

## 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 a parcel depicted in the attached drawing attached as **Exhibit A** as **Brownfield Way** and described more particularly as follows:

Beginning at a 5/8" rebar set at the northeasterly terminus of Ashby Street; thence N 77' 17' 27" W 40.00' to a 5/8" rebar and cap set; thence N 12' 42' 36" E 134.82" to a 5/8" rebar and cap set; thence N 77' 17' 24" W 629.22' to a 5/8" rebar and cap set on the Easterly right of way line of "D" Street; thence with said street N 29' 55' 33" W 54.37' to a 5/8" rebar and cap set; thence leaving said street S 77' 17' 24" E, passing a 5/8" rebar and cap set at 666.05', in all 1480.12" to a 5/8" rebar and cap set; thence S 12' 42' 36" W 40.00' to a 5/8" rebar and cap set; thence S 77' 17' 24" W, passing a 5/8" rebar and cap set at 92.42', in all 749.07' to a 5/8" rebar found; thence with a curve to the left, having an arc length of 39.27', a radius of 25.00', and chord bearing and distance of S 57' 42' 17" W 35.35' to a 5/8" rebar and cap set; thence S 12' 42' 33" W 109.82' to the place point of beginning and containing 83.995 sq. ft. (1.47 AC), more or less;

(hereinafter referred to 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 Site, shown on the attached **Exhibit A** as Brownfield Way, 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 identifying proper controls and protective measures to prevent environmental releases and worker exposure to chemical hazards developed or approved by a Licensed Remediation Specialist (LRS) or similarly qualified individual. The contractor will also be required to remediate the disturbed area in a manner which

DEED 2761 902  
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Vera J. McCormick  
County Clerk  
Kanawha County, WV  
Deed Tax 0.00  
Recording Fee 14.00  
TOTAL 14.00

ensures 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 at the site 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 any construction of any enclosed structures 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.

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:

Contamination occurred at the Site due to past chemical manufacturing and processing activities in adjacent areas and the migration of contaminants of concern (COCs) under the Site. COCs for Brownfield Way 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 surface soils and rubble and the placement of clean fill on the western portion of the Site as well as the placement of an asphalt cap over the entire area. 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 pavement that covers the ground surface of nearly all of Brownfield Way and the narrow grass right-of-way along each side of Brownfield Way has been capped with clean fill material.

Additionally Ordinance No. 2055 prohibiting the drilling into and extraction of groundwater from certain properties including Brownfield Way was approved and enacted by the City of South Charleston on December 18, 2004.

This land use covenant requires that the asphalt pavement be maintained in a contiguous, impermeable, unbroken condition such that it performs as an engineering control.

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 57<sup>th</sup> 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:

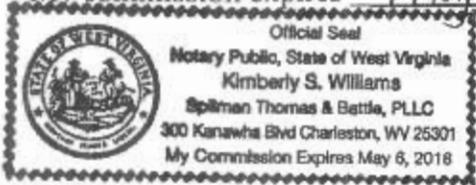
Marguerite Carpenter  
FMC Corporation

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 28<sup>th</sup> day of January, 2010

My commission expires May 6, 2018.

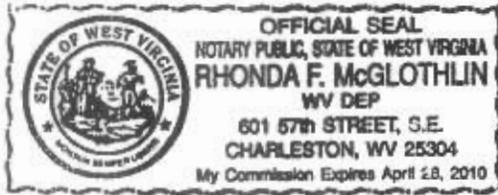


Kimberly S. Williams  
Notary Public

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 12<sup>th</sup> 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 57<sup>th</sup> Street  
Charleston, WV 25304

**Table 1**  
**Soil - Contaminants of Concern**  
**Brownfield Way**  
**FMC - East Plant**  
**South Charleston, West Virginia**

<u>Volatle Organic Compounds (VOCs)</u>	<u>Semivolatile Organic Compounds (SVOCs)</u>
<b>Carbon tetrachloride (CT)</b>	<i>Benzo(a)pyrene</i>
<b>Chloroform</b>	<i>Hexachlorobenzene</i>
<b>1,2-Dibromoethane</b>	<b><u>Inorganics</u></b>
<b>1,2-dichloroethane</b>	<b>Arsenic</b>
<u>cis-1,2-dichloroethene (cis-1,2-DCE)</u>	<i>Cadmium</i>
<u>trans-1,2-dichloroethene (trans-1,2-DCE)</u>	
<i>Methylene Chloride</i>	
<u>1,1-dichloroethene (1,1-DCE)</u>	
<b>Tetrachloroethene (PCE)</b>	
<b>Trichloroethene (TCE)</b>	

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

Compounds detected above Table 60-3B Residential De Minimis levels (revised July 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**  
**Brownfield Way**  
**FMC - East Plant**  
**South Charleston, West Virginia**

<u>Volatile Organic Compounds (VOCs)</u>	<u>Semivolatile Organic Compounds (SVOCs)</u>
Acetone	Hexachlorobutadiene
Benzene	Hexachloroethane
Carbon tetrachloride (CT)	
Chloroform	<u>Pesticides</u>
1,2-dibromoethane	Aldrin
1,2-dichloroethane (1,2-DCA)	Alpha-BHC
<u>1,1-dichloroethene (DCE)</u>	Gamma-BHC (lindane)
<u>cis-1,2-dichloroethene (cis-1,2-DCE)</u>	
<u>trans-1,2-dichloroethene (trans-1,2-DCE)</u>	<u>Inorganics</u>
1,2-di-chloropropane	Arsenic
Methylene chloride	Cadmium
1,1,2,2-tetrachloroethane	Chromium
Tetrachloroethene (PCE)	Iron
Trichloroethene (TCE)	Manganese
Vinyl chloride (VC)	Nickel
	Vanadium

Compounds detected above West Virginia Groundwater Deminimis 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

