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3 Antitrust Division
4 U.S. Department of Justice
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Filed October 20, 2004

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO VENUE

13 UNITED STATES OF AMERICA)

No. CR 04-0300 SI

14 v.)

PLEA AGREEMENT

15 DEGUSSA U.K. HOLDINGS LTD.,)
16 f/d/b/a LAPORTE PLC,)

17 Defendant.)
18 _____)

19 The United States of America and DEGUSSA U.K. HOLDINGS LTD. ("the defendant"),
20 a corporation organized and existing under the laws of the United Kingdom, hereby enter into
21 the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal
22 Procedure ("Fed. R. Crim. P."):

23 **RIGHTS OF DEFENDANT**

- 24 1. The defendant understands its rights:
25 (a) to be represented by an attorney;
26 (b) to be charged by indictment;

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Plea Agreement–Degussa U.K. Holdings Ltd.

1 (c) as a corporation organized and existing under the laws of the United
2 Kingdom, to decline to accept service of the Summons in this case, and to contest the
3 jurisdiction of the United States to prosecute this case against it in the United States
4 District Court for the Northern District of California;

5 (d) to plead not guilty to any criminal charge brought against it;

6 (e) to have a trial by jury, at which it would be presumed not guilty of the
7 charge and the United States would have to prove every essential element of the charged
8 offense beyond a reasonable doubt for it to be found guilty;

9 (f) to confront and cross-examine witnesses against it and to subpoena
10 witnesses in its defense at trial;

11 (g) to be charged within five years of the date of the offense and in a
12 State and District where the offense occurred;

13 (h) to appeal its conviction if found guilty; and

14 (i) to appeal the imposition of sentence against it.

15
16 **AGREEMENT TO PLEAD GUILTY**
17 **AND WAIVE CERTAIN RIGHTS**

18 2. The defendant waives the rights set out in Paragraph 1(b)-(h), above, including all
19 jurisdictional defenses to the prosecution of this case, and voluntarily consents to the jurisdiction
20 of the United States to prosecute this case against it in the United States District Court for the
21 Northern District of California. The defendant agrees to have its sentence determined under the
22 United States Sentencing Guidelines (“U.S.S.G.”) and waives all constitutional challenges to the
23 validity of the U.S.S.G. The defendant waives any right it may have to have facts that determine
24 its Guidelines fine range under the U.S.S.G. (including any facts used to determine its offense
25 level, base fine amount, culpability score, any specific offense characteristic, or other
26 enhancement or adjustment) alleged in an indictment and found by a jury beyond a reasonable
27 doubt. The defendant agrees that facts that determine its Guidelines fine range will be found by
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1 the Court at sentencing by a preponderance of the evidence and that the Court may consider any
2 reliable evidence, including hearsay, in making such determinations. The defendant further
3 agrees that it is making the above waivers knowingly and voluntarily, after fully conferring with
4 and on the advice of counsel, and that the waivers are for the defendant's own benefit. The
5 defendant also waives the right to appeal the imposition of sentence against it, so long as the
6 sentence imposed is consistent with the Recommended Sentence in Paragraph 8 of this Plea
7 Agreement. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead
8 guilty at arraignment to a one-count Information to be filed in the United States District Court
9 for the Northern District of California. The Information will charge the defendant with
10 participating in a conspiracy to suppress and eliminate competition by fixing the prices of
11 organic peroxides ("OP"), specifically t-butyl perbenzoate and t-butyl peracetate dedicated to
12 styrene polymerization (the "Specified OP Products"), sold in the United States and elsewhere,
13 beginning in or about August 1997 and continuing until in or about March 1998, in violation of
14 the Sherman Antitrust Act, 15 U.S.C. § 1.

16 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to
17 the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to
18 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

19 **FACTUAL BASIS FOR OFFENSE CHARGED**

20 4. Had this case gone to trial, the United States would have presented evidence to
21 prove the following facts:

22 (a) For purposes of this Plea Agreement, the "relevant period" is that period
23 beginning in or about August 1997 and continuing until in or about March 1998. During
24 the relevant period, the defendant was a corporation organized and existing under the
25 laws of the United Kingdom. Degussa Aktiengesellschaft, a corporation organized and
26 existing under the laws of the Federal Republic of Germany, is the parent company of the
27 defendant. The defendant has its principal place of business in London, England. During
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1 the relevant period, the defendant was a producer of the Specified OP Products and was
2 engaged in the sale of those products in the United States and elsewhere. The Specified
3 OP Products are essential chemical inputs used in the manufacture of certain polystyrene
4 products, including containers and packaging materials. During the relevant period, the
5 defendant had 200 or more employees in its business unit that produced and sold the
6 Specified OP Products, and its sales of those products to United States customers totaled
7 at least \$2,831,231.

