



On this Day, October 25, 2010,  
the U.S. Environmental Protection Agency (U.S. EPA)  
Determines that

*Eastern Michaud Flats Superfund Site, FMC Plant Operable Unit,  
Northern Properties, Supplemental Remedial Investigation Areas Parcels 4, 5 and 6  
Are Ready for Industrial/Commercial Reuse*

*This Ready for Reuse (RfR) Determination is for a portion of the Eastern Michaud Flats Superfund Site (Site), specifically the FMC Plant Operable Unit, Northern Properties Supplemental Remedial Investigation Areas (SRIA) Parcels 4, 5 and 6. This RfR Determination provides that U.S. EPA has made a technical determination that the SRIA Parcels 4, 5 and 6, located approximately two and a half miles northwest of Pocatello, in Power County, Idaho, are ready for industrial/commercial reuse and its remedy will remain protective of human health and the environment, subject to the continued enforcement of the 2010 restrictive covenant necessary for maintaining the remedy's protectiveness, as summarized in the attached report, Ready for Reuse Determination, FMC Plant Operable Unit, Northern Properties SRIA Parcels 4, 5 and 6, Superfund Site, October 25, 2010. This RfR Determination remains valid only as long as this covenant remains in place and is enforced.*

*The Institutional controls (ICs) that have been implemented by the landowner under the covenant for SRIA Parcels 4, 5 and 6 specify (1) the property may be used for commercial and industrial uses only and shall not be used or developed for any residential purposes or child care or schooling facilities; (2) there shall be no extraction of groundwater under the property for human consumption that exceeds the Maximum Contaminant Levels and (3) the property shall not be used for growing fruits and vegetables for human consumption. Future users of SRIA Parcels 4, 5 and 6 also will need to comply with local land use regulations. The types of uses identified in this RfR Determination remain subject to (i) applicable federal, state, and local regulation and (ii) title documents, including but not limited to easements, restrictive covenants, deed restrictions and institutional controls. Power County zoning regulations classify SRIA Parcels 4, 5 and 6 as a Heavy Industrial Zone.*

*This RfR Determination is an environmental status report that documents a technical determination which does not have any legally binding effect, nor does it expressly or implicitly create, expand, or limit any legal rights, obligations, responsibilities, expectations, or benefits of any party. U.S. EPA assumes no responsibility for reuse activities and/or for any possible or potential harm that might result from reuse activities. U.S. EPA retains any and all rights and authorities it has, including but not limited to legal, equitable, or administrative rights. U.S. EPA specifically retains any and all rights and authorities it has to conduct, direct, oversee, and/or require environmental response actions in connection with SRIA Parcels 4, 5 and 6, including but not limited to instances when new or additional information has been discovered regarding the contamination or conditions at the Site that indicate that the remedy and/or the conditions at the Site are no longer protective of human health or the environment for the types of uses identified in the RfR Determination.*

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**Ready for Reuse Determination**  
**FMC Plant Operable Unit, SRIA Parcels 4 to 6, Superfund Site**

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## **I. Executive Summary**

This Ready for Reuse (RfR) Determination is for the approximately 87 acres of the Eastern Michaud Flats Superfund Site (Site), FMC Plant Operable Unit, SRIA Parcels 4, 5 and 6. (See Figure 2, below.)

The U.S. Environmental Protection Agency (EPA) has made a technical determination that SRIA Parcels 4, 5 and 6 of the Site, located 2.5 miles northwest of the City of Pocatello, in Power County, Idaho, are ready for industrial/commercial use, including processing and manufacturing products from raw materials, as well as fabrication, assembly, treatment, and packaging of finished products, subject to the Power County zoning regulations and to the continued enforcement of the 2010 restrictive covenants and any successor restrictions deemed necessary and approved by EPA necessary for maintaining protectiveness.

The use limitations and technical requirements summarized in this RfR Determination are based on the results of the EPA approved Supplemental Remedial Investigation (SRI) and covenants established by FMC restricting uses at the property (2010 restrictive covenants).

The following are the operative restrictions under the 2010 restrictive covenants:

1. The Property, and any portion thereof, may be used for commercial and industrial uses only. The Property shall not be used or developed for any residential purposes or child care or schooling facilities.
2. There shall be no extraction of groundwater under the Property for human consumption that exceeds the Maximum Contaminant Levels prescribed by the federal Safe Drinking Water Act.
3. The Property shall not be used for growing fruits and vegetables for human consumption.


EPA performed an assessment of the human and environmental risks associated with using the Site for industrial/commercial purposes during its investigation of the Site. The risks of concern that were identified for SRIA Parcels 4, 5 and 6 were related to potential residential exposure to Site contaminants, primarily via drinking ground water, consuming fruits and vegetables grown on the property, incidental soil ingestion and external exposure to gamma radiation. The existence and enforcement of the restrictive covenants noted above will manage these risks to human health and the environment. This RfR Determination remains valid only as long as the limitations specified in the 2010 restrictive covenants noted above continue to be met.

Additional documents providing information and supporting this RfR Determination include the Supplemental Human Health Risk Assessment (HHRA) and the Supplemental Ecological Risk Assessment (ERA) Addenda, which comprise Appendices D and E of the Supplemental Remedial Investigation Addendum (SRIA).


U.S. EPA Region 10 issued this RfR Determination, effective October 25, 2010.



By:

  
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Region 10

  
Vicki Meadows  
Chair, Power County Commissioners  
Power County, Idaho

  
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Idaho Department of Environmental Quality

Documents pertaining to the Site and the RfR Determination are part of the Administrative Record for the Site, which is available for review at the EPA Region 10 Superfund Records Center in Seattle, Washington; the Idaho State University Library in Pocatello, Idaho, and Shoshone-Bannock Library in Fort Hall, Idaho. Additional information can be obtained from Kira Lynch, the Site's Remedial Project Manager (RPM), who can be reached at 206-553-2144 or [Lynch.Kira@epa.gov](mailto:Lynch.Kira@epa.gov).

