

DEED RESTRICTION

FMC San Jose

RECORDING REQUESTED E

DOCUMENT: 09513

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BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
Financial Title Company

RDE # 003
6/01/1998
8:00 AM

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

Covenants of deed Restriction

DOCUMENT TITLE



Paula for Jim

1 COVENANT OF DEED RESTRICTION

2 Recording Requested By:

3 FMC Corporation

4 When Recorded, Mail To:

5 Department of Toxic Substances Control
6 Northern California Permitting Branch
7 700 Heinz Avenue, Suite 200
8 Berkeley, CA 94710
9 Attention: James M. Pappas, P.E., Chief

10 COVENANT
11 TO RESTRICT USE OF PROPERTY

12 FMC Corporation - San Jose Facility - Plant 7 Area
13
14 1105/1107 and 1115 Coleman Avenue and 1095 Stockton Avenue
15 San Jose, California

16 This Covenant and Agreement ("Covenant") is made on the
17 18th day of February, 1998 by FMC Corporation
18 ("Covenantor"), who is the owner of record of certain
19 property situated in San Jose, County of Santa Clara, State
20 of California, described in Exhibit "A" attached hereto and
21 incorporated herein by this reference ("Property"), and by
22 the Department of Toxic Substances Control ("Department").
23 Covenantor and the Department desire and intend that in
24 order to protect the present and future public health and
25 safety, the Property shall be used in such a manner as to
26 avoid potential harm to persons or property which may result
27 from the presence of hazardous substances and wastes on the
28 Property.

1 hazardous waste, and (2) the Department's approved site-
2 specific health risk-based concentration levels acceptable
3 for industrial or commercial uses of the Property.

4 1.02 Potential Exposure Pathways. An evaluation of
5 the potential human health risk associated with chemicals of
6 concern in soil and groundwater at the Property was
7 performed. The detailed findings of this evaluation were
8 presented in the RFI Report. Based on the RFI Report, the
9 only current or future receptor at the Property expected to
10 have more than an insignificant exposure is a construction
11 or excavation worker who may experience exposure of brief
12 duration during active demolition of existing structures or
13 construction of utilities, buildings or other related
14 activities. All other potential receptors and pathways were
15 evaluated to be incomplete or insignificant.

16 1.03 Surrounding Land Use. The 29-acre Property includes
17 1105/1107 and 1115 Coleman Avenue and 1095 Stockton Avenue.
18 Land adjacent to the Property is used mainly for industrial
19 purposes; the only residential area is located along Newhall
20 Street, approximately 100 feet to the east-southeast.
21 According to the General Plan prepared by the City of San
22 Jose Planning Department (Shaffer 1995), the Property is
23 currently zoned for heavy industrial use. Other land use
24 restrictions may apply to a portion of the Property pursuant
25 to Santa Clara County Airport Land Use Commission policies.

1 Restrictions as herein established must be adhered to for
2 the benefit of future Owners and Occupants and that their
3 interest in the Property shall be subject to the
4 Restrictions contained herein.

5 2.03 Incorporation into Deeds and Leases. Covenantor
6 desires and covenants that the Restrictions set out herein
7 shall be incorporated by reference in each and all deeds and
8 leases of any portion of the Property.

9 ARTICLE III

10 DEFINITIONS

11 3.01 Department. "Department" shall mean the
12 California Department of Toxic Substances Control and shall
13 include its successor agencies, if any.

14 3.02 Improvements. "Improvements" shall mean all
15 buildings, roads, driveways, regrading, and paved parking
16 areas, constructed or placed upon any portion of the
17 Property.

18 3.03 Occupant(s). "Occupant(s)" shall mean those
19 persons entitled by ownership, leasehold, or other legal
20 relationship to the right to occupy any portion of the
21 Property.

22 3.04 Owner(s). "Owner(s)" shall mean the Covenantor
23 or its successors in interest, including heirs and assigns,
24 who hold title to all or any portion of the Property.

