

## LAND USE COVENANT

FMC CORPORATION ("FMC") has entered into a Voluntary Remediation Agreement for Investigation and Remediation Activities (hereinafter referred to as "the Agreement") with the **DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF WEST VIRGINIA** ("WVDEP") pursuant to the Voluntary Remediation and Redevelopment Act, W.Va. Code §§ 22-22-1 through 22-22-2 (hereinafter referred to as "the Act"), for certain property, owned by FMC, located at the Spring Hill facility, Parcel 3, in South Charleston, in South Charleston Tax District, Kanawha County, West Virginia, and more particularly described in a deed of record in the office of the Clerk of the County Commission of Kanawha County, West Virginia in Deed Book 1335, at page 73, more particularly described on Attachment 1 attached hereto (hereinafter referred to as the "Property"). The Agreement allows certain levels of contamination to remain on the Property and Paragraph 18 of the Agreement requires FMC, as the owner of said Property, to record a Land Use Covenant in the office of the Clerk of the County Commission of Kanawha County, West Virginia for the purposes of protecting public health and the environment and to prevent interference with the performance, operation and maintenance of any remedial actions required by the Agreement or the Certificate of Completion issued in connection therewith.

**NOW THEREFORE**, as FMC, hereinafter referred to as "Owner," and the WVDEP, by and through its Secretary, have provided in the Agreement, the following restrictions shall apply to this Property:

1. The Owner shall prohibit all activities on the Property, which may impede or in any way interfere with the remedial action required by the Agreement or the Owner's performance of its obligations thereunder.

2. The Owner shall prohibit all activities on the Property that may result in human exposures above those specified by the Agreement or that would result in the release of a contaminant that was contained as part of the remedial action. These activities include, but are not limited to:

a. The Property may not be used for any purposes other than "Non-Residential purposes" and may be used only as "nonresidential property" as that term is defined in W. Va. Code § 22-22-2(q).

b. No groundwater underlying the Property may be used for any purpose except that groundwater monitoring may be performed by the Owner as necessary to satisfy the requirements of the Agreement, the Certificate of Completion issued for the Property, and other monitoring as may be required by applicable law, regulation or action of a governmental authority, and no wells or groundwater recovery shall be installed or operated on the Property except by the Owner in accordance with the terms of the Agreement and the Certificate of Completion issued in connection therewith.

3. The Owner shall provide written notice to the Secretary of the WVDEP of the intent to transfer any interest in the Property.

4. The Owner shall not convey any title, easement, or other interest in the Property without adequate and complete provision for the continued implementation, operation and maintenance of any remedial action that has been implemented on the Property pursuant to the Agreement and without assuring prevention of the releases and exposures described in the provisions of the hereinabove paragraph 2.

5. The Owner shall grant the WVDEP and its designated representatives the right to enter the Property at reasonable times for the purpose of monitoring compliance with the Agreement, and the Certificate of Completion, including the right to take samples, inspect the operation to evaluate the effectiveness of remedial activities, and inspect records all as provided in the Agreement.

6. The WVDEP may enforce the restrictions set forth in this Land Use Covenant by legal action in a court of appropriate jurisdiction.

7. In accordance with the provisions of the Act regarding land use covenants, W. Va. Code § 22-22-15, and in addition to any rights or duties contained in the Certificate of Completion, this Land Use Covenant relieves the Owner and any subsequent successors and assigns of the Owner, and any person identified in W. Va. Code § 22-22-18 from all civil liability to the state as provided under the Act so long as the Property complies with the applicable standards identified in the Agreement.

8. The restrictions and other requirements described in this Land Use Covenant shall run with the land and shall be binding upon any future owners, their heirs, successors or assigns, and their authorized agents, employees or persons acting under their direction or control. Subject to subsequent written modification or release signed by the Secretary of the WVDEP and the Owner at the time of such modification or release, and filed in the office of the Clerk of the County Commission of the county where these covenants have been recorded, this Land Use Covenant shall continue in perpetuity.

9. If any provision of this Land Use Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof. All such other provisions shall continue unimpaired and in full force and effect.

10. This Land Use Covenant shall not be amended, modified or terminated except by written instrument executed by and between the Owner at the time of the proposed amendment, modification or termination, and the Secretary of the WVDEP, or his successor in accordance with regulations promulgated by the Secretary or his successor. Within five days of executing an amendment, modification or termination of this Land Use Covenant, the Owner shall record such amendment, modification or termination with the Clerk of the County Commission of Kanawha

County, and within five days thereafter, the Owner shall provide a true copy of the recorded amendment, modification or termination to the Secretary of the WVDEP.

The undersigned persons executing this Land Use Covenant on behalf of the Owner represent and certify that they are duly authorized and have been fully empowered to execute and deliver this Land Use Covenant.

The Clerk of the County Commission of Kanawha County, West Virginia is hereby requested and directed to return this instrument following recordation to the Secretary of the WVDEP, at the address indicated below, with evidence showing it has been duly recorded as required by the regulations promulgated by the Secretary of the WVDEP.

