

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: FMC Corporation
Petition for Variance

OGC File No. 07-2163

FINAL ORDER GRANTING PETITION FOR
VARIANCE FROM RULE 62-522.300(3), F.A.C.

On November 29, 2007, FMC Corporation (FMC) filed a petition for variance from requirements in Rule 62-522.300(3) of the Florida Administrative Code (F.A.C.). The petition was for a variance under section 120.542 of the Florida Statutes, from Rule 62-522.300(3), F.A.C., which prohibits a zone of discharge for discharges through wells, in order to use an in-situ remediation process. This process involves the use of wells or borings which is considered installation of one or more temporary Class V underground injection control wells at the site of contamination. A notice of receipt of the petition was noticed in the Florida Administrative Weekly on January 25, 2008.

1. Petitioner is located at 1735 Market Street, Philadelphia, Pennsylvania.
2. FMC sells a product called Dissolvine® E-FE-13 that is a chelated iron activating agent for persulfate which can be used in the remediation of ground water contaminated with chlorinated ethenes, phenolics, polyaromatic hydrocarbons, petroleum hydrocarbons, BTEX, MTBE, 1,4-dioxane, and other contaminants.
3. Under Rule 62-520.420, F.A.C., the standards for Class G-II ground waters include the primary and secondary drinking water standards of Rules 62-550.310 and 62-

550.320, F.A.C., and the minimum criteria of Rule 62-520.400, F.A.C., (the ground water target cleanup levels in Chapter 62-777, F.A.C., are used as a convenience). On August 27, 2001, Rules 62-522.300(2) and 62-528.605(3), F.A.C., were amended to allow injection of products for ground water cleanup that do not meet primary or secondary drinking water standards. Specific limitations were included in the rules (1. A zone of discharge is allowed for primary standards for ground water for closed-loop re-injection remediation systems; 2. A zone of discharge is allowed for the prime constituents (necessary for the remediation process) of the reagents used to remediate site contaminants. 3. A zone of discharge is allowed for secondary standards for ground water; and 4. A Department-approved remedial action plan that addresses the duration and size of the zone of discharge and ground water monitoring requirements is mandatory). The use of Dissolvine® E-FE-13 requires a variance for arsenic, cadmium, chromium, mercury, nickel, lead, cobalt, and molybdenum because these parameters are present in amounts that exceed the primary drinking water standards or minimum criteria and are not necessary for the remediation process. Ammonia nitrogen, iron, manganese, total dissolved solids (TDS), and color which are also present in amounts that exceed the standards will be addressed in a site-specific Remedial Action Plan, pursuant to Rule 62-522.300(2)(c), F.A.C., without the need for a variance because they are either prime constituents (ammonia nitrogen and iron) or have secondary standards (manganese, TDS, and color).

4. Dissolvine® E-FE-13 (Dissolvine) is used to activate persulfate. Dissolvine can be added to persulfate directly or added as a solution in conjunction with, prior to, or after injection of the persulfate. Dissolvine is to be injected through wells or borings into the soil and ground water. When persulfate is activated sulfate radicals are formed which oxidize and destroy the contaminants. The injected fluid, at a maximum concentration of ten percent Dissolvine by

weight, may contain as much as 0.025 mg/L arsenic (primary drinking water standard 0.01 mg/L), 0.10 mg/L cadmium (primary drinking water standard 0.005 mg/L), 0.20 mg/L chromium (primary drinking water standard 0.1 mg/L), 0.01 mg/L mercury (primary drinking water standard 0.002 mg/L), 0.10 mg/L nickel (primary drinking water standard 0.10 mg/L), 1.00 mg/L lead (primary drinking water standard 0.015 mg/L), 0.20 mg/L cobalt (cleanup target level of 0.14 mg/L) and 0.20 mg/L molybdenum (cleanup target level of 0.035 mg/L) . Arsenic, cadmium, chromium, mercury, nickel, lead, cobalt, and molybdenum are only allowed to exceed their ground water standard or cleanup target level within an area extending out to a radius of 50 feet from any point of injection for a period not to exceed 12 months from the last injection. The presence of arsenic, cadmium, chromium, mercury, nickel, lead, cobalt, and molybdenum above the drinking water standards maximum contaminant levels (MCLs) or cleanup target level have no anticipated adverse impacts to human health because such exceedances will occur in ground water at a site already contaminated and the ground water is not presently used for domestic purposes. No other constituents of the injected product or resulting remediation by-products will exceed any primary or secondary drinking water standard or cleanup target level not included in the rule amendments discussed in paragraph 3 above. The arsenic, cadmium, chromium, mercury, nickel, lead, cobalt, and molybdenum will return to meeting their respective standards or natural background, whichever is less, within one year from injection.