8 (b) During the relevant period, the defendant, through its officers and
9 employees, including high-level personnel within its business unit that produced and sold
10 the Specified OP Products, participated in a conspiracy among major OP producers, the
11 primary purpose of which was to fix the prices of the Specified OP Products to be sold in
12 the United States and elsewhere. In furtherance of the conspiracy, the defendant, through
13 its officers and employees, engaged in discussions and attended meetings with
14 representatives of other major OP producers. During those discussions and meetings,
15 agreements were reached to fix the prices of the Specified OP Products to be sold in the
16 United States and elsewhere.

17 (c) During the relevant period, the Specified OP Products sold by one or more
18 of the conspirator firms, and equipment and supplies necessary to the production and
19 distribution of the Specified OP Products, as well as payments for the Specified OP
20 Products, traveled in interstate and foreign commerce. The business activities of the
21 defendant and its co-conspirators in connection with the production and sale of the
22 Specified OP Products affected by this conspiracy were within the flow of, and
23 substantially affected, interstate and foreign trade and commerce.
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1 **POSSIBLE MAXIMUM SENTENCE**

2 5. The defendant understands that the maximum penalty which may be imposed
3 against it upon conviction for a violation of Section One of the Sherman Antitrust Act is a fine in
4 an amount equal to the greatest of:

5 (a) \$10 million (15 U.S.C. § 1);

6 (b) twice the gross pecuniary gain the conspirators derived from the crime (18
7 U.S.C. § 3571(c) and (d)); or

8 (c) twice the gross pecuniary loss caused to the victims of the crime by the
9 conspirators (18 U.S.C. § 3571(c) and (d)).

10 6. In addition, the defendant understands that:

11 (a) pursuant to § 8B1.1 of the United States Sentencing Guidelines
12 ("U.S.S.G."), the Court may order it to pay restitution to the victims of the offense;

13 (b) pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, the Court is
14 required to order the defendant to pay a \$400 special assessment upon conviction for the
15 charged crime; and

16 (c) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of
17 probation of at least one year, but not more than five years.

18 **SENTENCING GUIDELINES**

19 7. Sentencing for the offense to be charged will be conducted pursuant to the
20 U.S.S.G. Manual in effect on the day of sentencing. Pursuant to U.S.S.G. § 1B1.8, the United
21 States agrees that self-incriminating information that the defendant provides to the United States
22 pursuant to this Plea Agreement will not be used to increase the volume of affected commerce
23 attributable to the defendant or to otherwise enhance the defendant's applicable sentencing
24 guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b).
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1 **SENTENCING AGREEMENT**

2 8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant
3 agree that the appropriate disposition of this case is, and agree to recommend jointly that the
4 Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of
5 \$1.5 million, payable in full before the fifteenth (15th) day after the date of judgment (the
6 “Recommended Sentence”).

7 (a) The defendant understands that the Court will order it to pay a \$400
8 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, in
9 addition to any fine imposed.
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11 (b) The United States and the defendant will both recommend against the
12 imposition of a term of probation, but the defendant understands that the Court is free to
13 impose a term of probation.

14 (c) The United States and the defendant jointly submit that this Plea
15 Agreement, together with the record that will be created by the United States and the
16 defendant at the plea and sentencing hearings, and the further disclosure described in
17 Paragraph 9, will provide sufficient information concerning the defendant, the crime
18 charged in this case, and the defendant’s role in the crime to enable the meaningful
19 exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States
20 and defendant agree to request jointly that the Court accept the defendant’s guilty plea
21 and impose sentence on an expedited schedule as early as the date of arraignment, based
22 upon the record provided by the defendant and the United States, under the provisions of
23 Fed. R. Crim. P. 32(c)(1)(A)(ii), U.S.S.G. § 6A1.1, and Rule 32-1(b) of the Criminal
24 Local Rules. The Court’s denial of the request to impose sentence on an expedited
25 schedule will not void this Plea Agreement.
26

27 9. Subject to the ongoing, full, and truthful cooperation of the defendant described in
28 Paragraph 12 of this Plea Agreement, and before sentencing in this case, the United States will

1 fully advise the Court of the fact, manner, and extent of the defendant's cooperation with the
2 United States's investigations and prosecutions; of the defendant's commitment to prospective
3 cooperation with such investigations and prosecutions; of all material facts relating to the
4 defendant's involvement in the charged offense; and of all other relevant considerations.

