

**FMC CORPORATION – CENTRAL PLANT AREA
1125 COLEMAN AVENUE, SAN JOSE**

Land Use Covenant Implementation and Enforcement Plan

1.0 Land Use Restrictions

The Department of Toxic Substances Control (DTSC) and FMC Corporation (FMC) will enter into a Covenant to Restrict Use of Property (Land Use Covenant or LUC) to impose restrictions on the use of the property known as the Central Plant Area, 1125 Coleman Avenue, San Jose (Central Plant Area). These land use restrictions are the institutional controls required to limit exposure to current and future landowner(s) and/or user(s) and/or occupants and to maintain the effectiveness of the corrective action. These institutional controls are designed to limit exposure to any remaining hazardous waste and to protect human health and the environment. DTSC will conduct annual inspections to ensure that the following land use restrictions are being complied with.

- **Prohibited Uses.**
 - A residence, including any mobile home or factory-built housing, constructed or installed for use as residential human habitation.
 - A hospital for humans.
 - A public or private school for persons under 21 years of age.
 - A day care center for children.

- **Prohibited Activities.**
 - Raising of cattle, food crops or agricultural products.
 - Drilling for water, oil, or gas.
 - Extraction of groundwater for purposes other than site remediation, groundwater monitoring, or construction dewatering.
 - Any activities that may interfere with the selected remedy or operation and maintenance activities required for the Central Plant Area.

- **Permitted Uses and Improvements.** The use of the Central Plant Area shall be restricted to commercial, industrial, research and development, hotel, retail and office purposes only, any other use permitted by Planned Development Zoning Ordinance No. 26958, adopted by the City of San Jose on September 2, 2003, and any other use permitted by any amendment to the afore-mentioned Planned Development Zoning Ordinance, provided that the use is consistent with the prohibited uses and prohibited activities listed above.

- **Non-Interference with Groundwater Extraction and Treatment System, Groundwater Monitoring Wells, and Conveyance Piping on the Central Plant Area.** Activities that may disturb the groundwater remediation system, groundwater monitoring wells, and conveyance piping (e.g., excavation, grading or removal of soil; trenching; filling; earth movement; or mining) shall not be permitted on the Central Plant Area without prior review and approval by DTSC. All uses and development of the Central Plant Area shall preserve the integrity and physical

accessibility of the groundwater remediation system, groundwater monitoring wells, and conveyance piping. The groundwater remediation system, groundwater monitoring wells, and conveyance piping shall not be altered without prior written approval by DTSC.

