



## Minnesota Pollution Control Agency

February 2, 1988

Mr. R. W. Weaver  
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FMC Corporation  
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4800 East River Road  
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Mr. R. W. Warner  
Head, Environmental Engineering Branch  
Department of the Navy  
Northern Division  
Naval Facilities Engineering Command  
Philadelphia, Pennsylvania 19212-5094

Gentlemen:

RE: U.S. Navy/FMC Corporation Draft Permit  
MN3170022914

This letter summarizes the information presented and discussed at the December 11, 1987 meeting held at the Minnesota Pollution Control Agency (MPCA) offices between representatives of FMC Corporation (FMC), the U.S. Navy (Navy), U.S. Environmental Protection Agency (EPA) and MPCA. The meeting was held in response to FMC's November 16, 1987 letter and the Navy's November 18, 1987 letter. Outlined below and discussed in the same order as in the letter from FMC, are MPCA's comments and decisions on the issues presented. Regarding the "Petition by FMC Corporation for a Contested Case Hearing" enclosed in FMC's November 16, 1987 letter, EPA has informed the MPCA that they will respond under separate cover to the issues posed to them in Exhibit A to the letter.

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### ISSUE 1

At the December 11, 1987 meeting, FMC and the Navy notified the MPCA that a notice of award for the construction of hazardous waste Storage Area E was recently issued to the lowest bidder. However, due to weather constraints, the contract is suspended until this spring. It is specified within the contract that the construction of Storage Area E must be completed by July 2, 1988.

With regards to Storage Area C, we understand that the money for cleanup and closure had not yet been approved by the Naval Facilities Engineering Command (NAVFAC). However, FMC submitted to the MPCA a preliminary closure schedule which indicated a date of November 21, 1988 for closure of Storage Area C. Navy representatives from the Naval Plant Representative Office (NAVPRO) indicated that their function would be to meet the specified time for closure once a final schedule has been agreed upon. NAVPRO had to verify the schedule with NAVFAC, but believed a final schedule could be developed by the end of December. During a January 12, 1988 telephone conversation between Anita Pederstuen of my staff and Doug Hildre of FMC, changes for the proposed Storage Area C closure schedule were tentatively agreed upon. The new schedule is included in the draft permit. Please review these dates that have been placed into the enclosed draft permit for the closure of Storage Area C and construction of Storage Area E, and verify that the dates are correct and that the activities can be met by the time allotted. Once this permit is issued, the MPCA may initiate enforcement action if any activity is not completed by the time stated within the permit.

### ISSUE 2

The following are the MPCA's response to FMC's requested permit revisions:

1. Page 7, et. seq. Part IV.A

The MPCA does not believe that it is necessary to include a provision(s) in the permit to identify what is a major or minor change. Both Minn. Rules pt. 7001.0190, subp. 3 and Minn. Rules pt. 7001.0730, subp. 4 identify what are considered minor corrections or allowances which may be made to a permit without public noticing the change(s). Changes in personnel, phone numbers, employee training records, emergency equipment, estimates of maximum inventory, and the schedule for final closure may be all considered minor modifications to the permit. To make minor modifications to the permit, FMC must submit a request to the MPCA for the necessary change(s). In turn the MPCA would respond by indicating whether the change is a minor modification, and if so, that the change has been made to the permit. If FMC is still unclear as to what changes constitute a minor modification, please submit those changes that are in question and the MPCA will respond accordingly.

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2. Page 8, Part IV.B.10

This subpart has been deleted from the draft permit.

3. Page 10, Part IV.F

Minn. Rules pt. 7001.0720, subp. 2.B. requires that "The permittee shall maintain records from all ground water monitoring wells and associated ground water surface elevations for the active life of the facilit(y)..." In this permit, the permittees, who are both the U.S. Navy and FMC Corporation, must retain all monitoring well records throughout the active life of the facility. It was understood in the meeting that FMC and the Navy were going to work out a letter of understanding regarding who is to keep what monitoring well records and associated ground water surface elevations. Please submit an explanation of the agreement along with a copy of the signed letter of understanding between the permittees to the MPCA by no later than March 1, 1988.

