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Governor Cuomo Announces Historic Environmental Enforcement Settlement with FMC Corporation

One of State's Largest Environmental Settlements Will Require FMC to Address Violations and Historic Contamination in Niagara County and Fully Reimburse the State for \$31 Million Already Spent Cleaning Up the Site

Settlement Includes \$2.4 Million Penalty and \$1 Million for Environmental Benefit Project

State Continues to Oversee Comprehensive Cleanup after Decades of Chemical Releases from FMC's Middleport Facility

Governor Andrew M. Cuomo today announced the settlement of one of New York's largest environmental enforcement actions in state history. The settlement requires the FMC Corporation to clean up arsenic and other hazardous contamination affecting areas in and around its facility in Middleport, Niagara County, and includes \$2.4 million in penalties and \$1 million for a community-based environmental benefit project.

"When the health of our communities is threatened, we aggressively pursue polluters and hold them accountable," Governor Cuomo said. "The state is already working diligently to protect the public from contamination released by the FMC Corporation and this comprehensive enforcement agreement requires the company to reimburse taxpayers millions of dollars for past cleanup actions and invest hundreds of millions more until the job

is done."

DEC Commissioner Basil Seggos said, "This significant settlement is a major victory for environmental justice and a major victory for New York's strict environmental laws put in place to protect public health. Most importantly, it's a victory for the residents of the Niagara County neighborhoods who, through this Consent Order, are ensured that the environmental contamination is cleaned up by the polluter. I'm proud of the perseverance demonstrated by DEC's talented staff in their tenacious fight for fairness and requiring a real plan to fund and complete this extensive cleanup."

FMC Corporation's Middleport facility is a 103-acre pesticide formulation and packaging plant that previously manufactured arsenic-based pesticides and other chemical products. The primary contaminant of concern at this site is arsenic, which has been detected at elevated levels of up to 60,000 parts per million (ppm) on-site, and approximately 4,000 ppm off-site. Other contaminants include methylene chloride, pesticides such as DDT, and other organic and inorganic compounds.

Uncontrolled stormwater runoff, flood events, spills, releases, overflows, and air deposition have contaminated sediment, surface water, soil, and groundwater at the facility's property and off-site areas including residential and commercial properties and the adjacent Royaltan-Hartland Central School property. In addition, contamination has migrated to negatively impact miles of creeks and culverts downgradient of the FMC facility, adversely impacting birds, fish, and wildlife in the Jeddo and Johnson Creek drainage basins.

The DEC's enforcement actions include a consent order that requires the cleanup of all contaminated areas both on-site and off-site and avoids a protracted and costly legal battle that could have stalled cleanup progress for years. A prior 1991 Administrative Order on Consent with the United States Environmental Protection Agency (EPA) is terminated and replaced by DEC's new order, which requires a more thorough approach to address arsenic and other chemical impacts to the facility, residences, the school, and natural resources. Major highlights of the new consent order include:

- FMC will reimburse the State \$31 million for costs related to the cleanup performed

through the end of 2018. These funds will be returned to the State Superfund Program where they can be used to accelerate other critical cleanup projects;

- A \$1 million environmental benefit project to help compensate the community for the impacts created by FMC's contamination;
- FMC will reimburse DEC up to \$15 million per year over the next two years (2019-20) for costs incurred by the State as it completes the cleanup of surrounding residential properties and the Royalton-Hartland School;
- FMC will assume all cleanup responsibilities after 2020 with stringent DEC oversight until the State determines the work is complete;
- FMC will pay penalties of \$2.4 million to resolve decades of violations at the facility. A portion of the penalty will help fund habitat restoration projects related to past wildlife impacts caused by chemical releases;
- The settlement of outstanding state environmental violations will help the company protect current jobs at the facility and enable it to plan for potential future growth;
- FMC will fund an on-site environmental monitor at the facility and implement a site management plan to prevent future environmental violations;
- The facility will be required to fully upgrade the on-site wastewater treatment plant and expand the groundwater collection system to provide full hydraulic control and prevent off-site migration of groundwater contamination; and
- A substantial increase in financial assurance to \$80 million to ensure that funds will be available to address the contamination.

The site is currently regulated by DEC as both a State Superfund site and a facility subject to Resource Conservation and Recovery Act (RCRA) corrective action. Additional information about the site can be found at DEC's FMC Middleport Facility webpage: <https://www.dec.ny.gov/chemical/54220.html>.

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