

LAND USE COVENANT

This is an environmental covenant executed pursuant to the Voluntary Remediation and Redevelopment Act, West Virginia Code Chapter 22, Article 22, and the Uniform Environmental Covenants Act, West Virginia Code Chapter 22, Article 22B, to restrict the activities on, and uses of, the following described property:

The site consists of two parcels depicted in the attached drawings the first of which is depicted on **Exhibit A** and referred to therein as Area 1 and described more particularly as follows:

Area 1: Beginning at a 5/8" rebar found, corner to Rite Aid, and on the southern side of a 40' wide right of way, known as right of way number three; thence with said right of way S77'17'24" E143.13' to a point; thence leaving said right of way and with area 1A for the next 5 courses S 12'42'33" W 58.18' to a point; thence S 15'10'28" E 96.13' to a point; thence S 77'17'27" E 50.33' to a point; thence N 62'33'20" E 72.25' to a point; thence N 13'09'19" E 96.56' to a point on the said number three right of way; thence with said right of way for the next two courses S 77'17'24" E 133.67' to a 5/8" rebar with cap set; thence S 77'17'24" E 92.42' to a 5/8" rebar with cap set on the northeast corner of right of way number four; thence leaving right of way number 3 and with right of way number four S 12'52'34" W 144.60' to a 5/8" rebar with cap set on the southeast corner of right of way number four, and the northwest corner of Parcel B; thence leaving said right of way number four and with Parcel B for the next three courses S 76'22'54" E 137.81' to a 5/8" rebar with cap set; thence S 12'51'55" W 134.72' to a 1" post found; thence N 77'08'35" W passing a 3/4" rebar found at 72.65' to a 5/8" rebar with cap set a total distance of 137.83'; thence leaving said parcel B N 77'08'35" W passing a 3/4" rebar found at 173.49', passing a 3/4" rebar at 373.52', passing a point at 423.26' to a 5/8" rebar found at a total distance of 523.26', said rebar being the southeast corner of the Rite Aid tract; thence with Rite Aid N 12'42'33" E 279.81' to a place of beginning containing 3.38 acres;

and the second of which is depicted on **Exhibit B** and referred to therein as Area 1A and described more particularly as follows:

Area 1A: Commencing at a 5/8' rebar found, and being the southeasterly corner of a lot owned by Rite Aid of West Virginia, Inc.; thence with a tieline N40'22'505"E 315.94' to the true point of beginning, said point being in the northerly line of a tract of land known as Area 1 of the FMC East Plant Subdivision; thence with the northerly line of the aforementioned Area 1 S77'17.24"E 151.26'

to a point; thence leaving the northerly line of said area 1 S13°09'19"W 96.56' to a point; thence S62°33'20"W 72.25' to a point; thence N77°17'27"W 50.33' to a point; thence N15°10'28"W 96.13' to a point; thence N12°42'33"E 58.18' to 77 to the true point of beginning, containing 18,384.40 Sq. Ft;

(hereinafter referred to collectively as "the Site"). The Site is located near 333 MacCorkle Avenue in South Charleston, Kanawha County, West Virginia. The Site is part of a tract more particularly described in two deeds of record, Deed Book No. 154, Page 193 and Deed Book No. 182, Page 352, in the office of the Clerk of the County Commission of Kanawha County, West Virginia.

Activities on and uses of the above describe property that may result in excessive human exposure or in the release of a contaminant that was contained as part of the remedial action related to this covenant are prohibited. Those activities and uses include, but are not limited to:

- a) Excavation, drilling or penetration within the areas designated as **Area 1** and **Area 1A** as shown on the attached **Exhibits A and B** unless such excavation, drilling or penetration is conducted by a contractor who is qualified and knowledgeable about releases and exposures to contaminants known to exist at the site. The contractor will be required to perform the work in accordance with a site specific Health and Safety Plan developed by a Licensed Remediation Specialist or similarly qualified individual. The contractor will also be required to remediate the disturbed area in a manner which assures that an equivalent amount of engineering control of the site is achieved at the conclusion of the work. The Owner shall provide written notice to the Secretary of the Department of Environmental Protection of the intent to conduct such work.
- b) Extraction of groundwater within the areas designated as **Area 1** and **Area 1A** as shown on the attached **Exhibits A and B** for any use except groundwater monitoring.
- c) Any residential use as defined in W.Va. Code §22-22-2(bb), including but not limited to construction of any subsurface foundations such as basements or other subsurface structure for human occupancy or use of the property to house a school, day care center, nursing home, or other residential style facility or recreational area within the areas designated as **Area 1** and **Area 1A** as shown on the attached **Exhibits A and B**.

The current owners of record of the property, and their contact information, are:

FMC Corporation
1735 Market Street
Philadelphia, PA 19103

Any person, including a person that owns an interest in the real property, the state or federal agency determining or approving the environmental response project pursuant to which an environmental covenant is created, or a municipality or other unit of local government may be a holder of an environmental covenant. The following is the holder of this covenant:

FMC Corporation
1735 Market Street
Philadelphia, PA 19103

The facts regarding the remediation response project at this property are as follows:

Contamination occurred at the Site due to past chemical manufacturing and processing activities. The Contaminants of Concern (COCs) for Areas 1 and 1A include various volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), pesticides and inorganics (see attached Table 1 and 2 for specific COCs in soil and groundwater, respectively). The pathways of potential exposure for the COCs are generally ingestion, inhalation, and dermal absorption of surface soils and inhalation from volatilization of COCs from subsurface soils and groundwater.

The remediation at the site included removal of foundations and areas of soil found to be contaminated with COCs. The site was remediated to non-residential standards and non-residential exposure assumptions were used to comply with the site-specific remediation standard consistent with Section 9 of the Voluntary Remediation and Redevelopment Rule, Title 60, Code of State Rules, Series 3.

Certain engineering controls have been implemented to limit direct human exposure to the listed COCs in soil and groundwater. These engineering controls include asphalt and concrete pavement and buildings with concrete floors that cover the ground surface of Areas 1 and 1A entirely. Additionally Ordinance No. 2055 prohibiting the drilling into and extraction of groundwater from certain properties including Areas 1 and 1A was approved and enacted by the City of South Charleston on December 18, 2004.

This land use covenant requires that the asphalt and concrete pavement and concrete slab floors be maintained in a contiguous, impermeable, unbroken condition such that they perform as engineering controls.

Due to elevated concentrations of certain COC's in Area 1A no buildings or structures are permitted in this area. Further no excavation, drilling or penetration of the subsoil in Area 1A will be permitted.

During the third quarter of each year following the year in which this covenant is initially recorded the then owner of the Site shall conduct an inspection of the Site and prepare a written report describing the inspection performed, the observations made, and any corrective actions

taken. Two signed copies of that report shall be filed with the West Virginia Department of Environmental Protection no later than 30 days following the inspection.

The owner(s) of the property shall provide written notice to the Secretary of the Department of Environmental Protection and the holders of this covenant within 10 days following transfer of a specified interest in the property subject to this covenant, changes in use of the property, application for building permits regarding the property, or proposals for any site work affecting the contamination on the property.

This covenant relieves the applicant and subsequent successors and assigns from all civil liability to the state as provided under West Virginia Code Article 22 of Chapter 22 and shall remain in effect so long as the property complies with the applicable standards in effect at the time this covenant is recorded.

This covenant may be amended or terminated by consent only by written instrument executed in accordance with W. Va. Code § 22-22B-10. Within 5 days of executing an amendment or termination of this Land Use Covenant, the owner or other person designated in the instrument embodying the amendment or termination shall record such amendment or termination with the Clerk of the County Commission, and within 5 days thereafter, shall provide a true copy of the recorded amendment or termination to the Secretary of the Department of Environmental Protection.