5 10. The United States and the defendant understand that the Court retains complete
6 discretion to accept or reject the Recommended Sentence provided for in Paragraph 8 of this
7 Plea Agreement.

8 (a) If the Court does not accept the Recommended Sentence, the United
9 States and the defendant agree that this Plea Agreement, except for Paragraph 10(b)
10 below, shall be rendered void. Neither party may withdraw from this Plea Agreement,
11 however, based on the imposition of a term of probation.

12 (b) If the Court does not accept the Recommended Sentence, the defendant
13 will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the
14 defendant withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any
15 statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the
16 guilty plea or this Plea Agreement or made in the course of plea discussions with an
17 attorney for the government shall not be admissible against the defendant in any criminal
18 or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the
19 defendant agrees that, if it withdraws its guilty plea pursuant to this subparagraph of the
20 Plea Agreement, the statute of limitations period for any offense referred to in Paragraph
21 14 of this Plea Agreement will be tolled for the period between the date of the signing of
22 the Plea Agreement and the date the defendant withdrew its guilty plea or for a period of
23 sixty (60) days after the date of the signing of the Plea Agreement, whichever period is
24 greater.
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1 (a) producing in the United States and at other mutually agreed-upon
2 locations all documents, including claimed personal documents, and other materials,
3 wherever located, requested by attorneys and agents of the United States in connection
4 with any Federal Proceeding;

5 (b) making himself or herself available for interviews in the United States and
6 at other mutually agreed-upon locations, not at the expense of the United States, upon the
7 request of attorneys and agents of the United States;

8 (c) responding fully and truthfully to all inquiries of the United States in
9 connection with any Federal Proceeding, without falsely implicating any person or
10 intentionally withholding any information, subject to the penalties for making false
11 statements (18 U.S.C. § 1001) and for obstruction of justice (18 U.S.C. § 1503);

12 (d) otherwise voluntarily providing the United States with any material or
13 information not requested under (a) – (c) of this paragraph that he or she may have that is
14 related to any Federal Proceeding;

15 (e) when called upon to do so by the United States in connection with any
16 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings fully,
17 truthfully, and under oath, subject to the penalties for perjury (18 U.S.C. § 1621), for
18 making false statements or declarations in grand jury or court proceedings (18 U.S.C. §
19 1623), for contempt (18 U.S.C. §§ 401-402), and for obstruction of justice (18 U.S.C. §
20 1503); and

21 (f) agreeing that, if the agreement not to prosecute him or her in this Plea
22 Agreement is rendered void under Paragraph 15(c), the statute of limitations period for
23 any Relevant Offense as defined in Paragraph 15(a) will be tolled as to him or her for the
24 period between the date of the signing of this Plea Agreement and six (6) months after
25 the date that the United States gave notice of its intent to void its obligations to that
26 person under the Plea Agreement.
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1 **GOVERNMENT'S AGREEMENT**

2 14. Upon acceptance of the guilty plea called for by this Plea Agreement and the
3 imposition of the Recommended Sentence, and subject to the cooperation requirements of
4 Paragraph 12 of this Plea Agreement, the United States agrees that it will not bring further
5 criminal charges against the defendant or any of its Related Entities for any act or offense
6 committed before the date of this Plea Agreement that was undertaken in furtherance of an
7 antitrust conspiracy involving the manufacture or sale of the Specified OP Products. The
8 nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation
9 of the federal tax or securities laws, or to any crime of violence.
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11 15. The United States agrees to the following:

12 (a) Upon the Court's acceptance of the guilty plea called for by this Plea
13 Agreement and the imposition of the Recommended Sentence, and subject to the
14 exceptions noted in Paragraph 15(c), the United States will not bring criminal charges
15 against any current or former director, officer, or employee of the defendant or of its
16 Related Entities for any act or offense committed before the date of this Plea Agreement
17 and while that person was acting as a director, officer, or employee of the defendant or its
18 Related Entities that was undertaken in furtherance of an antitrust conspiracy involving
19 the manufacture or sale of the Specified OP Products (a "Relevant Offense"), except that
20 the protections granted in this paragraph shall not apply to Hans Seidl, to Christopher H.
21 Groom, or to Jack L. Kulasa;

22 (b) Should the United States determine that any current or former director,
23 officer, or employee of the defendant or its Related Entities may have information
24 relevant to any Federal Proceeding, the United States may request that person's
25 cooperation under the terms of this Plea Agreement by written request delivered to
26 counsel for the individual (with a copy to the undersigned counsel for the defendant) or,
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1 if the individual is not known by the United States to be represented, to the undersigned
2 counsel for the defendant;