1 minimize or eliminate potential exposure of off-
2 site residents and on-site workers to chemically-
3 impacted soil via pathways such as inhalation of
4 impacted dust and direct contact after deposition
5 of dust. Future workers not involved in
6 construction and customers at the Property are not
7 anticipated to be exposed to impacted soil or
8 groundwater since the Property will be occupied by
9 buildings, paved with either concrete or asphalt,
10 covered with landscaping or other vegetative
11 cover, or covered with other suitable cover to
12 prevent direct exposure. In the event that there
13 is future industrial or commercial land use that
14 does not involve one or more forms of the
15 foregoing cover over the entire Property, approval
16 for such use will be obtained from the Department.

- 17 h. No raising of food (e.g., livestock, food crops,
18 etc.) shall be permitted on the Property.
- 19 i. Subject to applicable security and safety
20 procedures, the Owner(s) grants the Department
21 access to the Property at all reasonable times for
22 inspection, surveillance, monitoring, maintenance,
23 and other activities pertaining to the
24 restrictions and other provisions of this covenant
25 as deemed necessary by the Department for the
26 protection of public health and the environment.

1 j. Prior to sale, lease, or rental, the Owner(s) and
2 Occupant(s) shall give written notice to
3 purchasers, lessees, and tenants stating that
4 there is residual contamination as specified in
5 California Health & Safety Code Section 25359.7.

6 4.02 Conveyance of Property. The Owner(s) shall
7 provide a thirty (30) days advance notice to the Department
8 of any sale, lease or other conveyance of the Property or an
9 interest in the Property to a third person. The Department
10 shall not, by reason of the Covenant, have authority to
11 approve, disapprove, or otherwise affect any sale, lease, or
12 other conveyance of the Property except as otherwise
13 provided by law, by administrative order, or this Covenant.

14 4.03 Enforcement. Failure of the Owner(s) or
15 Occupant(s) to comply with any of the requirements, as set
16 forth in Section 4.01, shall be grounds for the Department,
17 by reason of the Covenant, to require that the Owner(s) or
18 Occupant(s) comply with this covenant and modify or remove
19 any improvements constructed in violation of Section 4.01.
20 Violation of the Covenant shall be grounds for the
21 Department to file civil and criminal actions against the
22 Owner(s) or Occupant(s) as provided by law.

23 4.04 Notice in Agreements. All Owners and Occupants
24 shall execute a written instrument which shall accompany all
25 purchase, lease, sublease, or rental agreements relating to
26 the Property. The instrument shall contain the following

1 statement:

2 "The land described herein contains hazardous
3 substances and wastes. Such condition renders the land
4 and the owner, lessee, or other possessor of the land
5 subject to requirements, restrictions, provisions, and
6 liabilities contained in Chapter 6.5 and Chapter 6.8 of
7 Division 20 of the California Health and Safety Code as
8 made applicable to this Property by a specific Covenant
9 to Restrict Use of Property, a copy of which is
10 attached hereto and incorporated herein by reference.
11 This statement is not a declaration that a hazard
12 exists."

13 ARTICLE V

14 VARIANCE AND TERMINATION

15 5.01 Variance. Any Owner(s) or, with the Owner(s)'
16 written consent, any Occupant of the Property or any portion
17 thereof may apply to the Department for a written variance
18 from the provisions of this Covenant. Such application
19 shall be made in accordance with California Health & Safety
20 Code section 25202.6.

21 5.02 Termination. Any Owner(s) or, with the Owner(s)'
22 written consent, any Occupant of the Property or a portion
23 thereof may apply to the Department for a termination of the
24 Restrictions as they apply to all or any portion of the
25 Property. Such application shall be made in accordance with
26 California Health & Safety Code section 25202.6.

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Copy to:
FMC Corporation
Remediation Department
P.O. Box 367
1125 Coleman Avenue
San Jose, CA 95103
Attention: Sally A. Jenks
West Coast Remediation Manager
EH&S: Toxicology Group

To:
Department of Toxic Substances Control
Northern California Permitting Branch
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: James M. Pappas, P.E., Chief

Copy to:
California Regional Water Quality Control Board
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 94612
Attention: Loretta Barsamian
Executive Officer

6.03 Partial Invalidity. If any portion of the
Restrictions or terms set forth herein is determined to be
invalid for any reason, the remaining portion shall remain
in full force and effect as if such portion has not been
included herein.