IN WITNESS WHEREOF, FMC Corporation, as the Owner of the Property and the Secretary, or his designee, for and on behalf of the Department of Environmental Protection of the State of West Virginia, have caused this Land Use Covenant to be executed this 18<sup>th</sup> day of December, 2002.

**FMC CORPORATION**

By: Robert J. Forbes

Its: Director, ENVIRONMENT  
Property Owner

**DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF WEST VIRGINIA**

By: Ken Ellison

Its: Director

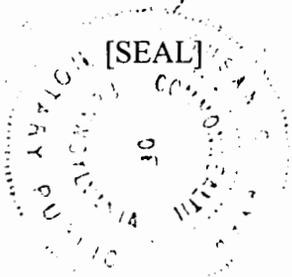
COMMONWEALTH OF PENNSYLVANIA,  
COUNTY OF PHILADELPHIA, to-wit:

The foregoing was acknowledged before me this 18<sup>th</sup> day of December, 2002, by Robert T. Forbes, the Director, Environment of **FMC CORPORATION**, a Delaware corporation, who signed the foregoing writing, bearing date the 18<sup>th</sup> day of December, 2002, for and on behalf of said corporation.

Given under my hand and official notarial seal this 18<sup>th</sup> day of Dec., 2002

My commission expires: Nov. 24, 2006

Susan C. Byer  
Commissioner of Deeds (Notary Public)



STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to-wit:

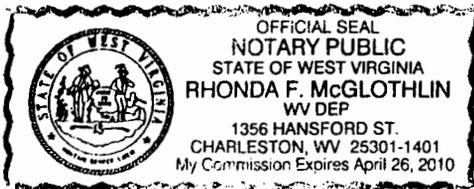
The foregoing was acknowledged before me this 19<sup>th</sup> day of December, 2002, by Ken Ellison for, the Secretary of the **DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF WEST VIRGINIA**, an agency of state government, who signed the foregoing writing, bearing date the 19<sup>th</sup> day of December, 2002, for and on behalf of said agency.

Given under my hand and official notarial seal this 19<sup>th</sup> day of December, 2002

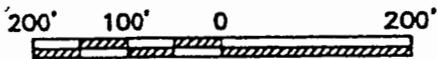
My commission expires April 26, 2010

[NOTARIAL SEAL]