## II. Site and Parcel Location

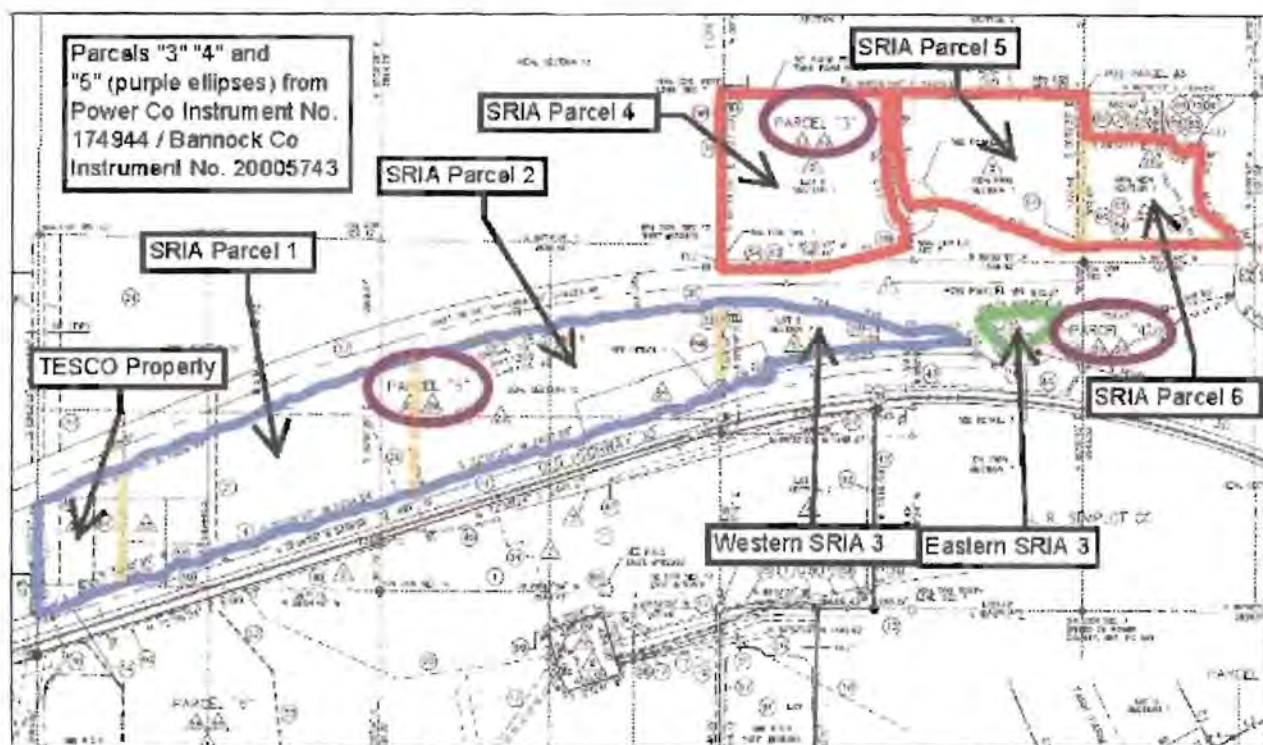
The FMC Plant Operable Unit (OU) is a part of the larger Eastern Michaud Flats (EMF) Superfund Site (Site), which is located in southeastern Idaho, approximately 2.5 miles northwest of the city of Pocatello, Idaho. The Site was listed on the National Priorities List (NPL) on August 30, 1990. The Site includes two adjacent production facilities, a former FMC Corporation elemental phosphorus processing plant that ceased operation in 2001 and a phosphate fertilizer processing facility operated by the J.R. Simplot Company which remains in operation.

The Site was originally divided into three subareas or operable units. EPA designated these areas as the FMC Plant OU, the Simplot Plant OU, and the Off-Plant OU after its June 1998 Record of Decision for the Site (U.S. EPA 1998). The SRIA Parcels 4, 5, and 6 which are the subject of this RfR determination are part of the FMC Plant OU.

Figure 1: General Location of FMC Plant Operable Unit



Figure 2: Location of FMC Northern Properties and SRIA Parcels 1 to 6



Deed parcels and SRIA parcels refer to different geographic locations. The deed parcels on this graphic are used to demonstrate that they are specifically covered by the restrictive covenants and show where they are with respect to SRIA sampling parcels inside the FMC Plant OU. SRIA parcels 4, 5, and 6 are the subject of this RfR Determination.

### III. Site Summary

As described in the Supplemental Remedial Investigation Report for the FMC Plant Operable Unit (MWH, 2009), FMC ceased production of elemental phosphorus from phosphate ore at its Pocatello facility in December 2001. EPA subsequently determined that additional investigations and evaluations were needed at the plant areas that had been actively operated at the time of the 1996 remedial investigation, but where operations had terminated with the plant shutdown. This finding led EPA and FMC to enter into an Administrative Order on Consent in October 2003 (U.S. EPA 2003) for a Supplemental Remedial Investigation and Supplemental Feasibility Study at the FMC Plant OU. The Supplemental Remedial Investigation activities targeted the data gaps identified which were largely related to the former operating areas of the FMC Plant Site, located south of Highway 30, but also included the FMC-owned properties north of Highway 30. In June 2008, FMC submitted the Draft Supplemental Remedial Investigation Report that included the results of the 2007 field investigations conducted at the FMC Plant Site. In August 2008, based on review and comment on the Draft Supplemental Remedial Investigation Report, EPA requested that additional investigations be performed at FMC's Undeveloped Areas and the FMC Northern Properties to gather data for further assessment of risks in these areas to support the Supplemental Feasibility Study.



**SRIA Parcels 4, 5, and 6, which are the subject of this RfR determination are part of the FMC Plant OU and include Deed parcels 3, 4 and 5.**

#### **SRIA Parcel 4 Site Description**

The northwestern sampling parcel is approximately 40 acres in size and has historically been used only for agricultural purposes (currently used for hay storage). This sampling parcel is generally bounded by Tank Farm Road to the east and north, I-86 to the south, and one of the City of Pocatello's municipal sewage sludge land application areas to the west. This parcel is entirely outside the boundary of the Fort Hall Reservation and is included as one of the FMC parcels subject to a redevelopment agreement with the Power County Development Authority. The City of Pocatello acquired this property from the US Government after World War II. FMC purchased this parcel from the City of Pocatello in 1950. This parcel was not used as part of the FMC phosphorus manufacturing operations.