6.04 Article headings. Headings at the beginning of
each numbered article of this Covenant are solely for the
convenience of the parties and are not a part of the
Covenant.

6.05 Recordation. This instrument shall be executed
by the Covenantor and by the Northern California Permitting
Branch Chief, California Department of Toxic Substances

1 Control. This instrument shall be recorded by the
2 Covenantor in the County of Santa Clara within ten (10) days
3 of the date of execution.

4 6.06 References. All references to Health and Safety
5 Code sections include successor provisions.

6 IN WITNESS WHEREOF, the parties execute this Covenant as of
7 the date set forth above.

8 OWNER: FMC Corporation

9 By: Robert J. Fier

10 Title: Vice President

11 Date: October 31, 1997

12 DEPARTMENT OF TOXIC SUBSTANCES
13 CONTROL

14 By: James M. Pappas

15 James M. Pappas, P.E., Chief
16 Northern California Permitting
17 Branch

18 Date: 2/18/98

1 STATE OF PENNSYLVANIA)
2)
3 COUNTY OF PHILADELPHIA)

4 On October 31, 1997 before me, a Notary Public in
5 and for State of Pennsylvania, personally appeared Robert
6 J. Fields, personally known to me or proved to me
7 on the basis of satisfactory evidence to be the person whose
8 name is subscribed to the within instrument and acknowledged
9 to me that he/she executed the same in his/her authorized
10 capacity, and that by his/her signature on the instrument
11 the person, or the entity upon behalf of which the person
12 acted, executed the instrument.

13 WITNESS my hand and official seal.

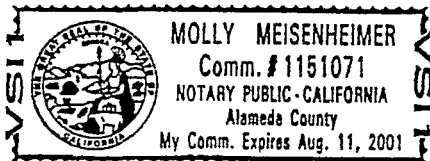
14 Suzan Butt
15 Notary's Signature

NOTARIAL SEAL
SUZAN BUTT Notary Public
City of Philadelphia, Phila. County
My Commission Expires Nov. 30, 1998

1 STATE OF CALIFORNIA)
2)
3 COUNTY OF ALAMEDA)

4 On 2-18-98, ~~1997~~¹⁹⁹⁸ before me, a Notary Public in
5 and for State of California, personally appeared James M.
6 Pappas, personally known to me or proved to me on the basis
7 of satisfactory evidence to be the person whose name is
8 subscribed to the within instrument and acknowledged to me
9 that he executed the same in his authorized capacity, and
10 that by his signature on the instrument, the Department of
11 Toxic Substances Control executed the instrument.

12 WITNESS my hand and official seal.




Notary's Signature



Ruth and Going

EXHIBIT "A"
LAND USE DEED RESTRICTION EASEMENT
LANDS OF FMC CORPORATION
SAN JOSE, CALIFORNIA

ALL that certain real property situate in the City of San Jose, County of Santa Clara, State of California, more particularly described as follows:

Being a portion of the lands shown upon the Record of Survey Map entitled "Map showing the Lands of the Estate of Mary Ives Crocker, deceased", which map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on February 11, 1936 in Book Z of Maps at page 42, more particularly described as follows:

Commencing at the most Easterly corner of that parcel of land conveyed to Food Machinery Corporation and described in the Deed recorded October 29, 1946 in Book 1388, at page 294, Official Records of the County of Santa Clara; said corner being at the intersection of the Southwesterly line of Coleman Avenue, as said Coleman Avenue (100 feet wide) was dedicated to public use for street purpose by San Jose City Ordinance No. 3376 dated July 28, 1947 and filed October 31, 1949 in Book 1869 of Official Records of Santa Clara County, at page 116 with the Northwesterly line of Newhall Street as said Newhall Street (60 feet wide) appears on said Record of Survey Map;