The administrative record for the environmental response project reflected in this covenant is maintained in the files of the Department of Environmental Protection, Division of Land Restoration, entitled

FMC CORPORATION
FORMER EAST PLANT SITE
SOUTH CHARLESTON, KANAWHA COUNTY, WEST VIRGINIA
WVDEP VRP #02234

and located at 601 57th Street SE, Charleston, West Virginia 25304.

The West Virginia Department of Environmental Protection is granted full right of access to the property for the purpose of implementation or enforcement of this covenant.

All restrictions and other requirements described in this covenant shall run with the land and shall be binding upon all holders and their grantees, lessees, authorized agents, employees or persons acting under their direction or control. If any term or provision of this covenant is held invalid or unenforceable to any extent, the remaining terms and provision of this covenant shall not be affected thereby, but each term and provision shall be valid and be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the following holders have executed this covenant on the dates indicated.

SIGNED:

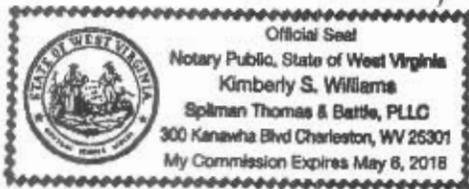
Marguerite Carpenter
FMC Corporation

Ken Ellison, Director
Secretary, Department of Environmental Protection

I, Kimberly S. Williams, a Notary Public in and for the County of Kanawha, State of West Virginia, do hereby certify that Marguerite Carpenter, Associate Director, Environment, FMC Corporation whose name is signed above, this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

Given under my hand this the 28th day of January, 2010.

My commission expires May 6, 2018.

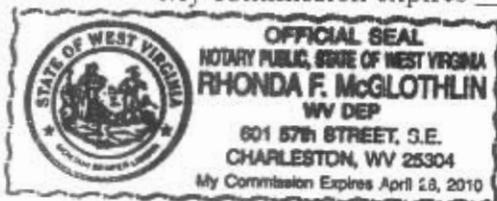


Kimberly S. Williams
Notary Public

Rhonda McGlothlin, a Notary Public in and for the County of Kanawha, State of West Virginia, do hereby certify that Ken Ellison, whose name is signed to the writing above, has this day executed this document in my presence or this day acknowledged same to be the true act and deed of said holder.

Given under my hand this the 12th day of February, 2010.

My commission expires April 26, 2010.



Rhonda F. McGlothlin
Notary Public

The Clerk will return the recorded document to:
Mr. Ken Ellison, Director
WVDEP, DLR
601 57th Street
Charleston, WV 25304

Table 1
Soil - Contaminants of Concern
Area 1 and 1A
FMC - East Plant
South Charleston, West Virginia

<u>Volatile Organic Compounds (VOCs)</u>	<u>Semivolatile Organic Compounds (SVOCs)</u>
Benzene	<i>Benzo(a)pyrene</i>
Carbon tetrachloride (CT)	Pesticides
Chloroform	<i>Alpha-BHC</i>
1,2-Dibromoethane	<i>Beta-BHC</i>
1,2-dichloroethane	
<u>cis-1,2-dichloroethene (cis-1,2-DCE)</u>	Inorganics
<u>trans-1,2-dichloroethene (trans-1,2-DCE)</u>	<i>Arsenic</i>
<i>Methylene Chloride</i>	<i>Manganese</i>
<u>1,1-dichloroethene (1,1-DCE)</u>	Mercury
Tetrachloroethene (PCE)	
Trichloroethene (TCE)	
<u>Vinyl chloride (VC)</u>	

Compounds detected above Table 60-3B Industrial De Minimis levels (revised 2008) in bold print

Compounds detected above Table 60-3B Residential De Minimis levels (revised 2008) in italic print

PCE daughter compound not detected above the referenced de minimis levels, but retained as COC are underlined

