

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 drawings attached, the first of which is depicted on **Exhibit A** and referred to therein as Area 2A and described as follows:

Area 2A: all that certain parcel or tract of land situate on the waters of the Kanawha River, South Charleston, West Virginia and being more particularly bounded and described as follows:

Beginning at a 5/8" rebar and cap, said rebar being located on the Eastern edge of "D" Street; thence following the Eastern edge of "D" street N. 29' 55' 43" W. a distance of 261.40 feet to a 5/8" rebar and cap set; thence leaving "D" Street S. 80' 47' 28" E. a distance of 25.18 feet to a 5/8" rebar and cap set; thence N. 13' 05' 40" E. a distance of 95.84 feet to a 3/4" iron pipe; thence N. 13' 05' 40" E. a distance of 41.75 feet to a 5/8" rebar and cap set; thence N. 83' 15' 51" E. a distance of 94.90 feet to a 5/8" rebar and cap set; thence S. 88' 55' 50" E. a distance of 133.40 feet to a 5/8" rebar and cap set; thence N. 87' 16' 21" E. a distance of 80.77 feet to a 5/8" rebar and cap set; thence S. 80' 02' 02" E. a distance of 132.16 feet to a 5/8" rebar and cap set; thence S. 12' 42' 36" W. a distance of 337.76 feet to a point; thence S. 12' 42' 36" W. a distance of 80.00 feet to a 5/8" rebar and cap set on the northern edge of former Lee Street of the City of South Charleston; thence following the said Northern edge N. 77' 17' 24" W. a distance of 55.00 feet to a point; thence continuing to follow said Northern edge N. 77' 17' 24" W. a distance of 224.00 feet to the true point of beginning, containing 3.54 acres, more or less;

and the second of which is depicted on **Exhibit B** and referred to therein as Area 2B and described as follows:

Area 2B: all that certain parcel or tract of land situate on the waters of the Kanawha River, South Charleston, West Virginia and being more particularly bounded and described as follows:

Beginning at a 5/8" rebar and cap, said rebar and cap being located on the Eastern edge of "D" Street and being the true point of beginning; thence following said Eastern edge for two courses; N.

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County Clerk
Kanawha County, WV
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29' 55' 43" W. a distance of 95.73 feet to a point; N. 29' 55' 43" W. a distance of 61.92 feet to a 5/8" rebar and cap set; thence leaving said "D" Street N. 85' 34' 58" E. a distance of 64.01 feet to a 5/8" rebar and cap set; said point being located on the Southern edge of former 10th Street of the City of South Charleston; thence following said Southern edge for three courses: S. 77' 17' 24" E. a distance of 61.70 feet to a point; S. 77' 17' 24" a distance of 101.94 feet to a point; S. 77' 17' 24" E. a distance of 387.05 feet to a 5/8" rebar and cap set; thence S. 12' 42' 36" W. a distance of 134.82 feet to a 5/8" rebar and cap set; thence N. 77' 17' 24" W. a distance of 505.08 feet to the point of beginning, containing 1.74 acres, more or less;

(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 described 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 2A** and **2B** 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 Site 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 Site designated as **Area 2A** and **Area 2B** 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 2A and 2B include various volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), pesticides and inorganics (see attached Tables 1 and 2 for specific COCs in soil and groundwater, respectively). The pathways of potential exposure to 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 much of the ground surface of Areas 2A and 2B. Additionally Ordinance No. 2055 prohibiting the drilling into and extraction of groundwater from certain properties including Areas 2A and 2B 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.

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:

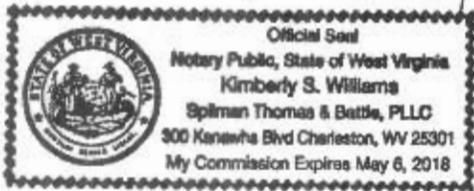
Marguerite Carpenter
FMC Corporation

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.

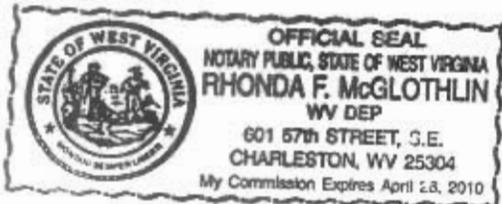


Kimberly S. Williams
Notary Public

Rhonda F. 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 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
Areas 2A and 2B
FMC - East Plant
South Charleston, West Virginia

<u>Volatile Organic Compounds (VOCs)</u>	<u>Semi-volatile Organic Compounds (SVOCs)</u>
Carbon tetrachloride (CT)	<i>Benzo (a)pyrene</i>
Chloroform	<i>Dibenz(a,h)anthracene</i>
<u>cis-1,2-dichloroethene (cis-1,2-DCE)</u>	<i>Indeno(1,2,3-cd)pyrene</i>
<u>trans-1,2-dichloroethene (trans-1,2-DCE)</u>	<u>Pesticides</u>
<i>1,1-dichloroethene (1,1-DCE)</i>	<i>Alpha-BHC</i>
Tetrachloroethene (PCE)	<i>Dieldrin</i>
Trichloroethene (TCE)	<u>Inorganics</u>
<i>Vinyl chloride (VC)</i>	<i>Arsenic</i>
<u>Semi-volatile Organic Compounds (SVOCs)</u>	<i>Lead</i>
<i>Benzo(a)anthracene</i>	
<i>Benzo(b)fluoranthene</i>	

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

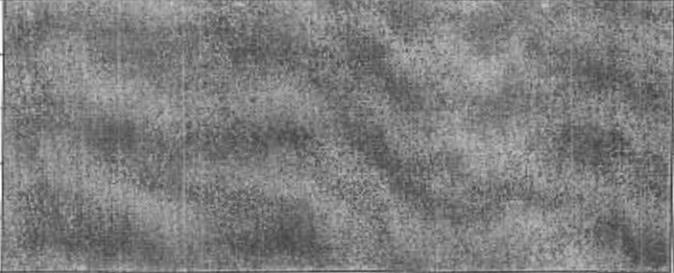
Compounds detected above Table 60-3B Residential De Minimis levels (revised July 2008) are in italic print

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

BHC – Benzene hexachloride

COC - Contaminant of concern

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

<u>Volatile Organic Compounds (VOCs)</u>	<u>Semi-volatile Organic Compounds (SVOCs)</u>
Benzene	Hexachloroethane
Carbon tetrachloride (CT)	<u>Pesticides</u>
Chlorobenzene	Alpha-BHC
Chloroform	Beta-BHC
<u>cis- 1,2-dichloroethene (cis-1,2-DCE)</u>	<u>Inorganics</u>
<u>trans- 1,2-dichloroethene (trans-1,2-DCE)</u>	Iron
Methylene chloride	Manganese
<u>1,1-dichloroethene (1,1-DCE)</u>	
1,1,2,2-tetrachloroethane	
Tetrachloroethene (PCE)	
Trichloroethene (TCE)	
Vinyl chloride (VC)	

Compounds detected above West Virginia Groundwater de minimis Levels (revised July 2008) or have laboratory method limits above respective De Minimis Levels are in bold print

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

BHC – Benzene hexachloride

COC – Contaminant of concern

