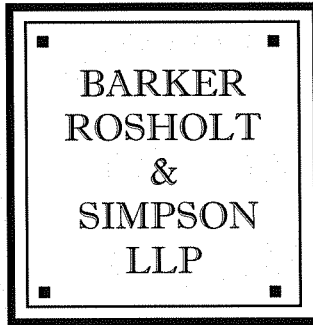


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January 17, 2014

VIA HAND DELIVERY

Garrick L. Baxter
Deputy Attorney General
Idaho Department of Water Resources
P.O. Box 83720
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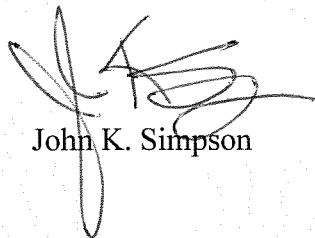
***Re: Memorandum of Agreement between the Idaho Department of Water Resources
and FMC Idaho, LLC***

Dear Garrick:

Enclosed please find the original of the above-referenced Memorandum of Agreement which has been executed by FMC Idaho, LLC.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson

JKS/jlw
Enclosure

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("MOA") is made and entered into by the Idaho Department of Water Resources ("IDWR") and FMC Idaho LLC ("FMC"), collectively referred to herein as the "Parties" and individually as "Party."

RECITALS:

WHEREAS, the United States Environmental Protection Agency ("EPA") has issued an Interim Record of Decision ("IROD") under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") to amend the Record of Decision ("ROD") dated June 8, 1998 associated with the release of hazardous substances at the FMC Plant Operable Unit of the Eastern Michaud Flats Superfund Site ("FMC Plant Site"). One element of the IROD addresses groundwater contamination and requires groundwater extraction and treatment from the shallow aquifer to provide hydraulic containment and remediation of contamination at the FMC Plant Site. The IROD identifies two options for management of the extracted groundwater.

WHEREAS, the proposed ground water extraction wells required under the IROD are situated within the FMC Plant Site approximately 1 mile up-gradient from Portneuf River near the Power County and Bannock County boundary.

WHEREAS, IDWR has identified wells and water rights owned by others within a 1-mile radius of the FMC Plant Site.

WHEREAS, FMC is authorized to divert and use ground water under water right nos. 29-2255C, 29-2255E and 29-11342 in limited amounts for industrial, irrigation and municipal purposes respectively from wells in the vicinity of the proposed ground water extraction wells required under the IROD.

WHEREAS, IDWR regulates the diversion of water within the state of Idaho.

WHEREAS, Section 42-226, Idaho Code provides in relevant part, "All ground waters in this state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same for beneficial use."

WHEREAS, Section 42-201 of Idaho Code provides in relevant part:

No person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists.

WHEREAS, Section 42-103 of Idaho Code provides:

The right to the use of the unappropriated waters of rivers, streams, lakes, springs and of subterranean waters or other sources within this state shall hereafter be acquired only by appropriation under the application, permit and license procedure as provided for in this title, unless hereinafter in this title excepted.

WHEREAS, Section 121(e)(1) of CERCLA provides that "No federal, state, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section."

WHEREAS, the Parties recognize that a question may exist concerning whether CERCLA Section 121(e)(1) preempts procedural state water law requirements. However, the Parties agree that any diversion of water for remedial actions cannot injure pre-existing water rights without the provision of appropriate mitigation.

WHEREAS, IDWR finds that the interests of the State of Idaho in the protection of groundwater and surface water rights and the interests of existing water users can be adequately protected by entering into this MOA.

AGREEMENT:

NOW, THEREFORE, IT IS HEREBY AGREED among the Parties as follows:

This MOA shall act in lieu of the requirements of Idaho Code § 42-201 *et. seq.*

The diversion of groundwater associated with the IROD implementation is unlikely to injure other water rights given the proximity of the wells to the Portneuf River, the fact that the water will be discharged to on-site percolation basins or through the City of Pocatello Publicly Owned Treatment Works (POTW) directly to the Portneuf River, and the generally non-consumptive nature of the remedial ground water diversions. However, given the number of nearby water rights and uncertainty regarding the final design of the remedial action plan, it is prudent to require that FMC retain ownership and sufficient control over water right nos. 29-2255C, 29-2255E, and 29-11342 in case injury to pre-existing water rights occurs.

The operation of ground water diversion works shall proceed as described in Attachment A and as limited below:

CONDITIONS OF OPERATION

1. FMC shall be allowed to divert up to 530 gpm of groundwater from not more than five (5) wells located approximately as depicted in Figure 1 attached hereto. These numbers are based on FMC's initial conceptual remedial action plan. The quantity of water and the number of extraction wells may be increased through an amendment to this MOA once the remedial action plan is finalized.

2. FMC shall notify the IDWR of the final location of each well constructed for the remedial action plan.

3. The construction and decommissioning of wells associated with the remedial action plan shall comply with IDWR's Well Construction Standards Rules, IDAPA 37.03.09. All as-built diagrams and driller reports shall be provided to IDWR within 30 days of completing each well.