Thence South $48^{\circ} 54' 00''$ West along said northwesterly line of Newhall Street 77.85 feet to the True Point of Beginning;

Thence continuing along said northwesterly line, South $48^{\circ} 54' 00''$ West 1051.52 feet to a point on the northeasterly line of the lands of Southern Pacific Railroad Company;

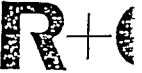
Thence along said northeasterly line North $57^{\circ} 34' 50''$ West 880.00 feet;

Thence leaving said northeasterly line North $32^{\circ} 25' 10''$ East 1082.97 feet to a point on the southwesterly line of Coleman Road (100 feet wide);

Thence along said southwesterly line South $57^{\circ} 34' 50''$ East 979.35 feet;

Thence continuing along said southwesterly line in a southeasterly direction along a non-tangent curve to the right having a radius of 994.00 feet, concave to the south, whose radius point bears South $41^{\circ} 19' 20''$ West; through a central angle of $11^{\circ} 02' 54''$; an arc length of 191.67 feet to a point of compound curvature;

Thence along a curve to the right having a radius of 22.00 feet through a central angle of $86^{\circ} 31' 46''$, an arc length of 33.23 feet to the True Point of Beginning.



Ruth and Goin

Together with:

A portion of Lot 1 and all of Lots 2, 3 and 4, Block 23 and portion of Laurel Street, now abandoned, and portion of Hamline Street, now abandoned, as shown on that certain Map entitled. "Map of University Grounds:", which Map as filed for record in the office of Recorder of the County of Santa Clara, State of California on August 25, 1866 in Book A of Maps, pages 80 and 81. and more particularly described as follows:

Beginning at the point of intersection of the Southeasterly line of Newhall Street with the Southwesterly line of Stockton Street, as said Streets are shown upon the Map above referred to;

Thence from said point of beginning Southwesterly and along the said Southeasterly line of Newhall Street South $48^{\circ} 54'$ West 450.00 feet to the point of intersection thereof with the center line of Laurel Street (now abandoned), as said Street is shown upon the Map above referred to;

Thence Southeasterly along the said center line of Laurel Street South $41^{\circ} 06'$ East 285.00 feet;

Thence, leaving said center line North $48^{\circ} 54'$ East 105.00 feet;

Thence South $41^{\circ} 06'$ East 115.00 feet more or less to a point on the Southeasterly line of Hamline Street, (now abandoned), as said Street is shown upon the Map above referred to;

Thence Northeasterly along the said Southeasterly line of Hamline Street North $48^{\circ} 54'$ East 345.00 feet to the point of intersection thereof with the said southwesterly line of Stockton Street;

Thence northwesterly along said southwesterly line of Stockton Street North $41^{\circ} 06'$ West 400 feet more or less to the point of beginning.

EXHIBIT "A-1"

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California, described as follows:

All of Lots 1, 2, 3 and 4, Block 23 and portion of Laurel Street, now abandoned, and portion of Hamline Street, now abandoned, as shown on that certain Map entitled, "Map of University Grounds", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on August 25, 1866 in Book A of Maps, pages 80 and 81, and more particularly described as follows:

Beginning at the point of intersection of the Southeasterly line of Newhall Street with the Southwesterly line of Stockton Street, as said Streets are shown upon the Map above referred to; thence from said point of beginning Southwesterly and along the said Southeasterly line of Newhall Street for a distance of 450.00 feet to the point of intersection thereof with the center line of Laurel Street (now abandoned), as said Street is shown upon the Map above referred to; thence Southeasterly along the said center line of Laurel Street for a distance of 412.00 feet to the point of intersection thereof with the Southeasterly line of Hamline Street (now abandoned), as said Street is shown upon the Map above referred to; thence Northeasterly along the said Southeasterly line of Hamline Street for a distance of 450.00 feet to the point of intersection thereof with the said Southwesterly line of Stockton Street; thence Northwesterly along said Southwesterly line of Stockton Street for a distance of 412.00 feet to the point of beginning of this description.