COC - contaminant of concern

Table 2
Groundwater - Contaminants of Concern
Area 1 and 1A
FMC - East Plant
South Charleston, West Virginia

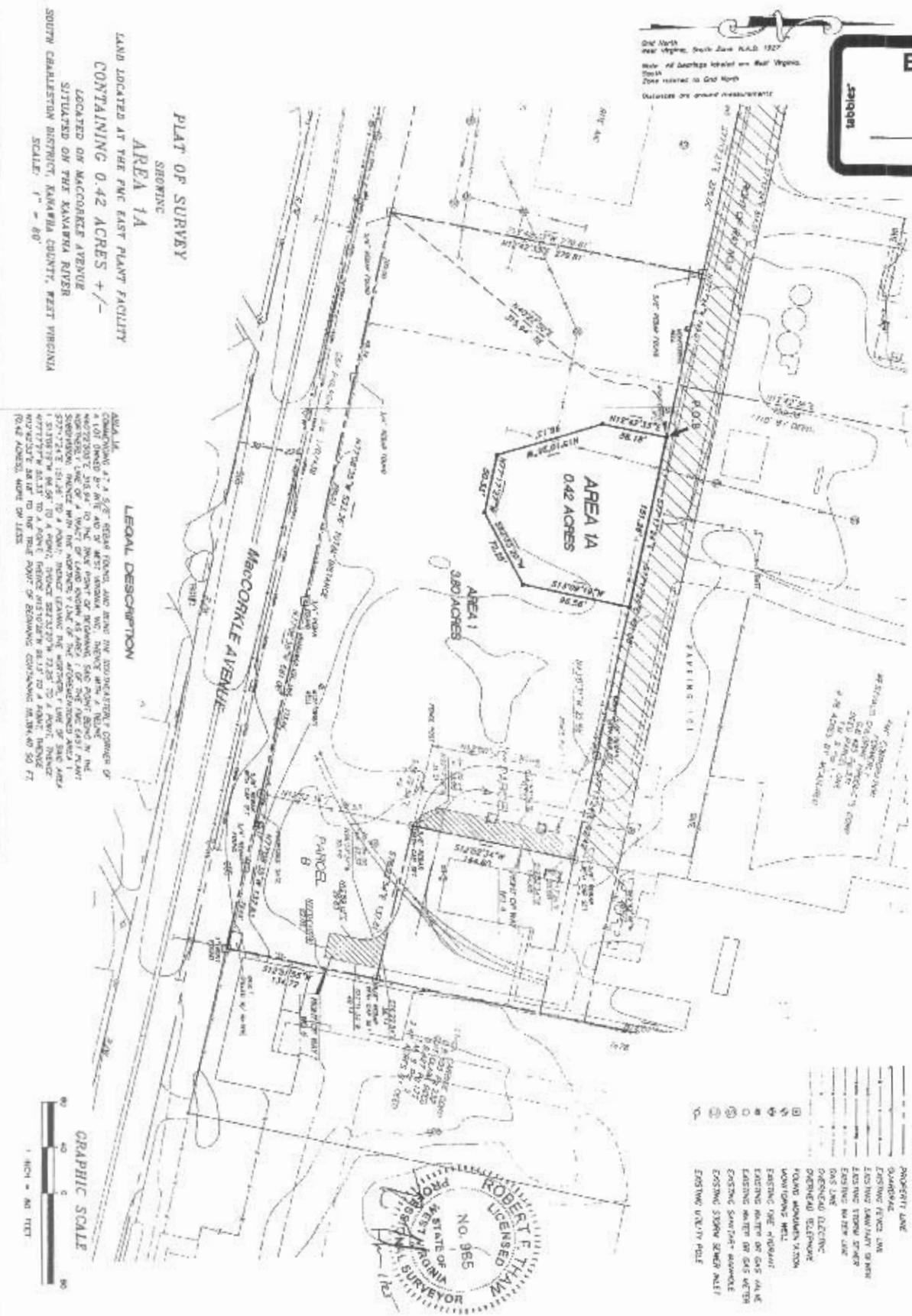
<u>Volatile Organic Compounds (VOCs)</u>	<u>Semivolatile Organic Compounds (SVOCs)</u>
Carbon tetrachloride (CT)	None
Chloroform	
1,2-dibromoethane	<u>Pesticides</u>
<u>trans-1,2-dichloroethene (trans-1,2-DCE)</u>	Aldrin
1,2-dichloroethane (1,2-DCA)	Alpha-BHC
<u>1,1-dichloroethene (1,1-DCE)</u>	Beta-BHC
<u>cis-1,2-dichloroethene (cis-1,2-DCE)</u>	<u>Inorganics</u>
Methylene chloride	Arsenic
Tetrachloroethene (PCE)	Cadmium
Trichloroethene (TCE)	Iron
Vinyl chloride (VC)	Manganese
	Mercury