3 (c) If any person requested to provide cooperation under Paragraph 15(b) fails
4 to comply with his or her obligations under Paragraph 13, then the terms of this Plea
5 Agreement as they pertain to that person, and the agreement not to prosecute that person
6 granted in this Plea Agreement, shall be rendered void;

7 (d) Except as provided in Paragraph 15(e), information provided by a person
8 described in Paragraph 15(b) to the United States under the terms of this Plea Agreement
9 pertaining to any Relevant Offense, or any information directly or indirectly derived from
10 that information, may not be used against that person in a criminal case, except in a
11 prosecution for perjury (18 U.S.C. § 1621), for making a false statement or declaration
12 (18 U.S.C. §§ 1001, 1623), or for obstruction of justice (18 U.S.C. § 1503);

13 (e) If any person who provides information to the United States under this
14 Plea Agreement fails to comply fully with his or her obligations under Paragraph 13 of
15 this Plea Agreement, the agreement in Paragraph 15(d) not to use that information or any
16 information directly or indirectly derived from it against that person in a criminal case
17 shall be rendered void;

18 (f) The nonprosecution terms of this paragraph do not apply to civil matters
19 of any kind, to any violation of the federal tax or securities laws, or to any crime of
20 violence; and

21 (g) Documents provided under Paragraphs 12(a) and 13(a) shall be deemed
22 responsive to outstanding grand jury subpoenas issued to the defendant or any of its
23 Related Entities.

24 16. The United States agrees that when any person travels to the United States for
25 interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for
26 meetings with counsel in preparation therefor, the United States will take no action, based upon
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1 any Relevant Offense, to subject such person to arrest, detention, or service of process, or to
2 prevent such person from departing the United States. This paragraph does not apply to an
3 individual's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. §
4 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. §
5 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401-402) in
6 connection with any testimony or information provided or requested in any Federal Proceeding.

7
8 17. The defendant understands that it may be subject to administrative action by
9 federal or state agencies other than the United States Department of Justice, Antitrust Division,
10 based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in
11 no way controls whatever action, if any, other agencies may take. However, the United States
12 agrees that, if requested, it will advise the appropriate officials of any governmental agency
13 considering such administrative action of the fact, manner, and extent of the cooperation of the
14 defendant and its Related Entities as a matter for that agency to consider before determining
15 what administrative action, if any, to take.

16 **REPRESENTATION BY COUNSEL**

17 18. The defendant has been represented by counsel and is fully satisfied that its
18 attorneys have provided competent legal representation. The defendant has thoroughly reviewed
19 this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge,
20 any possible defenses to the charge, and the nature and range of possible sentences.

21 **VOLUNTARY PLEA**

22 19. The defendant's decision to enter into this Plea Agreement and to tender a plea of
23 guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises,
24 or representations other than the representations contained in this Plea Agreement and in the
25 Degussa Cooperation Agreement, filed separately with the Court. The United States has made
26 no promises or representations to the defendant as to whether the Court will accept or reject the
27 recommendations contained within this Plea Agreement.
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1 **VIOLATION OF PLEA AGREEMENT**

2 20. The defendant agrees that, should the United States at any time determine in good
3 faith that the defendant or any of its Related Entities have failed to provide full and truthful
4 cooperation, as described in Paragraph 12 of this Plea Agreement, or has otherwise violated any
5 provision of this Plea Agreement, the United States will notify counsel for the defendant in
6 writing by personal or overnight delivery or by facsimile transmission of its intention to void any
7 or all of its obligations under this Plea Agreement (except its obligations under this paragraph),
8 and the defendant and its Related Entities shall be subject to prosecution for any federal crime of
9 which the United States has knowledge including, but not limited to, the substantive offenses
10 relating to the investigation resulting in this Plea Agreement. The defendant may seek Court
11 review of any determination made by the United States under this Paragraph to void its
12 obligations under the Plea Agreement. The defendant and its Related Entities agree that, in the
13 event that the United States is released from its obligations under this Plea Agreement and brings
14 criminal charges against the defendant or its Related Entities for any offense referred to in
15 Paragraph 14 of this Plea Agreement, the statute of limitations period for such offense will be
16 tolled for the period between the date of the signing of this Plea Agreement and six (6) months
17 after the date the United States gave notice of its intent to void its obligations.
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19 21. The defendant understands and agrees that in any further prosecution
20 of it or of its Related Entities resulting from the release of the United States from its obligations
21 under this Plea Agreement due to the defendant's or its Related Entities' violation of the Plea
22 Agreement, any documents, statements, information, testimony, or evidence provided by it, its
23 Related Entities, or current or former directors, officers, or employees of it or its Related Entities
24 to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived
25 therefrom, may be used against it or its Related Entities in any such further prosecution. In
26 addition, the defendant unconditionally waives its right to challenge the use of such evidence in
27 any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.
28