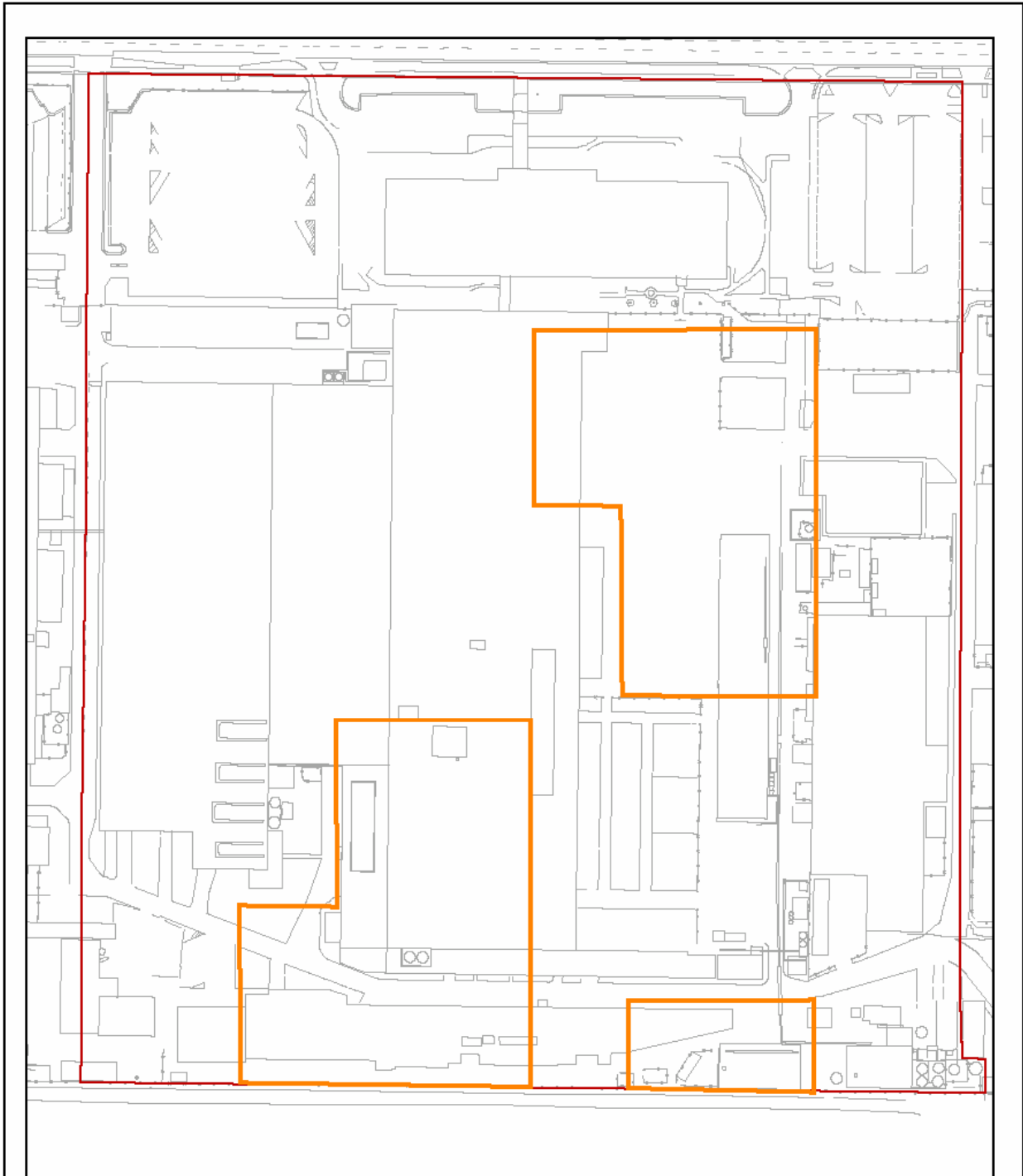
- **Property Cover.** The Central Plant Area will be variously occupied by buildings, paved with either concrete or asphalt, covered with landscaping or other vegetative cover, contain clean soil imported from an off-site location, or will be covered with other suitable cover to mitigate direct exposure. Loose coverings of clean materials (e.g., soil, gravel) shall be maintained at a thickness of at least six inches. In the event that there is future use of the Central Plant Area that does not involve one or more forms of the foregoing cover over the Central Plant Area, approval for such use must be obtained from DTSC.
- **Controls During Construction Activity.** Engineering controls, such as wind erosion control and dust suppression by watering, must be implemented during construction activities to minimize or mitigate potential exposure of off-site residents and on-site workers to contaminated soil via pathways such as inhalation of impacted dust and direct contact after deposition of impacted dust.
- **Restrictions on Development and Use (Specific to New Building Construction and for Protection of Future Indoor Office Workers).** Any new buildings constructed within the areas totaling 5.5 acres shown on Figure 2-1 and specified in the attached survey (survey of these areas to be attached) may be required by DTSC to incorporate risk management measures to mitigate possible vapor intrusion into such buildings for the protection of future indoor office workers. Such risk management measures shall be consistent with then-current DTSC guidelines for mitigation of vapor intrusion into buildings and protection of indoor office worker health. The type of risk management measures will be dependent upon the location of the building within the 5.5 acres, the design and use of the building, and concentrations of VOCs in the soil gas below the building footprint. These restrictions shall apply only to buildings constructed in the 5.5-acre area and shall not apply to any other portion of the Central Plant Area or to construction of parking lots or other improvements that do not entail occupancy by humans.
- **Soil Management.** Any contaminated soils brought to the surface by grading, excavation, trenching, backfilling, or other activity shall be managed in accordance with all applicable provisions of state and federal laws and regulations, and a Soil Management Plan and a Health and Safety Plan, both to be prepared by FMC and approved by DTSC.
- **Access for DTSC.** DTSC shall have reasonable right of entry and access to the Central Plant Area for inspection and other activities consistent with the purposes of implementing and enforcing the LUC as deemed necessary by DTSC in order to protect public health and the environment.
- **Access for Implementing Operation and Maintenance.** The entity or person responsible for implementing the operation and maintenance of the corrective action

remedy shall have reasonable right of entry and access to the Central Plant Area for the purpose of implementing the operation and maintenance requirements for the remedy until such time as DTSC determines that no further operation and maintenance is required.

- All owners or occupants of any portion of the Central Plant Area, by their purchase, leasing, or possession of such property, are bound by the LUC and agree that the restrictions in the LUC must be adhered to for the benefit of future owners and occupants and that their interest in the property shall be subject to the restrictions contained in the LUC.
 - The Owner of the Central Plant Area shall provide notice to DTSC no later than thirty (30) days after the conveyance of any ownership interest in the Central Plant Area (except for building space leases, mortgages, liens, and other non-possessory encumbrances).

2.0 Compliance with Land Use Restriction

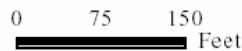
FMC or the future owner(s) shall submit an annual certification to DTSC by July 31st of each year to certify that the land use and any construction activities at the site are in full compliance with the LUC requirements. DTSC will inspect the Central Plant Area annually to assess compliance with the LUC. FMC or the future owner(s) of the Central Plant Area shall reimburse DTSC for DTSC's costs incurred in implementing and enforcing the LUC. Any violations of the LUC shall be grounds for DTSC to take enforcement actions in accordance with applicable law.



P:/5917/095/LUC Implementation and Enforcement Plan/figure 2-1.pdf

Legend

- Central Plant Area Boundary
- Restricted Areas due to Potential Vapor Intrusion
Total = 5.5 acres



MALCOLM PIRNIE	FMC 1125 Coleman Avenue San Jose, California
Areas Requiring Land-Use Restrictions Due to Potential Vapor Intrusion Land-Use Covenant Implementation & Enforcement Plan	
January 2006	Figure 2-1