Notary Public  
Rhonda F. McGlothlin



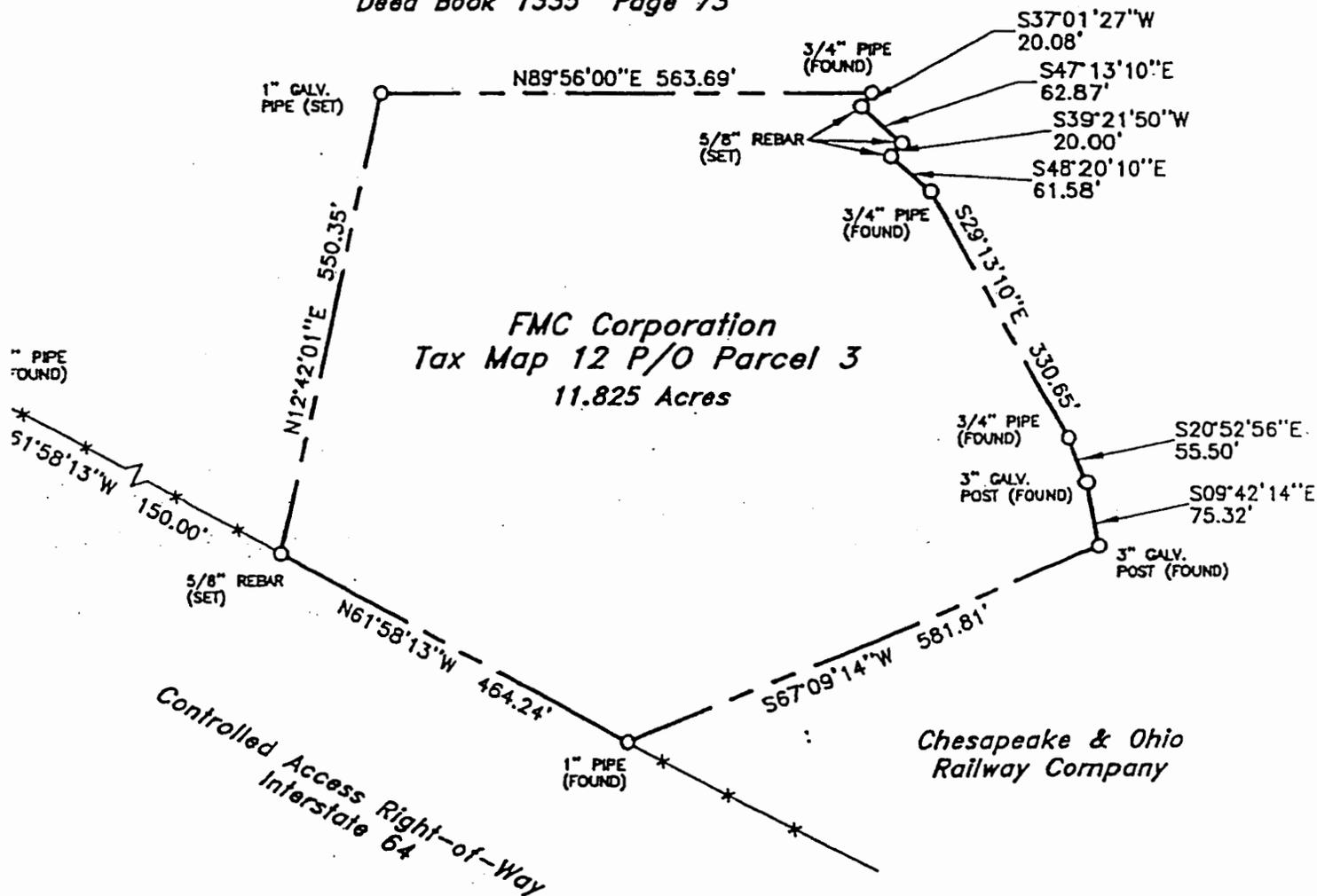
CITY OF SOUTH CHARLESTON  
KANAWHA COUNTY  
WEST VIRGINIA



SCALE : 1" = 200'

FMC Corporation  
Tax Map 12 Parcel  
Deed Book 1335 Page 73

FMC Corporation  
Tax Map 12 P/O Parcel 3  
11.825 Acres



SURVEYED BY HERSHEL D. WARD  
AUGUST 2000

*Hershel D. Ward*

HERSHEL D. WARD, P.S. 995  
MSES CONSULTANTS, INC.  
609 WEST MAIN STREET BUILDING 2  
P. O. DRAWER 190  
CLARKSBURG, WV 26302-0190  
(304) 624-9700



PLAT OF SURVEY  
FOR  
FMC CORPORATION

MSES PROJECT NO. 00-350  
CAD FILE NO. 00-350-1 / DISK 1385  
DRAWN BY : KLA

**DESCRIPTION OF SURVEY  
FOR  
FMC CORPORATION**

A partition survey of a tract of land situate along Interstate 64, on the waters of the Kanawha River, in the City of South Charleston, Kanawha County, West Virginia, more particularly described as follows;

Beginning at a 5/8 inch rebar, set, a corner to FMC Corporation , Deed Book 1335 at Page 73, and being a point on the Controlled Access Right-of-Way of Interstate 64, from which a 1-inch pipe, found, bears N 61° 58' 13" W 150.00 feet, thence with a new partition for nine (9) lines through the lands of FMC Corporation,

N 12° 42' 01" E 550.35 feet to a 1-inch galvanized pipe, set,

N 89° 56' 00" E 563.69 feet to a 3/4 inch pipe, found, thence,

S 37° 01' 27" W 20.08 feet to a 5/8 inch rebar, set, thence,

S 47° 13' 10" E 62.87 feet to a 5/8 inch rebar, set, thence,

S 39° 21' 50" W 20.00 feet to a 5/8 inch rebar, set, thence,

S 48° 20' 10" E 61.58 feet to a 3/4 inch pipe, found, thence,

S 29° 13' 10" E 330.65 feet to a 3/4 inch pipe, found, thence,

S 20° 52' 56" E 55.50 feet to a 3 inch galvanized post, thence,

S 09° 42' 14" E 75.32 feet to a 3 inch galvanized post, a point on the line of said FMC Corporation and Chesapeake and Ohio Railway Company, thence with said railway company.

S 67° 09' 14" W 581.81 feet to a one inch pipe, found, a corner to said railway company and on the Controlled Access Right-of-Way of Interstate 64, thence with said Interstate 64,

N 61° 58' 13" W 464.24 feet to the place of beginning, containing 11.825 acres, more or less, as determined by a survey conducted in August 2000,

Being part of the same tract of land as conveyed by The United States of America to Food Machinery and Chemical Corporation, by deed located in the Office of the Clerk of the County Court of Kanawha County, West Virginia in Deed Book 1335 at Page 73.

Surveyed by MSES Consultants, Inc. August, 2000.

Hershel D. Ward  
Hershel D. Ward, P.S.995  
MSES Consultants, Inc  
P. O. Drawer 190  
609 West Main Street, Bldg. 2  
Clarksburg, West Virginia, 26302-0190  
(304)624-9700



This instrument was presented to the Clerk of the County Commission of Kanawha County, West Virginia, on and the same is admitted to record.

Teste: Alma J. Berg DEC 20 2002  
Clerk  
Kanawha County Commission