

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of Application for a Permit Pursuant to  
Article 27 of the Environmental Conservation Law (ECL)  
and 6 NYCRR Part 373 (Hazardous Waste Management  
Facilities),

by

**FMC CORPORATION,**

Applicant (RE: FMC-Agricultural Products),

Permittee.

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**SUMMARY REPORT  
AND ORDER OF  
DISPOSITION**

DEC Permit Application ID  
No. 9-2936-00017/02004  
EPA RCRA ID  
No. NYD002126845

Appearances of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (Benjamin Conlon of counsel), for staff of the Department of Environmental Conservation
- Hodgson Russ, LLP (Michael J. Hecker and Julia M. Hilliker of counsel), for permittee FMC Corporation (FMC)

**Proceedings**

FMC applied to the Department of Environmental Conservation (DEC or Department) for a 6 NYCRR part 373 hazardous waste management facility permit. A combined notice of complete application, availability of draft part 373 permit, public comment period and legislative public hearing was published in the Department's *Environmental Notice Bulletin (ENB)* on August 16, 2017, and in the Lockport Union Sun and Journal and the Batavia Daily News on August 16, 2017. On August 18, 2017, radio announcements regarding the hearing were also broadcast on radio stations WBEN NewsRadio 930 and Newsradio WHAM 1830.<sup>1</sup> Legislative public comment hearings were held at 1:00 p.m. and 7:00 p.m. on September 27, 2017 at the Middleport Fire Department, Middleport, New York and written comments on the draft permit were received through October 20, 2017. No members of the public appeared at the public statement hearings.

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<sup>1</sup> See ENB notice at <http://www.dec.ny.gov/enb/111029.html>. The ENB notice included staff's determination that pursuant to article 8 of the ECL and 6 NYCRR part 617, the proposed action constitutes a Type II action and was not subject to further review under SEQRA.

Pursuant to a notice dated February 7, 2018, and published in the *ENB* on February 7, 2018, and in the Lockport Union Sun and Journal and the Batavia Daily News on February 14, 2018, an issues conference was scheduled for May 23, 2018.<sup>2</sup> The notice also stated that petitions for party status must be received by 3:00 p.m., April 20, 2018. I received no petitions for party status.

Because FMC objected to conditions of the draft permit on legal and factual issues, the issues conference was convened to narrow the issues raised. Following the issues conference, a briefing schedule was established for Department staff and FMC to brief legal questions raised by the parties. The briefing schedule was held in abeyance as Department staff and FMC continued settlement discussions.

### **Discussion**

A stipulation executed by all the parties to the proceeding resolving any or all issues removes those issues from further consideration in the hearing (*see* 6 NYCRR 624.13[d]). Where the parties' agreement resolves all issues, such as the case here, the agreement must be reduced to writing and accepted by all parties. The written agreement must then be submitted to the administrative law judge to be included in the hearing record, along with written statements, signed by the parties or their representatives, stating that the agreement and any conditions resolve all issues between the parties (*see* DEC Organization and Delegation Memorandum 94-13, *Effect of Stipulations on Decision-Making in Permit and Enforcement Hearings*, May 5, 1994, at 2).

In this proceeding, I have received into the record an order on consent and administrative settlement (Order and Settlement) incorporating the agreement of the parties together with signed statements from the parties indicating that the Order and Settlement resolves all permit related issues between the parties.

### **Order of Disposition**

ACCORDINGLY, IT IS HEREBY ORDERED that the hearing record in this proceeding is closed, and the matter is remanded to Department staff for administration of the Order and Settlement of the parties.

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/s/  
Michael S. Caruso  
Administrative Law Judge

Dated: June 17, 2019  
Albany, New York

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<sup>2</sup> See *ENB* notice at <http://www.dec.ny.gov/enb/112587.html>.