1 **ENTIRETY OF AGREEMENT**

2 22. This Plea Agreement and the Degussa Cooperation Agreement, filed separately
3 with the Court, constitute the entire agreement between the United States and the defendant
4 concerning the disposition of the criminal charge in this case. No modification of this Plea
5 Agreement shall be valid unless made in writing and signed by both the United States and the
6 defendant.

7 23. The undersigned is authorized to enter this Plea Agreement on behalf of the
8 defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to,
9 and incorporated by reference in, this Plea Agreement.
10

11 24. The undersigned attorneys for the United States have been authorized
12 by the Attorney General of the United States to enter this Plea Agreement on behalf of the
13 United States.

14 25. A facsimile signature shall be deemed an original signature for the purpose of
15 executing this Plea Agreement. Multiple signature pages are authorized for the purpose of
16 executing this Plea Agreement.
17

18 DATED: 9/16/04

19 Respectfully submitted,

20
21 BY: /s/
22 John R. Pendergast
23 Senior Counsel
24 DEGUSSA U.K. HOLDINGS LTD.

21 BY: /s/
22 Marc Siegel
23 Dana R. Wagner

24
25 BY: /s/
26 Michael F. Tubach, Esq.
27 Counsel for DEGUSSA U.K. HOLDINGS LTD.

24 Attorneys
25 U.S. Department of Justice
26 Antitrust Division
27 450 Golden Gate Avenue
28 Box 36046, Room 10.0101
San Francisco, CA 94102
Tel.: (415) 436-6660

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

USA et al,

Plaintiff,

v.

Degussa U.K. Holdings Ltd. et al,

Defendant.

Case Number: CR04-00300 SI

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 21, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Dana R. Wagner
450 Golden Gate Avenue
Box 36046
Room 10-0101
San Francisco, CA 94102

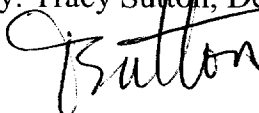
Michael F. Tubach
O'Melveny & Myers LLP
275 Battery Street
San Francisco, CA 94111-3344

Degussa U.K. Holdings
Attn: John R. Pendergast, Jr.,
23700 Chargin Blvd.,
Cleveland, OH 44122-5554

Financial

Dated: October 21, 2004

Richard W. Wierking, Clerk
By: Tracy Sutton, Deputy Clerk



LIMITED POWER OF ATTORNEY

DEGUSSA UK HOLDINGS LTD, a company registered in England and Wales under company number 2885034, and whose registered office is at 68 Wigmora Street, London, W1U 2HQ, (the "Company") hereby grants a limited power of attorney to:

John R. Pendergast

23700 Chagrin Blvd., Cleveland, Ohio 44122

(hereinafter the "attorney-in-fact")

individually and with the right to delegate his limited power of attorney, to execute, acknowledge and deliver and to make and to receive on behalf of the Company the attached **Plan Agreement** with the U.S. Department of Justice regarding organic peroxides (the "Agreement"). The attorney-in-fact shall have full authority to take any other steps and such further acts as are deemed requisite or necessary by the attorney-in-fact to effect the Agreement.


All steps already taken by the attorney-in-fact in connection with the Agreement are hereby expressly ratified. The rights, powers and authority of the attorney-in-fact granted herein shall remain in full force and effect unless and until rescinded in a signed instrument by the Company delivered to the attorney-in-fact, or consummation of the underlying transaction to which the Agreement relates, whichever first occurs.

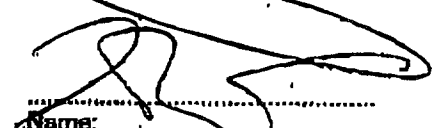
In cases of doubt, this limited power of attorney shall be interpreted broadly to realize the purpose of its granting.

This Power of Attorney shall be governed by the laws of England and Wales.

IN WITNESS WHEREOF, the Company has caused this Limited Power of Attorney to be executed and delivered as a deed by the Company this 31st day of August 2004.

For and on behalf of
Degussa UK Holdings Limited


Name: _____
Title: Director


Name: _____
Title: Director/Secretary