#### **SRIA Parcel 5 Site Description**

This gravel pit sampling parcel is approximately 31 acres in size and has the same ownership history as SRIA Parcel 4. This sampling parcel is generally bounded by Rowlands Lane to the north, a gated, non-public dirt road to the east, Batiste Road to the south, and Tank Farm Road to the west. This parcel is entirely outside the boundary of the Fort Hall Reservation and is part of the PCDA redevelopment agreement. This parcel was used to support the FMC phosphorus manufacturing operations only to the extent that the parcel was excavated in the 1950s to a depth of approximately 20 feet to recover gravel as a plant raw material (silica). Top soil was removed and stockpiled around the perimeter of the sampling parcel prior to the gravel excavation and remains stockpiled to the present. Although this parcel supported manufacturing operations, those operations were conducted at the FMC plant site and did not take place at this parcel. The excavated gravel pit currently is being backfilled with clean construction debris by Mickelsen Construction from construction sites in the Pocatello area. This type of landfill is exempt from landfill permitting regulations in the State of Idaho. According to FMC's agreement with Mickelsen Construction, once backfilling is complete, the stockpiled topsoil will be placed over the reclaimed area.

#### **SRIA Parcel 6 Site Description**

The Batiste Spring sampling parcel was purchased by FMC from the Union Pacific Railroad in 1996 and is approximately 16 acres in size. This sampling parcel is generally bounded by the Rowland property to the north, the Portneuf River to the east, Batiste Road to the south, and a gated, non-public dirt road to the west. This sampling parcel is entirely outside the boundary of the Fort Hall Reservation and was not used as part of the FMC phosphorus manufacturing operations. This parcel contains the Batiste Spring pump house, spring house and access roads.

## Summary of Exposure and Risk Assessment Investigation

Table 1 shows a timeline of activities at the FMC Plant OU Superfund site.

**Table 1: Chronology of Site Events**

<b>Date</b>	<b>Event</b>
December 2001	FMC ceased production of elemental phosphorus from phosphate ore at its Pocatello facility.
October 2003	EPA and FMC entered into an AOC for a Supplemental Remedial Investigation and Feasibility Study (SRI/SFS) at the FMC Plant OU.
2007	The SRI Work Plan was completed and SRI field work was performed on the FMC Plant Site property, location of the former elemental phosphorus processing facility.
June 2008	FMC submitted the Draft SRI Report with the results of the 2007 field investigations conducted at the FMC Plant Site.
August 2008	EPA requested additional risk assessment investigations of FMC's Undeveloped Areas and the FMC Northern Properties to support the SFS. These areas were not investigated during the 2007 SRI field work.
October 2008	Southern and Western Undeveloped Areas, Northern Properties and Background Soil Sampling Field Investigations were conducted.
June 2009	FMC submitted the SRI Addendum Draft Final Report with results of October 2008 field investigations, including human health and ecological risk assessments.
November 2009	FMC submitted the Final SRI Addendum Report.

## IV. U.S. EPA's Basis for the Ready for Reuse (RfR) Determination

### Background

The Superfund RfR Determination for FMC Plant OU, Northern Properties SRIA Parcels 4, 5 and 6, is based on U.S. EPA approved documents produced during the course of the Site's Supplemental Remedial Investigation studies and FMC implemented use restrictions on the property. These documents provide information that this portion of the Site, is ready for industrial/commercial use and that it will remain protective of human health and the environment, subject to the limitations specified in the 2010 restrictive covenants on the property. The Supplemental Human Health Risk Assessment and Supplemental Ecological Risk Assessment Addenda (MWH 2009, Appendices D and E, respectively) provide information on the exposure pathways and risk levels associated with the Site. That report can be found in the Site's Administrative Record, which is available for review at the EPA Region 10 Superfund Records Center in Seattle, Washington; the Idaho State University Library in Pocatello, Idaho, and Shoshone-Bannock Library in Fort Hall, Idaho.



## **Description of Risks in SRIA Parcels 4 to 6**

The Supplemental Remedial Investigation Addendum activities were conducted to collect and analyze surface samples of native soils to further evaluate potential risks to potential future human and current and future ecological receptors on the Northern Properties. Background studies also were performed to characterize background soil concentrations, so that incremental risks could be evaluated in the Supplemental Human Health and Environmental Risk Addenda.

EPA required that potential risks to hypothetical residential receptors be evaluated in the Supplemental Human Health and Environmental Risk Addenda, even though the FMC northern properties are zoned heavy industrial and FMC recorded restrictive covenants with Power County that prohibit residential development of SRIA Parcels 4 and 5. The reason for this is that baseline risk assessments are intended to characterize site risks absent any remedial action, in order to determine what, if any, remedial actions are appropriate. Since land use restrictions and other institutional controls constitute remedial action, their effect in limiting residential use is not a consideration for characterizing the baseline risk. In addition, potential risks to hypothetical future commercial/industrial, construction and utility workers were also evaluated consistent with EPA guidance concerning risk assessments for reasonably anticipated future land uses.

The Supplemental Human Health and Ecological Risk Assessment Addenda were performed using conservative assumptions to evaluate risks to potential future human (residential and worker) receptors, and current and potential future ecological receptors from exposure to contaminants of concern in surface soil that were found to exceed risk-based comparative values in an initial screening evaluation. In addition, risks to potential future human receptors from exposure to groundwater were evaluated. According to the Supplemental Human Health and Ecological Risk Assessment Addenda, the risks posed to human health in SRIA Parcels 4, 5 and 6 require the evaluation of remedial alternatives in the Supplemental Feasibility Study for hypothetical future residential receptors. However, the results showed that risk to workers and the environment are within EPA's acceptable risk range. Table 2 shows a summary of the exposures and risks in SRIA Parcels 4 to 6 that exceed EPA's acceptable risk range.

### **Risks identified for each SRIA Parcel**

**SRIA Parcel 4** – The cumulative total Reasonable Maximum Exposure (RME) non-cancer risk estimate to hypothetical future residential receptors in Parcel 4 (HQ = 5.0)<sup>1</sup> is driven by homegrown produce ingestion, groundwater ingestion and incidental soil ingestion.

**SRIA Parcel 5** – The cumulative total RME non-cancer risk estimate to hypothetical future residential receptors in Parcel 5 (HQ = 2.4) is driven by groundwater ingestion, in addition to contributions from homegrown produce ingestion and incidental soil ingestion.

**SRIA Parcel 6** – Cumulative RME total lifetime cancer risks to hypothetical future residents were found to exceed EPA's acceptable risk range<sup>2</sup>. This risk estimate is driven by the

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<sup>1</sup> A hazard quotient (HQ) greater than 1.0 exceeds the acceptable risk range.

groundwater ingestion and external exposure to gamma radiation pathways. The cumulative total RME non-cancer risk estimate to hypothetical future residential receptors in Parcel 6 (HQ = 15.1) is driven by homegrown produce ingestion, groundwater ingestion and incidental soil ingestion.

