

**NEW YORK STATE 6 NYCRR PART 373 PERMIT  
FACT SHEET  
FOR  
FMC CORPORATION.  
MIDDLEPORT, NEW YORK  
NIAGARA COUNTY  
EPA ID No. NYD002126845**

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
AUGUST 2017**

This fact sheet has been developed by the New York State Department of Environmental Conservation (NYSDEC) in response to an application by FMC Corporation (FMC) for a 6 NYCRR Part 373 Hazardous Waste Management Permit for the FMC facility in Middleport, NY. NYSDEC has made a tentative determination to issue FMC a Part 373 Permit. This fact sheet was prepared in accordance with the requirements of 6 NYCRR 373-1.4(f).

**A. PURPOSE OF THE PERMIT PROCESS**

The purpose of the permit process is to allow NYSDEC, interested citizens, and other governmental agencies the opportunity to evaluate the draft permit and permit application as it relates to compliance with the applicable requirements promulgated under New York State laws. NYSDEC is required to prepare a draft permit that sets forth all requirements FMC must comply with during the term of the permit. The public is being provided with more than sixty (60) days to review and provide comments on NYSDEC's State Environmental Quality Review Act (Environmental Conservation Law Article 8 [SEQRA]) determination, the FMC permit application, and the draft Part 373 permit prior to NYSDEC making a final determination on the permit.

**B. PUBLIC INVOLVEMENT IN THE PERMIT PROCESS**

State regulations provide the public with the opportunity to become involved in the permit process through a comment period which can be extended in response to public requests. The comment period for this specific permit begins immediately and ends on October 20, 2017, which is longer than the minimum forty-five (45) days required by State regulations. In addition, NYSDEC has scheduled two Legislative Public Hearings on September 27, 2017 at 1:00 p.m. and 7:00 p.m. at the Middleport Fire Department, 28 Main Street, Middleport, New York to provide an additional opportunity for the public to comment on the draft permit both preceded by a one hour Public Availability Session to answer any questions on this draft permit. Persons who wish to propose an issue for adjudication may petition for party status to participate in an adjudicatory hearing. An independent Administrative Law Judge will schedule an issues conference to determine which issues, if any, may proceed to adjudication.

1. TENTATIVE DETERMINATION

NYSDEC has determined that the FMC permit application is technically and administratively complete and has made a tentative determination to issue the permit. The draft permit has been prepared pursuant to the applicable regulations in 6 NYCRR Part 373-2 (Final Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities), as well as with all other applicable hazardous waste management laws and regulations.

2. SEQRA STATUS

NYSDEC has determined that the proposed action is a Type II action, not subject to further review under SEQRA.

3. DOCUMENT AVAILABILITY

Hard copies of the draft permit and FMC's application are available for inspection at the following locations:

- NYSDEC, Division of Environmental Remediation, 625 Broadway, 12<sup>th</sup> Floor, Albany, NY 12233-7017 (contact person: Deborah Gardell at (518) 402-9813);
- NYSDEC's Region 9 office, 270 Michigan Avenue, Buffalo, NY 14203-2915 (contact person: Michelle Woznick at (716) 851-7165); and,
- Royalton Hartland Community Library, 9 S. Vernon Street, Middleport, New York.

Electronic copies of FMC's application and FMC documents that are incorporated into the draft permit by reference are available through the following web site:

- FMC's website <http://www.fmc-middleport.com/>.

Electronic copies of the draft permit (modules and attachments) are available through the following web site:

- NYSDEC's website <http://www.dec.ny.gov/chemical/54220.html>.

If you would like a DVD of the draft facility permit, it can be obtained by contacting Deborah Gardell at (518) 402-9813 or [debbie.gardell@dec.ny.gov](mailto:debbie.gardell@dec.ny.gov).

4. HOW TO PROVIDE YOUR COMMENTS

All persons interested in commenting (in writing) on the draft Part 373 Permit should submit their comments in writing to:

Ms. Michelle Woznick  
Environmental Analyst  
NYSDEC Region 9  
270 Michigan Avenue  
Buffalo, NY 14203-2915  
[DEP.R9@dec.ny.gov](mailto:DEP.R9@dec.ny.gov)

NYSDEC will consider all written comments received during the public comment period, oral or written statements received during the legislative public hearing, the requirements of the hazardous waste regulations including 6 NYCRR Part 370, Part 371, Part 372 Subpart 373-1, Subpart 373-2, Part 374, Part 376, and NYSDEC's permitting policies in making a final permit decision. When NYSDEC makes a final permit decision to either issue, deny or modify the draft permit, notice will be given to the applicant and each person who has submitted written comments or requested notice of the final decision. If the decision is to issue a final permit, this notice will include a summary of responses to comments, identifying the permit conditions in the final permit that are different from those in the draft permit and the reasons for the changes. The final permit would become effective immediately on the date of issuance, unless a later date is specified.