4. FMC shall provide appropriate mitigation if the remediation activity injures pre-existing water rights as determined by IDWR. If appropriate mitigation is not provided, curtailment may be ordered. The Parties agree that reducing or ceasing pumping of existing water rights described herein, or leasing of water through the State's Water Supply Bank, are mitigation options available to FMC if mitigation is required in the future. FMC has the right to appeal any decision or action of IDWR as provided by Idaho Code § 42-1701A or otherwise provided by Idaho law.

5. For the duration of this MOA, FMC shall retain ownership and sufficient control over water right nos. 29-2255C, 29-2255E, and 29-11342 to make available water for use as mitigation in the event pre-existing water rights are injured by the diversion of groundwater from wells located on the FMC Plant Site associated with the Proposed Plan. This condition may be removed through an amendment to this MOA once the remedial action plan is finalized.

6. FMC shall hold IDWR and the Idaho Water Resource Board harmless from any liability due to the planned remedial action or the negligent discharge of water.

7. Every five (5) years, starting five (5) years from the date of the last signature executing this MOA, FMC shall submit a report to IDWR describing the ongoing remediation efforts and documenting the continuing need for water at the FMC Plant Site for remediation.

ADDITIONAL PROVISIONS

The Director retains jurisdiction over the diversion of ground water authorized pursuant to this MOA. The Director may issue an order requiring mitigation, modification or cessation if appropriate mitigation is not provided of any diversion the Director determines is injuring an existing water right. This MOA shall automatically terminate once the ground water remediation efforts at the FMC Plant Site have been completed, the diversion of the water is no longer necessary to comply with CERCLA or the necessity of a water right for remediation is addressed by Idaho statute.

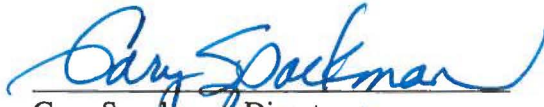
The covenants in this MOA are unique to the CERCLA Response Action at the FMC Plant Site. The provisions of this MOA shall have no effect and shall not bind or limit the Parties with regard to other remediation projects in the state in the future.

Notwithstanding the terms and conditions of this MOA, the Parties reserve all rights under State and Federal laws and expressly do not waive any legal claims or defenses available to them.

This MOA is entered for purposes of resolving a potential legal dispute and is subject to the provisions of Federal Rule of Evidence 408 and Idaho Rule of Evidence 408 and shall not be admissible in any court for the purpose of establishing a waiver of any legal rights or defenses.

AGREEMENT EXECUTION

Idaho Department of Water Resources



Gary Spackman, Director
12/21/2013

Date

FMC Idaho LLC



Name
FMC CORP
1735 MARKET ST PHILADELPHIA PA 19103

Address
215-299-6347

Telephone No.
1/13/14

Date

ATTACHMENT A

EPA Proposed Groundwater Remedial Action for Hydraulic Containment and Remediation of Contaminated Groundwater at the FMC Plant Site Boundary FMC Plant Operable Unit of the Eastern Michaud Flats Superfund Site

The United States Environmental Protection Agency (EPA) has issued an Interim Record of Decision (IROD) for remedial action (cleanup) of the FMC Plant Operable Unit of the Eastern Michaud Flats (EMF) Superfund Site. One element of the EPA IROD addresses groundwater remediation and requires groundwater extraction from the shallow aquifer to provide hydraulic containment and remediation of contaminated groundwater at the FMC Plant Site. Specifics of this element of the groundwater remedial action are described below.

The extraction wells would be located in the northeastern corner of the former FMC Plant Site to capture impacted shallow groundwater before it can migrate down-gradient beyond the FMC Plant Site boundary and subsequently discharge through springs and base flow to the Portneuf River. The attached Figure 1 shows the location of the FMC Plant Site, shallow groundwater elevation contours, and groundwater flow to the Portneuf River. Initial groundwater modeling indicates that five (5) extraction wells would be sufficient for hydraulic capture (containment) of the remaining plume before it leaves the FMC Plant Site. Based on FMC's groundwater model capture simulations, a total combined extraction rate of approximately 530 gallons per minute (gpm) in this area is predicted to fully capture migration of impacted groundwater (as defined by arsenic above the Federal drinking water standard maximum contaminant level [MCL]) beyond the FMC Plant Site. The approximate locations of the proposed extraction wells on the FMC Plant Site are also depicted on the attached Figure 1.

The IROD identifies two options for management of the extracted groundwater: A) discharge to the City of Pocatello POTW for treatment and discharge to the Portneuf River under the City's NPDES permit, or B) on-site treatment and discharge to an on-site percolation basin(s) located in the western undeveloped portion of the FMC Plant Site where percolated water would recharge the groundwater system upgradient of the extraction zone. Under scenario A, the extracted groundwater would be discharged to the Portneuf River, where the groundwater would otherwise manifest itself as surface water if not extracted. Under scenario B, the extracted groundwater would be returned to the originating shallow groundwater system via percolation.