5. The injection of Dissolvine through temporary wells or borings is defined as a Class V, Group 4 (injection wells associated with an aquifer remediation project) underground injection control well, as per Rule 62-528.300(1)(e)4, F.A.C. Under Rule 62-528.630(2)(c), F.A.C., "Class V wells associated with aquifer remediation projects shall be authorized under the

provisions of a remedial action plan . . . provided the construction, operation, and monitoring of this Chapter are met.”

6. The Rule, 62-522.300(3), F.A.C., from which this petition seeks a variance, prohibits the Department from granting a zone of discharge for a discharge through an injection well to Class G-II ground water. Strict adherence to this rule would preclude the Department from granting approval for the use of Dissolvine for in-situ chemical oxidation remediation of contaminated ground water and soils.

7. The applicable rules state in pertinent part:

62-522.300(1) . . . [N]o installation shall directly or indirectly discharge into any ground water any contaminant that causes a violation in the ground water quality standards and criteria for the receiving ground water as established in Chapter 62-520, F.A.C., except within a zone of discharge established by permit or rule pursuant to this chapter.

62-522.300(3) Other discharges through wells or sinkholes that allow direct contact with Class G-I, F-I, or Class G-II ground water shall not be allowed a zone of discharge.

8. FMC has stated in its petition that to apply the zone of discharge prohibition to the use of Dissolvine would create a substantial hardship or would violate the principles of fairness because Dissolvine will facilitate remediation of contaminated ground water as inexpensively as possible, without causing further harm to the environment or public health. Remediation would improve the water quality, and to prohibit any exceedance of the specified standards in such a small area of already contaminated ground water and for short duration would cause a substantial hardship. By allowing the use of Dissolvine contaminated ground water may be returned to a usable condition.

9. A zone of discharge for the use of Dissolve is necessary because of the temporary (not to exceed one year) exceedance of the arsenic, cadmium, chromium, mercury, nickel, lead, cobalt, and molybdenum standards in the ground water surrounding the points of injection. Because this ground water is already contaminated and does not meet all applicable standards, allowing a zone of discharge as part of an approved remediation strategy for sites contaminated with chlorinated ethenes, phenolics, polyaromatic hydrocarbons, petroleum hydrocarbons, BTEX, MTBE, 1,4-dioxane, and other contaminants meets the purpose of the underlying statute, which is to improve the quality of the waters of the state for beneficial uses. Such contaminated ground water is not presently used for drinking purposes, thus posing no threat to human health.

10. The Department received no comments about the petition for variance.

11. For the foregoing reasons, FMC has demonstrated that it is entitled to a variance from the prohibition of zones of discharge in Rule 62-522.300(3), F.A.C., for its remedial product, with the conditions below.

a. Use of this product must be through a Department-approved remedial action plan, or other Department-enforceable document, for an aquifer remediation project and such approval shall not be solely by a delegated local program.

b. The discharge to the ground water must be through a Class V, Group 4 underground injection control well which meets all of the applicable construction, operating, and monitoring requirements of Chapter 62-528, F.A.C.

c. The extent of the zone of discharge for arsenic, cadmium, chromium, mercury, nickel, lead, cobalt, and molybdenum shall be within a 50-foot radius from the points of injection and the duration of the zone of discharge shall be limited to one year from the last injection. This

will allow time for the temporarily exceeded parameters to return to the drinking water standards set forth in chapter 62-550, F.A.C., or their naturally occurring background levels at the site, whichever is less stringent.

d. The injection of the product shall be at such a rate and volume (Dissolvine concentration no greater than 10 percent) that no undesirable migration occurs of the product, its by-products, or the contaminants already present in the aquifer.