5. LEGISLATIVE PUBLIC HEARING & PUBLIC AVAILABILITY SESSION

NYSDEC has scheduled a legislative public hearing to be conducted in two (2) sessions on September 27, 2017 at the Middleport Fire Department, 28 Main Street, Middleport, New York. The first session will begin at 1:00 p.m. and the second session will begin at 7:00 p.m. It is not necessary to file in advance to speak at this hearing. Lengthy comments, however, should be submitted in writing. Equal weight will be given to both oral and written statements. Reasonable time limits may be set for each speaker as necessary to afford all attendees an opportunity to be heard.

In addition, NYSDEC will conduct public availability sessions on September 27, 2017 at 12:00 p.m. and 6:00 p.m. at the same location as the legislative public hearing. The purpose of this session will be for NYSDEC staff to answer questions that the public may have on the technical, environmental, and procedural aspects of the draft permit.

## 6. REQUEST FOR PARTY STATUS

Persons seeking to participate at the issues conference and any subsequent adjudicatory hearing, if one is necessary, must file a written petition explaining whether their request is for full party status or amicus status. A public notice of issues conference will be published explaining the purpose of the issues conference and provide persons seeking to participate in the issues conference with instructions for filing petitions for party status as well as the deadline for submitting a petition and the time and location of the issues conference. For the required contents of petitions for full party status, see 6 NYCRR 624.5(b)(1) and (2). To determine whether an issue is substantive, see 6 NYCRR 624.4(c)(2), and to determine whether an issue is significant, see 6 NYCRR 624.4(c)(3). For the required contents of a petition seeking amicus status, see 6 NYCRR 624.5(b)(1) and (3).

Any questions about filing requirements or other hearing procedures may be addressed to Administrative Law Judge Michael S. Caruso by telephone at (518) 402-9003. NYSDEC's permit hearing regulations may be found at:

[https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=Ifc83bdf0b5a011dda0a4e17826ebc834&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?guid=Ifc83bdf0b5a011dda0a4e17826ebc834&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)),

and a guide to permit hearing procedures may be found at:

<http://www.dec.ny.gov/permits/6234.html>, Guide to Permit Hearings.

## C. FACILITY DESCRIPTION

FMC has been used for the manufacture and/or formulation of pesticide products since the 1920s, when Niagara Sprayer Company began operations, producing primarily sulfur, lime, arsenic, and lead based pesticides. FMC purchased the facility in 1946 and continued operations, with primary manufacturing also including dinitrocresol, karbutilate, carbofuran, and dithiocarbamate pesticides. FMC ceased pesticide manufacturing operations at the facility in 1985, and since that time has conducted only formulating (i.e., mixing and blending) and packaging operations at the facility. Major crop protection products currently formulated or packaged at the facility include Furadan (carbofuran), Talstar (bifenthrin), and Command (clomazone).

The facility comprises approximately 103 acres. The plant security fence encloses approximately 83 acres, including all operational facilities. The facility is bounded (clockwise, beginning to the southwest) by: 1) vacant commercial land (FMC's former research and development property) to the southwest; 2) residential properties and South Vernon Street to the west; 3) a commercial business, vacant commercial/industrial land (including the "Wooded Parcel"), Alfred Street, the Royalton-Hartland school district property, agricultural land, and railroad tracks to the north; 4) agricultural land to the east; 5) an electrical substation and commercial businesses to the southeast; and 6) State

Route 31 to the south. A drive-in theater, a church, a park, commercial businesses, and residential properties are located south of Route 31.

The facility operates as a large quantity generator (LQG) of hazardous waste; a description of routine hazardous wastes generated and how the wastes are managed is provided in the facility's *RCRA Contingency Plan* (Contingency Plan) (Attachment B to FMC's permit application). Hazardous wastes generated at the facility are accumulated in containers or tanks prior to off-site disposal within 90 days of generation, or are managed in water treatment units exempt from permitting requirements pursuant to Paragraph 373-1.1(d)(1)(xii).

The facility has three surface impoundments: the Eastern Surface Impoundment is an inactive surface impoundment with a temporary soil cover. FMC will be required to close this unit as per the requirements in the draft permit and closure plan. The Western Surface Impoundment has been repurposed as a lined pond for the collection contaminated surface water run-off from the North site cover and groundwater prior to treatment at the on-site waste water treatment plant as part of an interim corrective measure. The Central Surface Impoundment has been closed and must operate according to the post closure plan.

