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March 28, 2008

Via E-Mail and Certified Mail – Return Receipt Requested

Mr. Matt Mortefolio, P.E.
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Division of Solid and Hazardous Waste
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NEW YORK STATE DEPARTMENT OF
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Mr. Michael Infurna
USEPA Project Coordinator
Environmental Planning and Protection
Division
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, Region II
290 Broadway – 20th Floor
New York, NY 10007-1866

Re: RCRA Section 3008(h) Administrative Order on Consent
Docket No. II-RCRA-90-3008(h)-0209
FMC Corporation, Middleport, NY Facility
EPA I.D. No. NYD002126845
Response to Agencies' March 10, 2008 letter re: "Confirmation of
Agreements & Resolution of Outstanding Issues"

Dear Messrs. Mortefolio and Infurna:

Representatives (including senior management) from FMC Corporation (FMC), the New York State Department of Environmental Conservation (NYSDEC), the New York State Department of Health (NYSDOH) and the United States Environmental Protection Agency (USEPA) (jointly NYSDEC and USEPA are referred to herein as "the Agencies") met on February 14, 2008 to discuss the Agencies' September 24, 2007 directives related to specific RCRA Facility Investigation (RFI) tasks and the Corrective Measures Study (CMS) under the above-referenced Administrative Order on Consent (AOC); and (2) the Agencies' December 13, 2007 directives for additional investigative work related to a 1967 FMC research report submitted to the United States Department of Defense (DoD). By letter dated March 10, 2008¹ (hard copy received on March 13, 2008), the Agencies confirmed the agreements reached and presented the Agencies' final determinations on the outstanding issues as discussed during the February 14th meeting and associated with the September 24, 2007 directives.

As requested in the Agencies' March 10, 2008 letter and pursuant to Section XI.1 of the AOC, FMC now notifies the Agencies that it will comply with the Agencies' directives presented in

¹ The Agencies' hard copy letter is dated March 10, 2007. This is a typographical error, as corrected by an email received from Matt Mortefolio on March 12, 2008. Therefore, all references in this response will be to March 10, 2008 as the date of the Agencies' letter.



Items I through V of the March 10, 2008 letter in order to expedite completion of the RFI/CMS process for the off-Site study areas and to avoid a possible lengthy dispute resolution process.

FMC offers the following comments and clarifications on the agreements and determinations discussed in the March 10, 2008 letter:

I. September 24, 2007 Directives #s 1 & 2 - Criterion for Middleport Soil Arsenic Delineation - Agencies' Determination:

With respect to the Agencies' specific rationale for the determinations and directives concerning the criterion for Middleport soil arsenic delineation (20 ppm -- based on the weighted 95th Percentile of the Middleport Site –Specific Arsenic Background Data Set), FMC intends to include discussions of the information concerning the new aerial photos, revised historic land use percentages/weighting factors, and associated statistical values (including the weighted 95th and 98th percentiles) in the appropriate RFI Report and CMS Report volumes. The new land use weighting factors and associated statistical values will be estimated using both FMC's method discussed during February 14th meeting (e.g., use of two time periods, as described in the approved September 2001 Work Plan for Development of Arsenic Background in Middleport Soil) and the new method set forth by the Agencies in the March 10, 2008 letter, which uses time-weight for each photo date.

It should also be noted that using the method the Agencies have now prescribed, FMC calculated the orchard land weighting factor to be 7% and not "a small increase ... from the 3% used in the 2001 study," as stated in the Agencies' March 10, 2008 letter. Based on an orchard land weighting factor of 7%, FMC estimates the weighted 95th percentile and the weighted 98th percentile of 2001 Middleport Site –Specific Arsenic Background Data Set (excluding both the 1989 Gasport orchard data and the data for four samples from the 2001 study that were considered to be "outliers") to be 23 ppm and 40 ppm, respectively. FMC calculated an orchard land weighting factor of 18% using the two time periods specified in the approved September 2001 Work Plan (excluding both the 1989 Gasport orchard data and the data for four samples from the 2001 study that were considered to be "outliers"). Based on an 18% orchard land weighting factor, FMC estimated the weighted 95th percentile and the weighted 98th percentile to be 39 ppm and 75 ppm, respectively.

As directed in the Agencies' March 10, 2008 letter, FMC will compare soil arsenic data to 20 ppm and will evaluate other factors (e.g., historic land use, data variability, wind patterns, ground features and flood zone topography) to delineate potential FMC-related soil arsenic in RFI Report volumes II, IV and V (described below). Other potential FMC-related constituents will be delineated based on comparison of soil sample data to soil screening levels previously presented in the 1999 Draft RFI Report and on evaluation of other factors such as those identified above.

