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FMC

May 23, 2002

Chairman Blaine J. Edmo
Fort Hall Business Council
Shoshone-Bannock Tribes
P.O. Box 308
Fort Hall, Idaho 83203

Dear Mr. Chairman:

I would like to thank you for your response of May 10th. As of this writing, I have not received your letter but Paul Yochum faxed me a copy on Monday. Regardless, I would like to further discuss my views on this subject.

First, I appreciate your sharing with me your views, position and clarifying your rationale for the payment. Unfortunately, neither you nor I were in the discussions and negotiations with Paul McGrath. Thus, neither you nor I can relate the intent of what was agreed upon at the time. Therefore, I don't think that this is a trust issue or an issue of FMC Corporation living up to our agreements.


I have taken this issue to our Legal Department and they have assembled all the pertinent documents and communications since the start of this in 1997. Our interpretation of both the actual documents and the intent at the time is different than your view of the situation. Some of the key points that they have reviewed with me can be found in the attachment.

Closure of the Pocatello plant has been a very painful situation for everyone. I would think that you have seen good paying jobs go away, loss of a revenue stream from the plant site for the Reservation. The community at large is economically challenged and recent layoffs announcements by Simplot, AMI and the Union Pacific Railroad have just added to the situation. Similarly, FMC was split into two companies on January 1st of this year, FMC Chemical and FTI. The significance of this is that the new FMC Chemical Company has inherited most of the liabilities and financial challenges from the old FMC Corporation. The result is that we no longer have the resources available that we had previously enjoyed as a larger more diverse corporation.

From my perspective, you and I have a decision to make regarding this matter that will set the tone of the future relationship between FMC and Tribes. If we stay the current course based on significantly different views of the Waste Fee, I am afraid that the matter will, most likely, be decided in the courts. This will probably take years and result in a relationship between FMC and the Tribes that is not conducive to cleaning up the site and supporting redevelopment and subsequent Tribal re-employment at the site. This is not the path that I personally want to travel. My goal is to develop a partnership between the new FMC Chemical Company and the Tribes. One of our first imperatives must be to restore the Reservation property back to a state that is mutually acceptable to the Tribes, FMC and the regulators.

As a goodwill gesture to maintain and improve relationships thereby allowing us to focus on the broader needs, I and FMC are willing to enter into good faith discussions leading to successful resolution of this situation.

If you would like to open discussions on this subject, I am willing to meet with you at your convenience. Please let me know how you would like to proceed.

Sincerely,

John I. Bartholomew

AR 003327

FMC Legal Comments re: Tribal Waste Fee

5/22/02

First, the Tribes have never enacted or codified the fee in accordance with the terms and conditions of the agreement between FMC and the Land Use Policy Commission. Those terms and conditions are set forth in the letter from the Land Use Policy Commission to Paul McGrath and Robert Fields dated May 19, 1998. That letter specifically states that:

the Chapter V Amendments to the Operative Guidelines is only temporary for this year. Accordingly, the Hazardous Waste Program will be drafting a Hazardous Waste Act that will include either specific classes or exemptions to ensure that FMC's fixed fee of \$1.5 million remains the same in the future. As part of the process, the FMC Corporation can participate in the public hearing and comment period.

It was never FMC's intent that the fee be applied beyond the first year without it being codified according to a process that provided notice to FMC and an opportunity to comment. Mr. McGrath's letters of May 26, 1998 and June 2, 1998 were merely explaining what FMC was expecting to see codified in the future. To FMC's knowledge, no Hazardous Waste Act has ever been enacted and FMC has certainly not been provided with any opportunity to comment on the specific classes or exemptions regarding payment of the fee. Such a process could have avoided our current disagreement over the scope of the fee.

In the absence of a law codifying the permit fee, the only other possible legal basis for paying the fee might be found in the Land Use Policy Commission's letter of April 13, 1998 regarding the Building Permit and Special Use Permit for Ponds 17, 18 and 19, which required payment of the fee as a condition of the use permit. Now that FMC is no longer disposing of wastes in these ponds, this permit condition is no longer applicable.

Second, even under the temporary provisions of the Chapter V Amendments to the Operative Guidelines, the Hazardous Waste permit fee would apply only at the time of disposal. The definition of "disposal" in the Amendments means "the discharge, deposit injection, dumping, spilling, leaking or placing of hazardous wastes into or on any land. . . ." All of these words involve the act of disposal itself, rather than the mere existence of the disposal unit. Because FMC is no longer disposing of hazardous wastes in the ponds (and, in fact, is now prohibited from doing so by federal law), there is no basis for applying the fee.

It has been suggested by the Tribes that the fee may apply because the ponds are "storing" hazardous wastes. However, the definition of "storage" rules out this interpretation. In the Amendments, "storage" is defined to mean "the containment of hazardous waste either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes." Because EPA has approved the

capping of the ponds (and the Tribes have specifically approved the capping of Pond 18), they are not "temporary" storage units, but rather are disposal units. Because FMC and Astaris paid the fee at the time of disposal, in accordance with the definition of disposal in the Amendments, FMC has completed any fee payment obligations with respect to these ponds.

Third, statements of the Business Council and the Land Use Commission are inconsistent with Mr. McGrath's letter of June 2, 1998. For example, in a Business Council Resolution dated September 1, 1998, in which the Business Council earmarked the uses of the proceeds from FMC's payment of the fee, the Business Council referred to the fee as "Pond Permit Fees." Subsequently, in a letter dated June 14, 2000, Curtis Farmer, then Chairman of the Land Use Policy Commission stated that "[t]he annual permit fee as established by the Shoshone-Bannock Tribes Land Use Policy Commission and agreed to by FMC only covers the permitting of Ponds 17, 18A and 18B which contain hazardous waste." These statements cannot be reconciled with the position taken in a recent letter from the Tribes, and would make it difficult, if not impossible, to present a clear and consistent record in support of applying the fee in the future.

Fourth, any attempt to apply the fees in the future, particularly with regard to Pond 18, will have to be reconciled with the Letter for Capping Pond 18 and Other Benefits dated June 6, 2001. That letter states that "any prior oral or written agreements and communications are hereby superceded, except as provided in this letter" (page 2, emphasis added).

FMC, therefore, believes that we have lived up to our end of the agreement and have shown our good faith by continuing to pay the \$1.5 million fee while we were disposing of wastes in the ponds even though the Land Use Commission never proposed a Hazardous Waste Act to codify the fee. Now that we have stopped disposing of hazardous wastes in the ponds, we see no legal basis for continuing to pay the fee.