e. The Department-approved remedial action plan shall address appropriate ground water monitoring requirements associated with the use of Dissolvine for remediation based on site-specific hydrogeology and conditions. These shall include the sampling of ground water at monitoring wells located outside the contamination plume, before use of Dissolvine, to determine the naturally occurring background levels of arsenic, cadmium, chromium, mercury, nickel, lead, cobalt, molybdenum, ammonia nitrogen, iron, manganese, TDS, and color which are the parameters pertinent to this variance. Monitoring of these parameters in ground water should also be included downgradient from the injection points for at least one year after active remediation. Ammonia nitrogen, iron, manganese, TDS, and color are included herein solely because of the recent rules amendments discussed in paragraph 3 above, which require any parameter that will not meet its standard, and for which a variance is no longer needed, to be included in the remedial action plan for monitoring and zone of discharge purposes. Copies of all ground water monitoring data for all remedial action sites where this product will be used, in regard to this variance, must be submitted to the Underground Injection Control Program, MS 3530, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400. Submittals shall include the following: (1) the Florida Department of Environmental Protection facility identification number for the cleanup site; (2) the date that the most recent injection occurred; (3) the well(s) at which

the most recent injection occurred; (4) the total volume of all fluid(s) associated with the most recent injection and the concentration of Dissolvine in that total volume, expressed as a percent by weight; (5) the cumulative volume of all fluid(s) injected since remediation began and the concentration of Dissolvine in that cumulative volume, expressed as a percent by weight. If any water is withdrawn from the well(s) and not reinjected (except for sampling purposes) then the submittal of the monitoring data must also identify the wells from which the water was withdrawn and provide a cumulative record of the volume withdrawn.

This order will become final unless a timely petition for an administrative proceeding is filed pursuant to the provisions of sections 120.569 and 120.57 of the Florida Statutes. Any person whose substantial interests are affected by the Department's action may file such a petition. The petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000. Petitions filed by FMC Corporation or any of the parties listed below must be filed within 21 days of receipt of this order. Petitions filed by any other person must be filed within 21 days of publication of the public notice or within 21 days of receipt of this order, whichever occurs first. Under section 120.60(3), of the Florida Statutes however, any person who asked the Department for notice of agency action may file a petition within 21 days of receipt of such notice, regardless of the date of publication. A petitioner must mail a copy of the petition to FMC Corporation, 1735 Market Street, Philadelphia, Pennsylvania, at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57 of the Florida Statutes, or to intervene in this proceeding and

participate as a party to it. Any subsequent intervention will only be at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name, address, and telephone number of each petitioner; the Department case identification number and the county in which the subject matter or activity is located;
- (b) A statement of how and when each petitioner received notice of the Department action;
- (c) A statement of how each petitioner's substantial interests are affected by the Department action;
- (d) A statement of the material facts disputed by the petitioner, if any;
- (e) A statement of facts that the petitioner contends warrant reversal or modification of the Department action;
- (f) A statement of which rules or statutes the petitioner contends require reversal or modification of the Department action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department final action may be different from the position taken by it in this order. Persons whose substantial interests will be affected by any such final

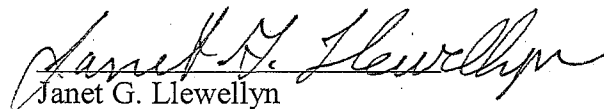
decision of the Department on the petitions have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation under section 120.573 of the Florida Statutes is not available for this proceeding.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above.

A party to this order has the right to seek judicial review of it under section 120.68 of the Florida Statutes, by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within thirty days after this order is filed with the clerk of the Department.

DONE AND ORDERED this 31st day of March 2008 in Tallahassee, Florida.



Janet G. Lewellyn

Director

Division of Water Resource Management

Department of Environmental Protection

2600 Blair Stone Road

Mail Station 3500

Tallahassee, Florida 32399-2400

Telephone (850) 245-8335

FILED ON THIS DATE, PURSUANT TO
§120.52, FLORIDA STATUTES, WITH THE
DESIGNATED DEPARTMENT CLERK, RECEIPT
OF WHICH IS HEREBY ACKNOWLEDGED.