ARB No: 230-22-6

APN No: 230-22-006

ATTACHMENT NO. 1

CHEMICAL CONCENTRATIONS IN SOIL
PLANT NO. 7 AREA

Chemical	Maximum Detected Concentrations [mg/kg]*	Soil Construction Risk-Based Target Level [mg/kg]*	TTLIC Values [mg/kg]**
Benzene	0.13	52	NA
Ethylbenzene	13	693	NA
Toluene	0.084	2.752	NA
Xylene (mixed)	36	988	NA
Bromomethane	0.083	118	NA
Methyl tertbutyl ether (MTBE)	0.07	1.034	NA
Phenol	3.9	35.712	NA
Tetrachloroethylene (PCE, PERC)	0.023	201	NA
Trichloroethylene (TCE)	0.72	436	2,040
Antimony and compounds	18	438	500
Arsenic (cancer endpoint)	20	25	500
Barium and compounds	405	12,263	10,000
Beryllium and compounds	0.8	17	75
Cadmium and compounds	5	316	100
Chromium Total (1/6 ratio Cr VI/Cr III)	75	170	2,500
Chromium VI	3.4	13	500
Cobalt	82	20,211	8,000
Copper and compounds	54	40,642	2,500
Lead	55.9	2,800	1,000
Mercury (assumed as 100% methyl mercury)	1.1	109	20
Molybdenum	4.1	5,471	3,500
Nickel and compounds	120	5,784	2,000
Selenium	6.3	5,471	100
Silver and compounds	12	5,471	500
Thallium (assumed as 100% Thallic oxide)	34	77	700
Vanadium	70	7,660	2,400
Zinc	150	100,000	5,000
Cyanide (assumed as 100% copper cyanide)	0.2	5,471	NA

Notes:

NA - Not Available or Not Applicable

* - RCRA Facility Investigation Report, Plant No. 7 Area, December 1996.

** - Total Threshold Limit Concentrations (TTLIC) Ref. California Code of Regulations, Title 22, Division 4.5, Article 3, Section 66261.24.

ATTACHMENT NO. 1

CHEMICAL CONCENTRATIONS IN GROUNDWATER
PLANT NO. 7 AREA

Chemical	Maximum Detected Concentrations [mg/l]*	Groundwater Construction Risk-Based Target Level [mg/L]*	STLC Values [mg/l]**
Benzene	0.18	0.91	NA
Ethylbenzene	5.8	39	NA
Toluene	0.00061	122	NA
Xylene (mixed)	16	200	NA
1,1,1-Trichloroethane	0.006	60	NA
1,1-Dichloroethane	0.00095	34	NA
1,2-Dichlorobenzene	0.00074	42	NA
1,2-Dichloroethane (EDC)	0.0007	5.2	NA
1,2-Dichloroethylene (cis)	0.003	40	NA
Phenol	0.02	3.211	NA
Tetrachloroethylene (PCE, PERC)	0.0034	0.8	NA
Trichloroethylene (TCE)	0.19	7.7	204
Antimony and compounds	0.0616	5.9	15
Arsenic (cancer endpoint)	0.245	0.69	5
Barium and compounds	17.7	1,030	100
Boron	0.585	1,325	NA
Chromium Total (1/6 ratio Cr VI/Cr III)	2.54	14,718	5
Cobalt	0.738	4,415	80
Copper and compounds	2.23	547	25
Lead	0.493	NA	5
Mercury (assumed as 100% methyl mercury)	0.0329	2.9	0.2
Molybdenum	0.0061	74	350
Nickel and compounds	4.93	5,887	20
Selenium	0.0902	74	1
Thallium (assumed as 100% Thallic oxide)	0.182	1.0	7
Vanadium	2.65	103	24
Zinc	3.71	14,718	250
Cyanide (assumed as 100% copper cyanide)	0.0288	74	NA

Notes:

NA - Not Available or Not Applicable

* - RCRA Facility Investigation Report, Plant No. 7 Area, December 1996.

** - Soluble Threshold Limit Concentrations (STLC). Ref. California Code of Regulations, Title 22, Division 4.5, Article 3, Section 66261.24.