**Table 2: Risk Scenarios Contributing to Exceedences of EPA's Acceptable Risk Range**

<b>FMC Plant OU Area</b>	<b>Risk Driving Exposure Pathways</b>	<b>Risk</b>
SRJA Parcel 4	Resident soil ingestion Resident consumption of homegrown produce Resident groundwater ingestion	Non-cancer hazard quotient (HQ) exceeds 1 for each pathway
SRJA Parcel 5	Resident groundwater ingestion	Non-cancer hazard quotient exceeds 1 for this pathway
SRJA Parcel 6	Resident groundwater ingestion Resident external exposure to gamma radiation	Cancer risk exceeds $3 \times 10^{-4}$ for all pathways combined
	Resident soil ingestion Resident consumption of homegrown produce Resident groundwater ingestion	Non-cancer hazard quotient exceeds 1 for each pathway

## **V. Ongoing Limitations and Responsibilities Established by FMC with the County of Power, State of Idaho**

Power County Book of Records Instrument Number 174944, Deed Parcels 3, 4 and 5 encompass SRJA Parcels 1 through 6, as shown on Figure 2. Deed Parcels 3, 4 and 5 specified in this Instrument have been encumbered with the use restrictions and prohibitions listed below by a Covenant Restricting Use of the Property that was recorded by the Power County Recorder on September 20, 2010 as Power County Book of Records Instrument Number 198944, a copy of which is included in Appendix C.

FMC Idaho LLC, as owner of the property located in Power County, Idaho adopted the covenants, conditions and restrictions described below which apply to and run with the Property in perpetuity. These covenants, conditions and restrictions are necessary to ensure the development of the property in a manner consistent with protection of human health and the environment.

1. The Property, and any portion thereof, shall not be used or developed for any residential purposes, child care, hospitals, schools, churches or other religious premises, or residential use associated with commercial premises, such as managers' housing at hotels or motels.

<sup>2</sup> EPA's acceptable risk range is generally defined as 1E-04 to 1E-06 but also includes an upperbound of 3E-04 as essentially equivalent to 1E-04 (see EPA's Establishment of Cleanup Levels for CERCLA sites with Radioactive Contamination, OSWER No. 9200 4-18, 1997.).

2. There shall be no extraction of groundwater under the Property for human consumption that exceeds the Maximum Contaminant Levels prescribed by the federal Safe Drinking Water Act.<sup>3</sup>
3. The Property shall not be used for growing fruits and vegetables for human consumption.

These covenants and restrictions are enforceable by any party with a claim or interest in the property.

Power County zoning regulations constitute an additional and separate restriction against residential use of the property, apart from the restrictions placed by the 2010 covenant. These zoning regulations place the property in a Heavy Industrial Zone. That zoning classification prohibits residential use. (See Appendix D.)

## **VI. Provisos**

This RfR Determination is an environmental status report that documents a technical determination and does not have any legally binding effect, nor does it expressly or implicitly create, expand, or limit any legal rights, obligations, responsibilities, expectations, or benefits of any party. U.S. EPA assumes no responsibility for reuse activities or for any possible or potential harm that might result from reuse activities. U.S. EPA retains any and all rights and authorities it has, including but not limited to, legal, equitable, or administrative rights. U.S. EPA specifically retains any and all rights and authorities it has to conduct, direct, oversee, and/or require environmental response actions in connection with the Site, including instances when new or additional information has been discovered regarding the contamination or conditions at the Site that indicate that the remedy and/or the conditions at the Site are no longer protective of human health or the environment for the uses identified in the RfR Determination.

This RfR Determination remains valid only as long as the limitations specified in the 2010 restrictive covenants described above are met.

The parcels addressed in the RfR Determination are subject to local land use regulations.

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<sup>3</sup> Only shallow zone groundwater has been shown to be contaminated on SRIA parcel 6 and is not currently in use as a water supply source.



## VII References

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## **Appendix A - Abbreviations and Acronyms**

**AOC** – Administrative Order on Consent

**AR** – Administrative Record

**CERCLA** – Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund)

**ICs** – institutional controls

**HRS** – Hazard Ranking System

**NPL** – National Priorities List of Superfund hazardous waste sites

**O&M** – Operation and Maintenance

**PCOR** – Preliminary Close Out Report

**RCRA** – Resource Conservation and Recovery Act

**RfR Determination** – Ready for Reuse Determination

**RI/FS** – Remedial Investigation/Feasibility Study

**ROD** – Record of Decision

**RPM** – Remedial Project Manager

**IDEQ** – Idaho Department of Environmental Quality

**U.S. EPA** – United States Environmental Protection Agency

## Appendix B - Glossary

Consent Decree: A legal document, approved by a judge, that formalizes an agreement reached between U.S. EPA and potentially responsible parties (PRPs) through which PRPs will conduct all or part of a cleanup action at a Superfund site; cease or correct actions or processes that are polluting the environment; or otherwise comply with U.S. EPA-initiated regulatory enforcement actions to resolve the contamination at the Superfund site involved. The consent decree describes the actions PRPs will take and may be subject to a public comment period.

Engineering controls: Engineering controls eliminate or reduce exposure to a chemical or physical hazard through the use of engineered machinery or equipment. An example of an engineering control is a protective cover over waste left on site.

Exposure pathways: Exposure pathways are means by which contaminants can reach populations of people, plants, or animals. Exposure pathways include ground water, surface water, soil, and air.

Feasibility Study (FS): A study of a hazardous waste site intended to (1) evaluate alternative remedial actions from technical, environmental, and cost-effectiveness perspectives; (2) recommend the cost-effective remedial action; and (3) prepare a conceptual design, a cost estimate for budgetary purposes, and a preliminary construction schedule.

Institutional controls (ICs): Non-engineered instruments, such as administrative and/or legal controls, that help minimize the potential for human exposure to contamination and/or protect the integrity of a remedy by limiting land or resource use.

National Priorities List (NPL): Sites are listed on the NPL upon completion of Hazard Ranking System (HRS) screening, public solicitation of comments about the proposed site, and consideration of all comments. The NPL primarily serves as an information and management tool. The identification of a site for the NPL is intended primarily to guide U.S. EPA in: determining which sites warrant further investigation to assess the nature and extent of the human health and environmental risks associated with a site; identifying what CERCLA-financed remedial actions may be appropriate; notifying the public of sites U.S. EPA believes warrant further investigation; and serving notice to potentially responsible parties that U.S. EPA may initiate CERCLA-financed remedial action.