Following EPA approval of the final remedial design and remedial action plan, FMC will be required to install and operate the groundwater extraction system continuously (except for downtime for scheduled maintenance or any upset conditions) until EPA determines that the system can be permanently shutdown. EPA will perform a review of the performance of the remedial action every five years ("5-year review") and any determination regarding the continuing need to operate or shutdown the groundwater extraction system would likely occur in conjunction with the 5-year reviews.

LEGEND

SHALLOW MONITORING WELL
AND GROUNDWATER
ELEVATION

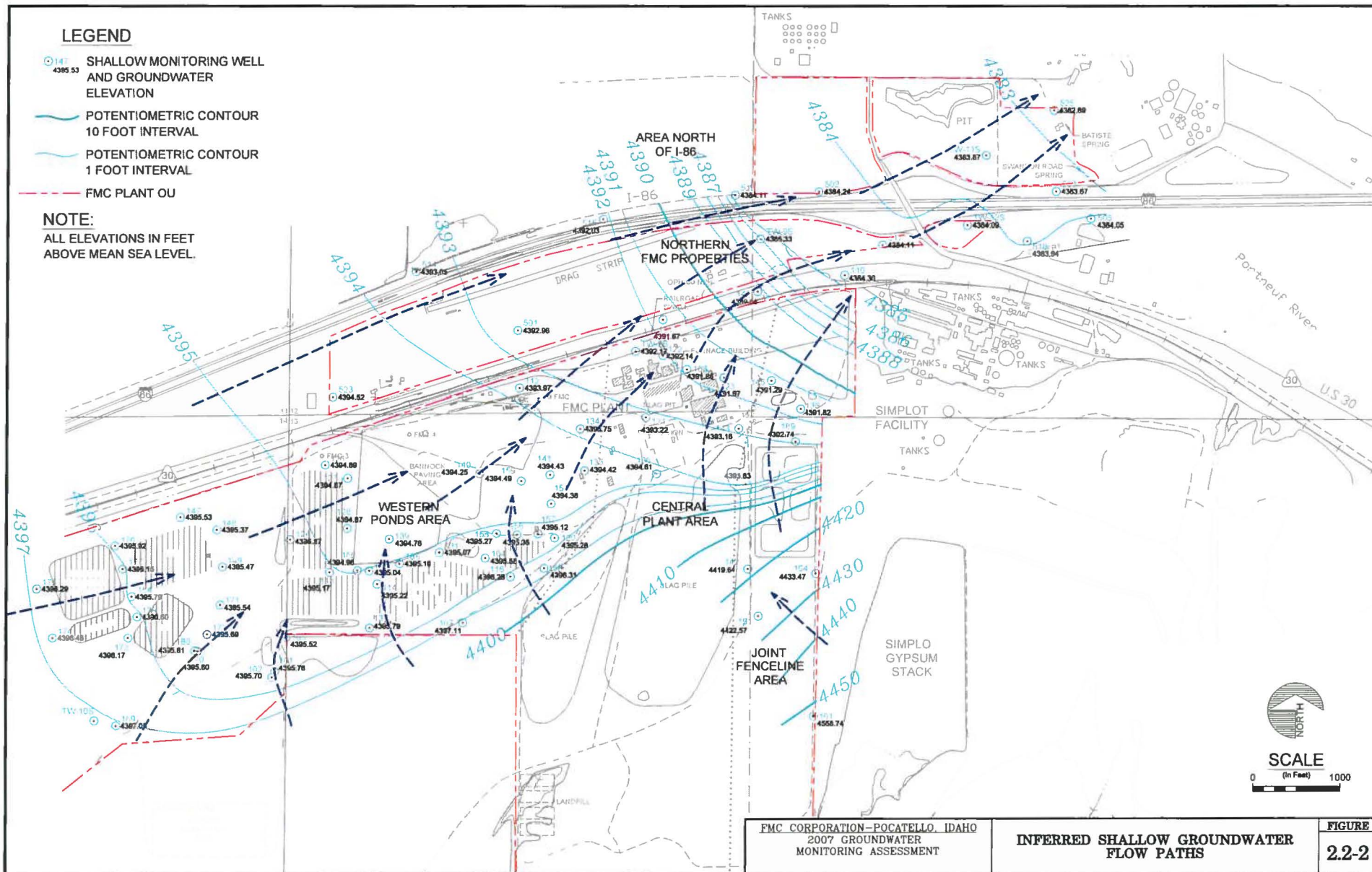
POTENTIOMETRIC CONTOUR
10 FOOT INTERVAL

POTENTIOMETRIC CONTOUR
1 FOOT INTERVAL

FMC PLANT OU

NOTE:

ALL ELEVATIONS IN FEET
ABOVE MEAN SEA LEVEL.



FMC CORPORATION-POCATELLO, IDAHO
2007 GROUNDWATER
MONITORING ASSESSMENT

INFERRED SHALLOW GROUNDWATER
FLOW PATHS

FIGURE
2.2-2