#### D. PERMIT HISTORY AND ADMINISTRATIVE ORDER ON CONSENT

FMC submitted their initial application for a permit to the United State Environmental Protection Agency (USEPA) on November 8, 1985. Subsequent to submission of the application to the USEPA, the USEPA authorized NYSDEC to administer the Resource Conservation and Recovery Act (RCRA) permitting program. FMC submitted its first application to NYSDEC on May 15, 1986. In June 1987, FMC requested a suspension of the processing of the permit application. Following suspension of the permitting process in 1987, the USEPA unilaterally issued an Initial Administrative Order to FMC on October 3, 1990. Negotiations following the Initial Administrative Order resulted in the USEPA and NYSDEC entering into an Administrative Order on Consent (the Order) with FMC on July 2, 1991 under the interim status provisions of Section 3008(h) of RCRA (42 USC § 6928[h]) to implement corrective action activities at the site. Upon issuance of this final status permit the implementation of corrective actions for this site, both on-site and off-site, will transition from the interim status Order to this permit.

The initial permit applications were for five container storage areas and the three surface impoundments listed above. NYSDEC accepted closure certification for the Central Surface Impoundment on November 8, 1989, at which time post closure obligations for this unit began. NYSDEC accepted clean closure certification for the container storage areas on August, 24, 2001, which ended their status as regulated units.

On March 18, 2015, NYSDEC requested an updated application from FMC to cover regulated activities at the site, including the three surface impoundments described above and to implement the corrective action program. An updated permit application was submitted on May 18, 2015, with additional application materials and modifications of

documents submitted through January 2017. These documents comprise the complete application.

E. REQUIREMENTS FOR CORRECTIVE ACTION AT THE FMC FACILITY

The owner or operator of a facility seeking a Part 373 permit must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time the waste was placed in the unit. The corrective action required for a facility will be specified in the permit in accordance with sections 373-2.6 and 373-2.19. The permit will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

Corrective action implementation authorized by 6 NYCRR 373-2.6 includes: (a) the RCRA Facility Assessment ("RFA"); (b) the RCRA Facility Investigation ("RFI"); and (c) Corrective Measures ("CM"). The RFA is a three-phase process that includes: a Preliminary Review ("PR"); a Visual Site Inspection ("VSI"); and a Sampling Visit ("SV"). The PR is a review of all available information on the individual Solid Waste Management Units (SWMUs) and Areas of Concern (AOC). During the PR, and in subsequent phases of the RFA, all of the media (i.e., soil, groundwater, surface water/sediment, air and subsurface gas) that could potentially be impacted by release(s) of hazardous waste, including hazardous constituents, are evaluated. Based on this evaluation, the SWMUs/AOC will be characterized for release potentials.

Following the PR, a VSI is conducted during which all of the SWMUs/AOCs, either previously or newly discovered, are observed. While performing this inspection, any signs of spills or leakage, stained soil, stressed vegetation, unit deterioration, or any other conditions that may be indicative of a release are assessed. By means of these observations and the findings of the PR, the Commissioner may require the facility to conduct a Sampling Visit (SV) at the units/areas where the releases would be suspected.

The SV can involve any or all of the previously described media at any given SWMU or AOC. For those units/areas where releases are clearly demonstrated in the PR or VSI, the SV can be avoided leaving the units/areas to be addressed in the RFI.

The RFA includes preparing the RFA report. This report includes the findings of the various RFA activities and recommendations for further action at those units and areas with demonstrated releases of hazardous wastes, including hazardous constituents. In some cases, where an immediate threat to human health or the environment exists, interim corrective measures may be required.

If the RFA concludes that further investigative work is needed, permittee shall be required to pursue phase two of corrective action, an RFI. The purpose of the RFI is to determine the nature, extent, direction and rate of migration of hazardous wastes, including hazardous constituents, in soils, groundwater, surface water/sediment,

subsurface gas or air. From these multimedia analyses, the types and concentrations of contaminants present, the boundaries of any contamination (e.g., plumes), and the rate and direction of contaminant movement should be determined in each of the impacted media. Sufficient data shall be generated during the RFI to allow proper assessment of corrective measure alternatives. This may require bench or pilot studies to be implemented as part of the RFI. Once all analyses are reviewed, a RFI report is prepared that provides a summation of the data and recommendations for any needed corrective measures.

The culmination of the Corrective Action Program is Corrective Measures ("CM"). The initial stage of the corrective measures phase is the preparation of a Corrective Measures Study ("CMS"). A CMS may be required if concentrations of hazardous constituents in an aquifer, in surface water/sediment, in soils, or in air exceed their corresponding action levels. Such a study may also be required if individual concentrations of hazardous constituents are at or below their action levels, but they still may pose a threat to human health or the environment due to site-specific exposure conditions. The CMS will address alternative corrective measure strategies that are technologically feasible and reliable and which effectively mitigate and minimize damage to, and provides adequate protection of human health and the environment. Permittee will develop the site-specific CMS using target clean up levels chosen by the Commissioner to be protective of human health and the environment. The CMS report should discuss the alternative corrective measure strategies studied, addressing technical, institutional, public health, and environmental issues, and develop the conceptual engineering for the alternative action proposed by the facility. The CMS may not require extensive evaluation of a number of remedial alternatives where a solution is straight forward or only few solutions exist. Such situations could require permittee to submit a highly focused CMS.