Operation and Maintenance (O&M): O&M activities are conducted after remedial actions are complete in order to ensure that remedies are operational and effective.

Potentially Responsible Parties (PRPs): The Superfund law (CERCLA) allows U.S. EPA to respond to releases or threatened releases of hazardous substances into the environment. Under CERCLA, PRPs are expected to conduct or pay for the cleanup. The Superfund enforcement program identifies the PRPs at the site; negotiates with PRPs to do the cleanup; and recovers from PRPs the costs spent by U.S. EPA at Superfund cleanups.



Preliminary Assessment (PA): Preliminary assessments are investigations of site conditions to ascertain the source, nature, extent, and magnitude of the contamination.

Record of Decision (ROD): The ROD documents the cleanup decision for the site or a portion of a NPL site and the supporting analyses.

Remedial Action (RA): The implementation of a permanent resolution to address a release or potential release of a hazardous substance from a site.

Remedial Design (RD): The process of fully detailing and specifying the selected remedy identified in the ROD.

Remedial Investigation (RI): An investigation intended to gather the data necessary to: (1) determine the nature and extent of problems at the site; (2) establish cleanup criteria for the site; (3) identify preliminary alternative remedial actions; and (4) support the technical and cost analyses of the alternatives.

Site Inspection (SI): The process of collecting site data and samples to characterize the severity of the hazard for the hazard ranking score and/or enforcement support.

## **Appendix C – Covenants**

Recording Requested By and  
When Recorded Return to:

**Instrument # 198944**

POWER COUNTY, IDAHO

9-20-2010 11:31:01 No. of Pages: 12

Recorded for : FMC IDAHO LLC

CHRISTINE STEINLICHT

Ex-Officio Recorder Deputy

*Jennifer Hupp*

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SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

**THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT IMPOSING  
ACTIVITY AND USE LIMITATIONS PURSUANT TO THE UNIFORM  
ENVIRONMENTAL COVENANTS ACT, IDAHO CODE § 55-3001, et seq.**

**ENVIRONMENTAL COVENANT**

FMC Idaho LLC ("FMC") as the owner of the Property described below grants this Environmental Covenant pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. FMC grants this Environmental Covenant to itself and its assigns as "holders" as defined at Idaho Code § 55-3002(6). This Environmental Covenant sets forth protective provisions, covenants, restrictions and conditions (collectively referred to as "Activity and Use Limitations") on the Property described below. The Activity and Use Limitations are designed to protect natural resources, human health and the environment. The U.S. Environmental Protection Agency ("EPA") and the Idaho Department of Environmental Quality (the "Department") are signing this Environmental Covenant as "agencies" as that term is defined in Idaho Code § 55-3002(2). The rights granted to EPA and the Department under UECA and this Environmental Covenant are not interests in real property and they are not "holders" under this Environmental Covenant.

Property. This Environmental Covenant concerns FMC-owned property located north of Highway 30 in Power County, Idaho that is within the FMC Plant Operable Unit of the Eastern Michaud Flats ("EMF") Superfund Site, a National Priorities List site under the federal Comprehensive Environmental Response, Compensation and Liability Act. The Property consists of Parcel 3 of the property conveyed to FMC under Instrument Number 174944 as recorded in the Power County recorder's office, also designated as Supplemental Remedial Investigation Addendum ("SRIA") Parcels 4, 5 and 6, and is legally described in the attached Schedule A (hereinafter referred to as the "Property"). The general location of the Property is shown on the map attached as Schedule B.

Property Ownership. FMC hereby represents and warrants to the other signatories to this Environmental Covenant that it is the sole owner of the Property, holds fee simple



title to the Property, and has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitations. FMC never conducted elemental phosphorus processing, phosphate ore handling or process waste management at the Property. However, its location directly north of other FMC property at which FMC carried out these operations prior to shutdown in 2001 and near the J.R. Simplot Company ("Simplot") phosphorus ore processing plant that remains in operation has caused soil and ground water contamination at the Property as detailed in the administrative record referenced below. EPA issued a Record of Decision ("ROD") in June 1998 that selected remedial action for the EMF Superfund Site including the Property, but EPA is reviewing that ROD with respect to the FMC Plant Operable Unit including what remedial action, if any, may be required at the Property. The Activity and Use Restrictions set forth herein are not inconsistent with the remedial action that EPA selected in the June 1998 ROD. EPA has concluded that it is appropriate to issue a Ready for Reuse Determination for the Property notwithstanding the current remedial action re-evaluation, based on the environmental characterization that FMC has conducted at the Property, the levels of soil and groundwater contaminants that have been found, the activity and use restrictions placed by this Environmental Covenant, and other factors. This Environmental Covenant supports the EPA Ready for Reuse Determination.

Name and Location of Administrative Record. A copy of the administrative record for the EMF Superfund Site, which encompasses the Property, can be found at the Idaho State University Library, 921 South 8th Avenue, Pocatello, Idaho 83209.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, FMC and any successors in interest (i.e., future owners of the Property or any portion thereof) are hereby restricted from using the Property, now or at any time in the future, as specifically set forth below:

1. The Property, and any portion thereof, shall not be used for any residential purposes, child care, hospitals, schools, churches or other religious premises, or residential use associated with commercial premises such as managers' housing at hotels or motels.
2. There shall be no extraction of ground water under the Property for human consumption that exceeds the Maximum Contaminant Levels prescribed by the federal Safe Drinking Water Act.
3. The Property shall not be used for growing fruits and vegetables for human consumption.

FMC or its successors in interest shall be solely responsible for demonstrating that use on the Property is in conformity with the Activity and Use Limitations. If any event or action occurs that constitutes or may constitute a breach of the activity and use

limitations, FMC or any successors in interest shall notify EPA and the Department within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by FMC or any successors in interest, EPA and the Department.

Amendment by Consent. This Environmental Covenant may be amended by consent pursuant to Idaho Code § 55-3010. Except for an assignment undertaken pursuant to a governmental reorganization, assignment of the Environmental Covenant to a new holder is an amendment.

Duration and Termination. The Activity and Use Limitations shall apply to the Property, or any subdivided portion thereof, in perpetuity unless FMC or its successors in interest apply to EPA and the Department to have this Environmental Covenant terminated pursuant to Idaho Code § 55-3010 and demonstrate that contaminated soils and ground water are at levels the EPA and the Department deem in writing to be adequate for the Property, or any subdivided portion thereof, to be developed for unrestricted use.

Provisions to Run With the Land. Each and all of the Activity and Use Limitations shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Activity and Use Limitations are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property.

