in and for said state, personally appeared Steven Ritchie, personally known to me or proved to me on the basis of satisfactory evidence to be the persons who executed the within instrument as Executive Officer of the Regional Water Quality Control Board for the San Francisco Bay Region, the Agency that executed the within instrument, and acknowledge to me that the such agency executed the same.

WITNESS my hand and official seal.



Paul C. Stein

Notary Public in and for said
County and State

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

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

Covenantor: Melvin Curtaccio

By: Melvin Curtaccio
Date: October 29, 1993

Owner of the
Benefitted Property: Sandoz Agro, Inc.

By: _____
Title: _____
Date: _____

Agency: State of California
Environmental Protection Agency
Regional Water Quality Board,
San Francisco Bay Region

By: Steven Ritchie
Title: Executive Officer
Date: 10/26/93

ACKNOWLEDGMENT

State of California
County of Santa Clara

On October 29, 1993 before me, Franklin Flocks, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Melvin Curtaccio
NAME(S) OF SIGNER(S)

personally known to me - OR - I 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.

[Signature]
SIGNATURE OF NOTARY

OPTIONAL SECTION
CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- INDIVIDUAL
- CORPORATE OFFICER(S)
- TITLE(S)
 - PARTNER(S) LIMITED
 - GENERAL
 - ATTORNEY-IN-FACT
 - TRUSTEE(S)
 - GUARDIAN/CONSERVATOR
 - OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

OPTIONAL SECTION

TITLE OR TYPE OF DOCUMENT Covenant of Deed Restriction
NUMBER OF PAGES _____ DATE OF DOCUMENT _____
SIGNER(S) OTHER THAN NAMED ABOVE _____

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

STATE OF CALIFORNIA)
)
COUNTY OF ~~SAN MATEO~~)
 Santa Clara

On Oct 29, 1993 before me, the undersigned a Notary Public in and for said state, personally appeared Melvin Curtaccio, personally known to me or proved to me on the basis of satisfactory evidence to be the persons who executed the within instrument.

WITNESS my hand and official seal.



Notary Public in and for said
County and State




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

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

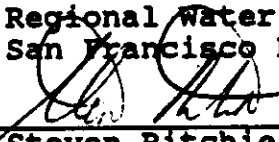
Covenantor: Melvin Curtaccio

By: _____
Date: _____

Owner of the
Benefitted Property: Sandoz Agro, Inc.

By: 
Title: Secretary and General Counsel
Date: November 15, 1993

Agency: State of California
Environmental Protection Agency
Regional Water Quality Board,
San Francisco Bay Region

By: 
Steven Ritchie
Title: Executive Officer
Date: 10/26/93

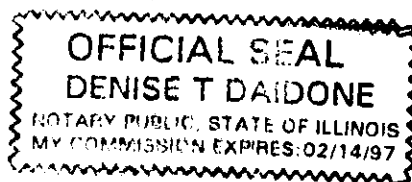
State of Illinois)

)

County of Cook)

On November 15, 1993 before me, the undersigned a Notary Public in and for said state, personally appeared Robin M. Demouth, personally known to me or proved to me on the basis of satisfactory evidence that he is the Secretary and General Counsel of Sandoz Agro, inc. and the person who executed the within instrument, and acknowledged to me that he executed the same pursuant to the Sandoz Agro, Inc. bylaws or a resolution of its directors.

WITNESS my hand and official seal.



Denise T. Daidone 11/23/93
Notary Public in and for said County and State

EXHIBIT A

85125-36
6/7/93
THM

LEGAL DESCRIPTION

Being a portion of a parcel of land as conveyed to Melvin Curtaccio by Quitclaim Deed filed July 26, 1989 at Series Number 89097619 in the Office of the Recorder, County of San Mateo, situated in the City of East Palo Alto, County of San Mateo, State of California, being more particularly described as follows:

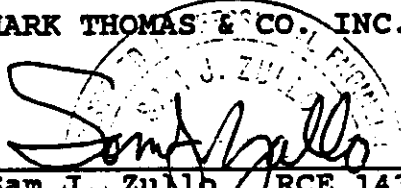
COMMENCING at a point being in the centerline of Bay Road, distant thereon North 65 deg. 11 min. 00 sec. East, 430.60 feet from the intersection of the centerline of Pulgas Avenue; thence South 24 deg. 49 min. 00 sec. East, 30.00 feet to the Northerly corner of said Curtaccio Parcel and TRUE POINT OF BEGINNING; thence leaving said TRUE POINT OF BEGINNING and the Northerly corner of said Curtaccio Parcel and running along the Northeasterly line of said Curtaccio Parcel South 24 deg. 49 min. 00 sec. East, 212.00 feet to the Easterly corner of said Curtaccio Parcel; thence leaving the Easterly corner of said Curtaccio Parcel and running along the Southeasterly line of said Curtaccio Parcel, South 65 deg. 11 min. 00 sec. West, 100.00 feet; thence leaving the Southeasterly line of said Curtaccio Parcel North 24 deg. 49 min. 00 sec. West, 212.00 feet; to the Southerly right-of-way line of Bay Road; thence running along the Southerly right-of-way line of Bay Road, North 65 deg. 11 min. 00 sec. East, 100.00 feet to the TRUE POINT OF BEGINNING.

Containing 0.487 acres of land, more or less.

The above described parcel is for restricted or conditional use of the parcel and is not intended to create new property lines.

Prepared June 7, 1993 by

MARK THOMAS & CO., INC.


Sam J. Zullo RCE 14392
Registration Expires 3/31/97

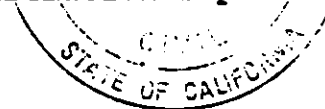


EXHIBIT B

85125-36
8/19/93
THM

LEGAL DESCRIPTION

Being all of a parcel of land conveyed to Sandoz Crop Protection Corporation by Grant Deed filed August 7, 1987 at Series Number 87123248 in the Office of the Recorder, County of San Mateo, situated in the City of East Palo Alto, County of San Mateo, State of California, being more particularly described as follows:

BEGINNING at the Northwest corner of said Sandoz Parcel being in the centerline of Bay Road, said point also being distant North 65 deg. 11 min. 00 sec. East 430.60 feet along the centerline of Bay Road from the intersection of Pulgas Avenue; thence North 65 deg. 11 min. 00 sec. East, 430.60 feet to the Northeasterly corner of said Sandoz Parcel; thence running along the Northeasterly line of said Sandoz Parcel South 24 deg. 49 min. 00 sec. East, 525.00 feet to the Easterly corner of said Sandoz Parcel; thence leaving said Easterly corner and running along the Southeasterly line of said Sandoz Parcel South 65 deg. 11 min. 00 sec. West, 430.60 feet to the Southerly corner of said Sandoz Parcel; thence leaving the Southerly corner of said Sandoz Parcel and running along the Southwesterly line of said Sandoz Parcel North 24 deg. 49 min. 00 sec. West, 525.00 to the TRUE POINT OF BEGINNING:

Containing 5.190 acres of land, more or less.

The above described parcel is for restricted and conditional use only, and is not intended to create any new property lines.

Prepared June 7, 1993

MARK THOMAS & CO. INC.