Following completion of the CMS, the Commissioner will select the corrective measures from the corrective measure alternatives evaluated in the CMS. The Commissioner will then initiate a permit modification for the selected corrective measures. Subsequent to the permit modification, the owner or operator of the facility will be required to demonstrate financial assurance for completing the approved corrective measures.

Permit modification for the approved corrective measures will initiate the final stage of corrective measures, Corrective Measures Implementation ("CMI"). The CMI addresses the final design, construction, operation, maintenance, and monitoring of the corrective measures selected.

#### F. CURRENT STATUS OF CORRECTIVE ACTION AT THE FACILITY

In August 1985, FMC submitted a Continuing Release Statement Related to Solid Waste Management Units to the USEPA that identified 57 SWMUs (FMC 1985). A RCRA Facility Assessment (RFA) report was submitted and reviewed, and accepted by NYSDEC in September 1989. A draft Remedial Facility Investigation report was submitted by FMC in January 1999. The report was not accepted.

NYSDEC determined in 2005 that due to the complexity of the site, the site would be divided into multiple operable units. A revised RFI Report would be prepared to present and summarize the RFI sampling data and results. This Revised RFI Report would be divided into several volumes. Each volume will address an operable unit. An operable unit represents a portion of a remedial program for a facility that for technical or administrative reasons can be addressed separately to investigate, eliminate or mitigate a release, threat of release or exposure pathway resulting from the site contamination. The number and subject of operable units at the FMC Facility have changed over time. Currently the operable units are defined as follows:

OU1: On-Site (all environmental media except groundwater) not including the eastern most parcel (OU11)

OU2: Air Deposition Area 1, South of Erie Canal and West of Niagara/Orleans County Line

OU3: Air Deposition Area 2, On/North of Erie Canal and East of Niagara/Orleans County Line

OU4: Royalton-Hartland School Property (within OU2)

OU5: Culvert 105 and Flood Zone

OU6: Tributary One (South) Stream and Flood Zone

OU7: Tributary One (North) Stream and Flood Zone

OU8: Jeddo and Johnson Creeks and Flood Zones

OU9: Southwest Commercial Property (Former FMC R&D Facility)

OU10: Groundwater (on-site and off-site)

OU11: The eastern most parcel of the FMC facility

The current status of these operable units is detailed in the draft permit.

#### G. PERMIT ORGANIZATION

The 6 NYCRR Part 373 permit is divided into parts as outlined below:

Module I - General Provisions- Covers the conditions found in 6 NYCRR Subpart 373-1 and conditions found in 6 NYCRR 373-2, 376 and ECL Article 27, Title 9, Section 0908;

Module II - Corrective Action Requirements for Solid Waste Management Units - Covers all applicable conditions for continuing releases at permitted facilities found in 6NYCRR 373-2.6 (l); and

Module V - Surface Impoundments - Covers the facility standards applicable for the treatment of hazardous waste in Surface Impoundments.

Attachments A through D contain the following information:

- A EPA Part A Application
- B Engineering Drawings
- C Closure Plan, Post-Closure Plan and Financial Assurance
- D Permit Modification Log

Documents Incorporated By Reference:

A list of the FMC documents which are incorporated into the permit by reference is presented in Schedule 1 of Module I of the draft permit, which is available in DVD format in the repositories and on FMC's website.

#### H. BASIS FOR PERMIT CONDITIONS

The draft permit conditions are based on the requirements of 6 NYCRR Part 370 (Hazardous Waste Management System: General), Part 371 (Identification and Listing of Hazardous Wastes), Part 372 (Hazardous Waste Manifest System and Related Standards for Generators, Transporters, and Facilities), Subpart 373-1 (Hazardous Waste Treatment, Storage, and Disposal Facility Permitting Requirements), and Subpart 373-2 (Final Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities), Part 374-1 (Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities), and Part 376 (Land Disposal Restrictions). Hazardous waste management activities which are not described in the FMC application are not authorized by the permit unless such activities meet the exclusions/exemptions covered by the above regulations.

#### I. LEGAL REFERENCES FOR THIS PROPOSAL

State permitting requirements for facilities that treat, store or dispose of hazardous waste are promulgated under the New York State Environmental Conservation Law pursuant to Article 19, Title 3, and Article 27, Title 9, and at the Federal level, under the Solid Waste Disposal Act as amended by RCRA and HSWA, and implementing regulations 42 U.S.C. 6901 et. seq and 40 CFR Parts 124, 260-264, 266, 268, and 270.