FMC would also like to re-iterate the agreement that the soil arsenic "delineation" criterion is fundamentally different from a "remediation" criterion. In other words, soil containing arsenic

above 20 ppm may or may not be remediated in the future. The nature and scope of any final corrective measures will be based on the outcome of the Corrective Measures Study or Studies to be completed for the off-Site areas.

Because soil containing arsenic at levels greater than 20 ppm in the Middleport off-site study areas may be attributable to anthropogenic sources (e.g., pesticide application, fertilizers, lawn chemicals and wood preservatives) other than historic air deposition from past operations at the FMC facility, FMC expressly reserves the right to present discussions in a CMS based on FMC's analyses of background data/conditions (and other factors) bearing on whether arsenic found in soil in a particular study area or portions of an area is attributable to FMC.

II. September 24, 2007 Directive # 3 - RFI Report Volumes Submission Schedule - FMC/Agencies' Agreement:

The scheduled submission dates (based on the receipt date of March 13, 2008) for the RFI volumes are as follows:

Draft RFI Report Volume	Scheduled Submission
1. RFI Report Volume I - Background and Related Information	April 30, 2008
2. RFI Report Volume II - Suspected Air Deposition Study Area South of the Erie (State) Barge Canal and West of the Niagara/Orleans County Line	August 10, 2008
3. RFI Report Volume IV - Culvert 105 and Flood Zone	October 9, 2008
4. RFI Report Volume V - Tributary One and Flood Plain South of Pearson/Stone Roads	December 8, 2008

FMC will solicit input from the Middleport Community Input Group (MCIG) and Village officials (during the spring 2008 MCIG meetings) concerning the sequence of and schedule for completion of the following remaining volumes of the RFI Report:

- RFI Report Volume III - FMC's Former R&D Property
- RFI Report Volume VI - Tributary One and Flood Plain North of Pearson/Stone Roads
- RFI Report Volume VII - Jeddo Creek and Johnson Creek
- RFI Report VIII – Groundwater Investigations and Remediation Results
- RFI Report Volume IX - On-Site Soil, Surface Water and Sediment Investigation Results
- RFI Report Volume X – Suspected Air Deposition Study Area Along/North of the Erie Canal and East of the Niagara/Orleans County Line

Based on that input, FMC will develop and submit in July 2008 a schedule (including sequence) for completion of these six report volumes. Each of the scheduled submission dates for these six report volumes will be measured from the date of receipt of the Agencies' determination of data sufficiency for the respective study area.

III. September 24, 2007 Directive # 4 - Additional Soil Sampling and Arsenic Analysis in Suspected FMC Arsenic Air Deposition Areas Along/North of the Barge Canal and East of the Niagara/Orleans County Line - Agencies' Determination:

As discussed in Section I, above, Middleport study area soil containing arsenic above 20 ppm is not necessarily related to historic air deposition from FMC's past operations. There are and were other anthropogenic sources. In particular, the pattern of soil data relative to these off-site areas that are thousands of feet from the former arsenicals manufacturing area at the Middleport plant site suggest the likelihood of sources other than air deposition from the FMC facility. However, in order to avoid a lengthy dispute resolution process, FMC will comply with the Agencies' directive to submit an outline and schedule for a sampling and analysis work plan for the areas described in Directive #4. FMC will submit a draft outline and schedule to the Agencies on or before May 12, 2008.

FMC reserves its right to dispute performance of any sampling and analysis if agreement on a scope of work/work plan cannot be reached.

IV. FMC's February 7, 2008 Letter Comment 2 - Data Sufficiency in Specified Areas - FMC/Agencies Agreement:

FMC agrees with the Agencies' characterization of the agreements reached with respect to data sufficiency in the three study areas.

FMC will review available local records by July 1, 2008 to determine if properties that could not previously be sampled due to the refusal of access permission are under new ownership. For those properties under new ownership, FMC will offer the approved soil sampling and analysis to the new owners. FMC will apprise the Agencies of the progress of this work during the biweekly Technical Group calls.

V. FMC's February 7, 2008 Letter Comment 4 - Development of a Draft CMS Work Plan for a Specified Area - FMC/Agencies Agreement:

FMC requested early input from the MCIG on the extent of public participation desired relative to development of a CMS for the off-site area south of the Barge Canal and west of the Niagara/Orleans County line (the "historic air deposition area") at the February and March

Messrs. Mortefolio and Infurna

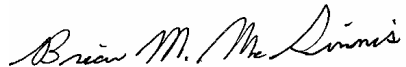
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2008 MCIG meetings. FMC understands that the MCIG will be providing input during the April 10, 2008 MCIG meeting.

If there are any questions or if additional information is needed at this time, please contact me at (215) 299-6047 or at the above address.

Sincerely,



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