Shirley Shields 04-02-08

CLERK

DATE

Copies furnished to:

Richard Deuerling, MS 3530

Cynthia Christen, MS 35

George Heuler, MS 3530

Jeff Lockwood, MS 4535

Rick Ruscito, MS 4590

Gary Millington, MS 4535

Richard Drew, MS 3535

Cathy McCarty, MS 3530

Lea Crandall, MS 35

Donnie McClaugherty, 3530

Robert Cowdery, MS 4520

Brian Dougherty, MS 4535

Bryan Baker, MS 4550

NOTICE OF RIGHTS OF SUBSTANTIALLY AFFECTED PERSONS

This determination is final and effective on the date filed with the Clerk of the Department unless a timely and sufficient petition for an administrative hearing is filed under sections 120.569 and 120.57 of the Florida Statutes as provided below. If a sufficient petition for an administrative hearing is timely filed, this determination automatically becomes only proposed agency action subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. The procedures for petitioning for a hearing are set forth in Rules 28-106.201-.202 and 62-110.106, F.A.C., and are summarized below.

Be advised that, under Florida law, your neighbors and other parties who may be substantially affected by this determination have a right to request an administrative hearing. Because the administrative hearing process is designed to re-determine final agency action, the filing of a petition for an administrative hearing may result in a final determination different from this determination. Generally speaking, the 21-day period for filing a petition begins to run on the date of publication of the notice (if published) or the date a person receives actual notice, whichever occurs first (see below).

The Department will not publish notice of this determination. Publication of notice by you is optional and is

not required for you to proceed. However, in the event that an administrative hearing is held and the Department's determination is reversed, proceeding with the proposed activity before the time period for requesting an administrative hearing has expired would mean that the activity was conducted without the required permit or authorization. In cases where notice is not published, there may be instances in which a substantial amount of time could pass before an affected person receives notice of the agency action.

If you wish to limit the time within which all substantially affected persons may request an administrative hearing, you may elect to publish, at your own expense, the notice specified below in the legal advertisement section of a newspaper of general circulation in the county where the activity is to take place. A single publication will suffice.

If you wish to limit the time within which any specific person(s) may request an administrative hearing, you may provide direct notice to such person(s), by certified mail and enclosing a copy of this determination.

For the purposes of publication, a newspaper of general circulation means a newspaper meeting the requirements of sections 50.011 and 50.031 of the Florida Statutes. In the event you do publish this notice, within seven days of publication, you must provide to the following address proof of publication issued by the newspaper as provided in section 50.051 of the Florida

Statutes. If you provide direct written notice to any person as noted above, you must provide to the following address a copy of the direct written notice: Florida Department of Environmental Protection, UIC Program, MS 3530, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; Attn: Cathy McCarty.

NOTICE
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

The Department of Environmental Protection gives notice that a variance from the zone of discharge prohibition for injection through wells has been granted to FMC Corporation, for the use of Dissolvine® E-FE-13 for aquifer remediation at sites contaminated with chlorinated ethenes, phenolics, polyaromatic hydrocarbons, petroleum hydrocarbons, BTEX, MTBE, 1,4-dioxane, and other contaminants. This variance grants a zone of discharge for arsenic, cadmium, chromium, lead, mercury, nickel, cobalt, and molybdenum, not to exceed 50 feet from any point of injection, and not to exceed one year in duration from the date of the last injection.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Mediation is not available.

If a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Intervention will be permitted only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205 of the Florida Administrative Code (F.A.C.).

In accordance with Rules 28-106.111(2) and 62-110.106(3)(a)(4), F.A.C., petitions for an administrative hearing must be filed within 21 days of publication of the notice or receipt of written notice, whichever occurs first. Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000 before the applicable deadline. A timely request for extension of time will toll the running of the time period for filing a petition until the request is acted upon. Upon motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect, the Department may also grant the requested extension of time.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within the appropriate time period shall constitute a waiver of that right.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;

- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Under sections 120.569(2)(c) and (d) of the Florida Statutes, a petition for administrative hearing shall be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

Complete copies of all documents relating to this determination are available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, at Florida Department of Environmental Protection, UIC Program, Room 212F, 2600 Blair Stone Road, Tallahassee, Florida. Please call Cathy McCarty to set up appointment, 850/245-8654.