Concurrence of Subsequent Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property to be in accord with the foregoing and to agree for and among themselves, and their successors, that the Activity and Use Limitations as herein established must be adhered to and that their interest in the Property shall be subject to the Activity and Use Limitations contained herein.

Recording/ Filing of Environmental Covenant. This Environmental Covenant and any amendment or termination of the Environmental Covenant shall be recorded in the Power County recorder's office. This Environmental Covenant shall be recorded by FMC or its successors in interest within fifteen (15) days of receipt of this Environmental Covenant signed by all parties. Any amendment or termination shall be recorded by the owner at that time within fifteen (15) days of receipt of such amendment or termination signed by all parties. Within thirty (30) days of the recording of this Environmental Covenant or any amendment or termination, FMC, its successors in interest or the owner at the time of amendment or termination shall provide to EPA and the Department a copy of this recorded Environmental Covenant or any amendment or termination of this Environmental Covenant. Upon receipt of the copy of the recorded Environmental Covenant, and any amendment or termination, the Department shall post the copy of the fully executed instrument in the Registry as required by Idaho Code Section 55-3012(1). In addition, a copy of the recorded Environmental Covenant, or any amendment or termination, shall be provided by the owner at that time to the

following persons: (a) each person that signed the Environmental Covenant; (b) each person holding a recorded interest in the Property; (c) each person in possession of the Property; (d) Power County; and (e) any other person as EPA or the Department may require. The validity of the Environmental Covenant is not affected by failure to provide a copy of the Environmental Covenant as required under this section.

Compliance Reporting. FMC, and/or any successors in interest, shall submit annually to the Department and EPA written documentation verifying that the activity and use limitations remain in place and compliance with the activity and use limitations.

Enforcement. EPA, the Department and any party to the Environmental Covenant shall have authority to enforce the Activity and Use Limitations against the owner at the time of a violation of this Environmental Covenant and any other person then using the Property. Failure to comply with any of the Activity and Use Limitations set forth herein shall be grounds for EPA, the Department, or their successors, to require the owner at that time to correct or remove any violations of this Environmental Covenant. Violation of this Environmental Covenant shall be grounds for EPA, the Department or their successors to file civil actions against the owner at that time as provided by law or in equity including, without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011.

Non-Waiver. No failure on the part of EPA, the Department or any holder at any time to require performance of any term of this Environmental Covenant shall be taken or held to be a waiver of such term or in any way affect the rights of EPA, the Department or any holder to enforce such term.

Property Access. EPA and the Department shall have a right of access to the Property at reasonable times for the purposes of evaluating compliance with this Environmental Covenant.

Notice of Conveyance of Property. Within thirty (30) days after the closing of any conveyance of the Property, or part thereof, the conveyor of the Property shall provide written notice to EPA, the Department and Power County regarding the name and address of all the then owners and/or occupants of the Property, or part thereof, conveyed. EPA and the Department shall not, by reason of this Environmental Covenant, have authority to approve, disapprove, or otherwise affect any conveyance of the Property except as otherwise provided by law.

Notices. All notices required or permitted to be given hereunder shall be in writing and mailed in the United States Mail, postage prepaid, by certified or registered mail, return receipt requested, to the appropriate address indicated below or at such other place or places as FMC or its successors, EPA or its successors, or the Department or its successors, may, from time to time, respectively, designate in a written notice given to the other parties. Notices that are deposited in the United States Mail in accordance with the terms of this provision shall be deemed received three (3) days after the date of mailing thereof.

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FMC IDAHO LLC:

FMC Corporation  
**ATTN:** Barbara Ritchie  
Associate Director, Environmental  
1735 Market Street  
Philadelphia, Pennsylvania 19103

EPA:

U.S. Environmental Protection Agency  
**ATTN:** Kira Lynch  
EMF Superfund Project Manager  
Office of Environmental Cleanup (ECL-113)  
1200 Sixth Avenue  
Seattle, Washington 98101

THE DEPARTMENT:

Idaho Department of Environmental Quality  
**ATTN:** State Response Program Manager  
1410 N. Hilton  
Boise, Idaho 83706

Partial Invalidity. If any portion of the Environmental Covenant 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 invalidated portion had not been included herein.

Headings. Headings at the beginning of each section of this Environmental Covenant are solely for the convenience of the parties and are not a part of the Environmental Covenant.

Idaho Code References. All references to the Idaho Code sections include successor provisions.

Reservation of Rights. Notwithstanding any provision of this Environmental Covenant, EPA and the Department retain all of their access and enforcement authorities under any applicable statute or rule. Nothing in this Environmental Covenant shall affect the ability of EPA or the Department to enforce the terms of any consent decree or other agreement or order relating to remediation of the Property entered into between EPA and/or the Department, on the one hand, and FMC and/or other parties. Nothing in this Environmental Covenant shall affect the obligations of FMC or other parties under any consent decree or other agreement or order. Acceptance by EPA and the Department hereunder is based upon the information presently known or available to EPA and the Department with respect to the environmental condition of the Property, and EPA and the Department reserve the right to take appropriate action under applicable authorities in the event EPA or the Department determines that new information warrants such action.

Effective Date. The effective date of this instrument shall be the date the fully executed Environmental Covenant is recorded at the Power County recorder's office.

**Signature and Acknowledgments**

**Accepted:**

**Idaho Department of Environmental Quality**

Signature: \_\_\_\_\_

Printed Name: Toni Hardesty

Title: Director, Idaho Department of Environmental Quality

Date: \_\_\_\_\_

State of Idaho )

) ss.