Compounds detected above Table 60-3B Groundwater De Minimis levels (revised 2008) in bold print
PCE daughter compound not detected above the referenced de minimis levels, but retained as COC are underlined

COC - contaminant of concern

EXHIBIT
B

Grid North
and UTM, South Zone NAD 83
Scale of bearings based on Real World
Data
Zone referred to Grid North
Distances are ground measurements



PLAT OF SURVEY
SHOWING
AREA 1A

LAND LOCATED AT THE FMC EAST PLANT FACILITY
CONTAINING 0.42 ACRES +/-
LOCATED ON MACCORKLE AVENUE
SITUATED ON THE KANAWHA RIVER
SOUTH CHARLESTON DISTRICT, KANAWHA COUNTY, WEST VIRGINIA
SCALE: 1" = 80'

LEGAL DESCRIPTION

AREA 1A
COMMENCING AT A 5/8" IRREGULAR POINT AND BEING THE ACCUMULATED CORNER OF A LOT OWNED BY ME AND BY WEST VIRGINIA WGT. INCORP. AND A POINT NEAR THE CORNER OF THE LOT OF THE PROPERTY OF THE STATE OF WEST VIRGINIA, BEING THE POINT OF BEGINNING, THENCE WITH THE ADJACENT LAND OF THE ACCUMULATED CORNER OF AREA 1, S77°12'42" E 151.28' TO A POINT, THENCE BEARING THE BEARING OF LINE OF AREA 1, S110°37'34" W 86.59' TO A POINT, THENCE BEARING S72°25' TO A POINT, THENCE BEARING S85°38' E 46.10' TO THE TRUE POINT OF BEGINNING CONTAINING THEREABOUTS 0.42 ACRES, MORE OR LESS.

- LEGEND**
- PROPERTY LINE
 - CONCRETE
 - EXISTING FENCED LINE
 - EXISTING FENCIBLE OR BAR
 - EXISTING TOWER CENTER
 - EXISTING WATER LINE
 - EXISTING GAS LINE
 - EXISTING UTILITY
 - EXISTING ELECTRIC
 - EXISTING TELEPHONE
 - EXISTING WIRE
 - EXISTING WATER OR GAS LINE
 - EXISTING WATER OR GAS UTILITY
 - EXISTING SANITARY SEWER
 - EXISTING STORM SEWER
 - EXISTING UTILITY POLE



<p>Project No. 218815</p> <p>Date: 1/19/2007</p> <p>Scale: 1" = 80'</p> <p>Sheet No. 1 of 1</p>	<p>FMC EAST PLANT-CHARLESTON, WV</p>	<p>TERRADON</p> <p>Engineering - Surveying - Landmark Architecture</p> <p>P.O. Box 515 Martinsburg, WV 26152 (304) 263-5151 FAX 304-263-5886 www.terradon.com</p>	DATE	NO.	REVISION
	<p>SURVEY PLAT AREA 1A</p>				

01