ISSUE 3

Apart from the Hazardous and Solid Waste Amendments (HSWA) of 1984, there is an independent State requirement for corrective action as a necessary condition to issuance of a permit for the treatment, storage, or disposal of hazardous waste. This requirement, Minn. Rules pt. 7045.0485, is applicable to federal facilities under § 6001 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6961. The corrective action portion of the draft permit has been modified to include this rule. As stated within Minn. Rules pt. 7045.0485, corrective action must be instituted at a facility seeking a permit and must be specified within the permit. Therefore, the MPCA does have authority to include and must include RCRA corrective action requirements within the State portion of the proposed permit.

Although the State has applied for HSWA authorization, its position is that § 3004(u) requires corrective action as a necessary condition to issuance of a permit, even if the State has not yet received HSWA authorization from EPA. This issue of State RCRA authority, however, is rendered moot by the existence of the independent State law authority discussed above and by the fact that EPA is requiring exactly the same corrective action measures as the State in the portion of the permit it is proposing to issue.

In response to your comment that the State lacks authority to enforce corrective action at federal government installations, Minn. Rules pt. 7045.0485, cited above is a duly promulgated State requirement addressing the disposal or management of hazardous waste. Each department, agency and instrumentality of the

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federal government is required by § 6001 of RCRA, 42 U.S.C. § 6961, to comply with this rule to the same extent as any private person. This State authority is independent from the authority for corrective action that the State derives directly from § 3004(u) of RCRA.

The State views the entire Navy/FMC industrial site as a single "facility" under Minn. Rules pt. 7045.0020, subp. 24 (1987), even though the real property is owned in part by FMC and in part by the Navy. The permit proposed is for the entire facility and, under Minn. Rules pt. 7045.0485, must include corrective action "for all releases of hazardous waste or constituents from any hazardous or solid waste management unit at the facility." In response to your comment to limit corrective action responsibility to only the Navy, both permittees must be named within the permit and must adhere to permit requirements. How FMC and the Navy apportion responsibility for corrective measures is not a concern of the State, so long as those measures are performed properly and in a timely fashion.

Also, the State interpretation of "facility" follows that employed by the EPA. The State definition in Minn. Rules pt. 7045.0020 is virtually identical to EPA's definition in 40 C.F.R. § 260.10. In the preamble to its final rule codifying the statutory change to its hazardous waste regulations, EPA explained that the "facility" extended to all contiguous property under the owner's or operator's control [ 50 Federal Register, page 28,712 (July 15, 1985) ]. EPA later supplemented this preamble in order to clarify that the same property-wide definition would apply for purposes of corrective action at federal facilities [ 51 Federal Register, page 7722 (March 5, 1986) ]. The State follows this interpretation in imposing corrective action in the permit on all continuing releases from solid waste management units at the facility.

#### ISSUE 4

The State believes the priorities issue was resolved by the Navy's representation at our December 11, 1987, meeting that funding is currently available for all the remedial investigation and feasibility study work to be required under the permit. Together with the schedule modifications noted earlier in this letter, the national issue of priorities for funding does not appear to impact corrective action work under the proposed permit.

Furthermore, the EPA rules that were referenced in FMC's November 16, 1987 letter regarding federal agency compliance with § 3004(u), are not currently in effect. Therefore, corrective action requirements and the associated schedule for the Naval Industrial Reserve Ordnance Plant/Naval Systems Division Plant will still be included in the permit. However, the corrective action schedule has been revised to include the modified dates that the Navy has indicated it can meet. Please review these dates and verify that the activities can be met by the time allotted. As previously stated, once this permit is issued, the MPCA may initiate enforcement action if any activity is not completed by the time stated within the permit.

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The MPCA believes that the above responses should satisfactorily resolve the factual issues in the draft permit contested by FMC and the Navy. Consequently, the MPCA intends to public notice the modified draft permit beginning on February 17, 1988 and ending on April 4, 1988. If you have any questions regarding this letter, please contact Anita Pederstuen of my staff at 612/296-7791.

Sincerely,



Richard A. Svanda  
Director  
Hazardous Waste Division

RAS/ASP:cj

Enclosure

cc: Douglas Hildre, FMC Corporation, Minneapolis  
William Warren, FMC Corporation, Minneapolis  
David Smith, NORTHNAVFACENGCOM, Philadelphia  
NORTHDIVNAVFACENGCOM (Code 114), Philadelphia  
NAVSEASYSYSCOM (Code 654B), Washington D.C.  
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