County of Ada )

On this 2 day of September, in the year 2010, before me, a Notary Public in and for said County and State, personally appeared Toni Hardesty, known or identified to me to be the Director of the Idaho Department of Environmental Quality that executed this Environmental Covenant, and acknowledged to me that the Idaho Department of Environmental Quality executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public for Idaho: \_\_\_\_\_

Residing at: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

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**Signature and Acknowledgments**

**Accepted:**

**United States Environmental Protection Agency**

Signature: 

Printed Name: Daniel D. Opalski

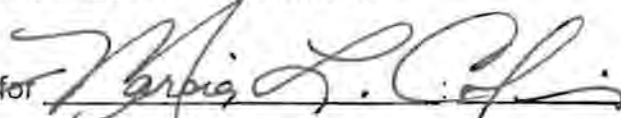
Title: Director, Office of Environmental Cleanup, Region 10

Date: 8/26/2010

State of Washington )  
 ) ss.  
County of King )

On this 26<sup>th</sup> day of AUGUST, in the year 2010, before me, a Notary Public in and for said County and State, personally appeared DANIEL D. OPALSKI, known or identified to me to be the DIRECTOR, OFFICE OF ENVIRONMENTAL CLEANUP the United States Environmental Protection Agency that executed this Environmental Covenant, and acknowledged to me that the United States Environmental Protection Agency executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for 

Residing at: SEATTLE, WASHINGTON

Commission Expires: 7/31/13



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**Signature and Acknowledgments**

**Accepted:**

**FMC Idaho LLC**

Signature: \_\_\_\_\_

Printed Name: John T. Bartholomew

Title: President

Date: 8/9/2010

State of Pennsylvania )  
 ) ss.  
County of Philadelphia )

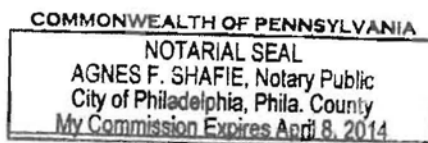
On this 9<sup>th</sup> day of August, in the year 2010, before me, a Notary Public in and for said County and State, personally appeared John T. Bartholomew, known or identified to me to be the President of FMC Idaho, LLC that executed this Environmental Covenant, and acknowledged to me that FMC Idaho LLC executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Agnes F. Shafie : \_\_\_\_\_

Residing at: FMC Corporation, 1735 Market Street, Philadelphia PA 19103

Commission Expires: April 8, 2014





### SCHEDULE A

A parcel of land located in the SW ¼ of the NE ¼, and in the SE ¼ of the NW ¼, and in US Government Lots 5 and 8, all in section 7, T6S, R34E, B.M., Power County, Idaho, more particularly described as follows:

Beginning at the Northeast corner of the SE ¼ NW ¼ of said section 7, said corner being marked by a found 5/8-inch diameter rebar with a 2-inch diameter aluminum cap stamped "PE/LS 4440";

Thence S 0°02'23" E along the meridional centerline of section 7, and along the West deed line of Parcel B, described in instrument #166781, 350.01 feet to the Southwest deed corner of said Parcel B, said point being marked by a found ½-inch rebar with a yellow plastic cap stamped "PE/LS 4440";

Thence S 89°32'13" E parallel with the North 1/16 line of section 7, and along the South deed line of

Parcel B, 674.35 feet to the Northeast deed corner of Parcel C, described in instrument #166780, said point being marked by a found ½-inch rebar with a yellow plastic cap stamped "PE/LS 4440";

Thence S 24°32'00" E along the Easterly deed line of said Parcel C, 81.90 feet to the Southwest deed corner of Parcel D, described in instrument #166781, said corner being marked by a found ½-inch rebar with a yellow plastic cap stamped "PE/LS 4440";

Thence S 71°43'51" E along the Southerly deed line of said instrument #166781, 113.39 feet to the Southeast deed corner of said Parcel D, said corner being marked by a found ½-inch rebar with a yellow plastic cap stamped "PE/LS 4440";

Thence N 21°03'32" E along the Easterly deed line of said Parcel D, and along the Westerly bank of the Portneuf River, 62.92 feet to a point on the South deed line of instrument #164682, said point being the Northeast deed corner of said Parcel D, and said point being marked by a found ½-inch rebar with a yellow plastic cap stamped "PE/LS 4440";

Thence S 89°32'13" E along the South deed line of said instrument #164682, 82.69 feet to a point on the Easterly Bank of the Portneuf River, said point being on the Easterly deed line of instrument #164922, said point being marked by a set 5/8-inch diameter rebar with a yellow plastic cap stamped "PLS 4440";

Thence Southeasterly along the Easterly bank of the Portneuf River the following six courses and distances:

S 3°37'20" W, 359.02 feet; S 6°00'46" E, 120.27 feet; S 21°19'31" E, 48.04 feet;

S 57°01'20" E, 218.85 feet; S 44°19'16" E, 129.23 feet; S 7°50'22" E, 45.66 feet

to a point on the Northerly line of the frontage road known as Batiste Lane, said point being marked by a set 5/8-inch diameter rebar with a yellow plastic cap stamped "PLS 4440";

Thence Westerly along said Northerly line of Batiste Lane the following eight courses and distances:

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S 86°45'14" W, 585.53 feet to a found State of Idaho right-of-way monument;  
 Thence N 83°08'56" W, 150.65 feet to a found State of Idaho right-of-way monument;  
 Thence S 89°18'25" W, 376.93 feet to a point of tangency with a 1372.40 foot radius curve, said point being marked by a found State of Idaho right-of-way monument;  
 Thence Northwesterly along a curve to the right, said curve having a central angle of 23°42'44", a radius of 1372.40 feet and a chord bearing of N 78°50'13" W, for an arc length of 567.97 feet to a point of non-tangency, said point being marked by a found State of Idaho right-of-way monument;  
 Thence N 73°14'35" W, 181.45 feet to a found State of Idaho right-of-way monument;  
 Thence N 66°58'13" W, 444.69 feet to a point of tangency with a 326.48 foot radius curve, said point being marked by a found State of Idaho right-of-way monument;  
 Thence Westerly along a curve to the left, said curve having a central angle of 53°41'54", a radius of 326.48 feet and a chord bearing of S 86°10'50" W, for an arc length of 305.98 feet to a point of non-tangency, said point being marked by a found State of Idaho right-of-way monument;  
 Thence S 59°19'48" W, 16.83 feet to a point on the Easterly line of Tank Farm Road, said point being marked by a set 5/8-inch diameter rebar with an aluminum cap stamped "PLS 4440";  
 Thence Northerly along said Easterly line of Tank Farm Road the following four courses and distances:  
 N 30°40'10" W, 9.42 feet to a point of tangency with a 656.20 foot radius curve, said point being marked by a found State of Idaho right-of-way monument;  
 Thence Northwesterly along a curve to the right, said curve having a central angle of 31°17'50", a radius of 656.20 feet and a chord bearing of N 15°01'15" W, for an arc length of 358.44 feet to a point of non-tangency, said point being marked by a found State of Idaho right-of-way monument;  
 Thence N 0°38'07" E, 159.48 feet to a found State of Idaho right-of-way monument;  
 Thence N 1°48'24" W, 354.04 feet to a point on the Southerly line of Tank Farm Road, said point being marked by a found State of Idaho right-of-way monument;  
 Thence N 89°26'17" W, 88.72 feet to a point on the Westerly line of Tank Farm Road, said point being marked by a found State of Idaho right-of-way monument;  
 Thence Southerly along said Westerly line of Tank Farm Road the following five courses and distances:  
 S 2°55'58" W, 403.93 feet to a found State of Idaho right-of-way monument;  
 Thence S 0°26'27" E, 109.48 feet to a point of non-tangency with a 776.20 foot radius curve, said point being marked by a found State of Idaho right-of-way monument;  
 Thence Southeasterly along a curve to the left, said curve having a central angle of 31°15'29", a radius of 776.20 feet and a chord bearing of S 14°45'20" E, for an

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arc length of 423.46 feet to a point of non-tangency, said point being marked by a set 5/8-inch diameter rebar with an aluminum cap stamped "PLS 4440";

Thence S 30°40'42" E, 203.18 feet to a found State of Idaho right-of-way monument;

Thence S 0°17'17" E, 66.23 feet to a point on the North line of Interstate 86 (I-86), said point being marked by a found State of Idaho right-of-way monument;

Thence Westerly along said North line of I-86, the following three courses and distances:

S 77°10'00" W, 664.78 feet to a found State of Idaho right-of-way monument;

Thence S 89°19'20" W, 312.56 feet to a point of tangency with a 11,609.10 foot radius curve, said point being marked by a found State of Idaho right-of-way monument;

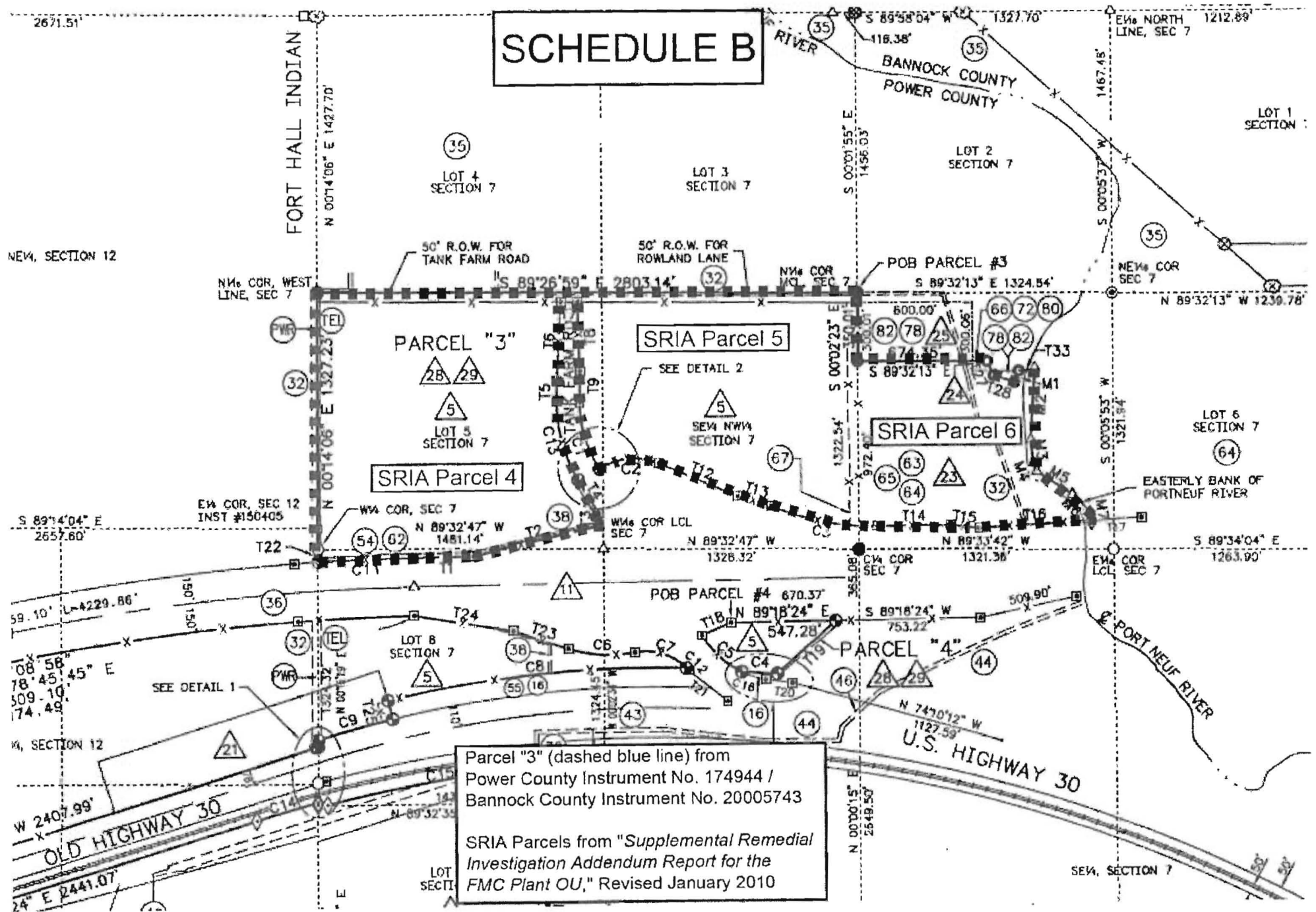
Thence Westerly along a curve to the left, said curve having a central angle of 2°27'18", a radius of 11,609.10 feet and a chord bearing of S 88°05'41" W, for an arc length of 497.42 feet to a point of non-tangency, said point being on the West line of section 7, and said point being marked by a set 5/8-inch diameter rebar with an aluminum cap stamped "PLS 4440";

Thence N 0°16'19" E along the West line of said section 7, 60.89 feet to the West ¼ corner of section 7, said corner being marked by a found 1-inch diameter pipe buried 2.5 feet deep with no markings;

Thence continuing N 0°14'06" E along the West line of said section 7, 1327.23 feet to the North 1/16 corner on the West line of section 7, said corner being marked by a set 5/8-inch diameter rebar with an aluminum cap stamped "PLS 4440";

Thence S 89°26'59" E along the North 1/16 line of section 7, 2803.14 feet to the true point of beginning.

Said parcel containing 92.3 acres, more or less.



Parcel "3" (dashed blue line) from  
Power County Instrument No. 174944 /  
Bannock County Instrument No. 20005743

SRIA Parcels from "Supplemental Remedial  
Investigation Addendum Report for the  
FMC Plant OU," Revised January 2010

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## Appendix D – Map of Power County Heavy Industrial Zone around Site

