

**Middleport Community Input Group
Meeting at Masonic Lodge Hall – Part I Meeting Summary
January 7, 2009 – 5:30 to 6:45 p.m.**

In Attendance:

Bill Arnold – CIG Chairman	Brian McGinnis - FMC
Liz Storch – Resident	Glen Wilson - FMC
Betty Whitney – Resident	Deb Overkamp – AMEC
Liz Bateman – Resident	Erin Rankin - Arcadis
Karen Pollworth - Resident	Wai Chin Lachell – AMEC
Dori Green - Resident	Michael Hinton – NYSDEC
Lynn Andrews – Resident	Ann Howard, RIT – Facilitator
Pat Cousins – Resident (MRAG)	Dan Watts, NJIT – Tech. Consultant
Dick Owen – Resident	Judy Smeltzer – FMC
Dick Westcott – Resident	Dana Thompson - FMC
Christa Lutz – Resident	Meeting Notes – Jim Pasinski,
Larry Lutz – Resident	Carr Marketing Communications

1. Welcome and Introductions

- A. Howard began the meeting, reviewed the agenda, and led introductions.

2. FMC Report

- B. Arnold noted that the CIG had compiled a list of topics that they are requesting an update on from FMC.
- B. McGinnis stated that FMC wanted to discuss the CIG’s impressions of the results of the Dec. 2 and 3 meeting that FMC held with the Agencies. He noted that he had sent an email to B. Arnold to address some of the CIG’s concerns. B. McGinnis stated that FMC feels it is important for the CIG and FMC to keep open lines of communication and for the CIG to freely express opinions to FMC.
- B. Arnold stated that most CIG members generally perceive there to be a lack of progress between FMC and the Agencies and the discussion from the Dec. 2 and 3 meeting partly led to that perception. He stated that there appears to be a lot of paper passing back and forth (paper tag) between FMC and the Agencies.
- B. McGinnis stated that FMC feels the CIG’s frustration over the paper tag but it is part of the process that is in place. He stated that FMC is complying with an Administrative Order on Consent (AOC), which was signed with the Agencies. He stated that the Agencies are in the driver’s seat and that FMC is acting on the order that it is under.
- W. Lachell stated that FMC is mandated to meet certain time frames set forth in the AOC. She stated that each time FMC receives a communication from the Agencies, FMC has a certain time frame in which to respond. Under the terms and conditions of the AOC, the

Agencies are not bound to any time frame to review any FMC submissions or to respond to any FMC communications.

- B. Arnold stated that the CIG believes something must be done to get target and end dates established that both FMC and the Agencies can strive for otherwise there are no target dates for anyone to shoot for and delays will continue to occur.
- W. Lachell stated that FMC pushes as hard as they can but there is nothing they can do to expedite Agencies reviews.
- B. McGinnis stated that some deadlines that FMC must meet are agreed upon, but others are generally set in the AOC. He stated that FMC has 15 days from the receipt of any Agency communication to either comply with the determinations in the Agencies' letter or to request a meeting with the Agencies to discuss the communication. Within 15 days of the meeting or if the Agencies deny FMC's request for a meeting, or if FMC does not request a meeting, FMC must comply or undergo a dispute resolution process described in the AOC. He stated that FMC faces fines/penalties for not meeting an Agency deadline and the company can be fined thousands of dollars a day for missing a deadline. He stated that the Agencies have no deadlines to meet.
- B. Arnold stated that he feels the Agencies not being held to any deadlines is unacceptable.
- E. Rankin stated that FMC met its schedule to submit draft volumes of the RFI report to the Agencies every two months and the Agencies have to prioritize the review of those and other documents submitted by FMC.
- W. Lachell stated that they know the process takes a lot of time and FMC attempts to accelerate the process whenever possible. She stated that it is one of the reasons why FMC submitted the CMS Work Plan before completion of the RFI Report for Air Deposition Area 1. She stated that the RFI Report is typically completed before performance of a CMS. She also stated that FMC proposed the pilot expeditor for the CMS in another attempt to accelerate the process for completion of the CMS.
- A resident stated that another reason for community frustration is that FMC took away their safety net by changing the Property Price Protection (PPP) Program. The resident stated that the replacement program (Home Value Assurance Program) is not nearly as good in their opinion.
- Another resident stated that the ending of the PPP program also bothered them.
- B. McGinnis stated that the PPP program was offered for five years and FMC made a business decision to end it and start the Home Value Assurance Program.
- A resident stated that when the PPP program started everyone thought that the decisions about remediation would have been made by the time the PPP was scheduled to end.
- B. Arnold stated that the Agencies, and to some degree FMC, should both establish end dates to shoot for on all steps remaining in the process.

- A resident stated that schedules have been presented in the past and they have proven to be not relevant.
- W. Lachell stated that when FMC creates a schedule they can only assume what the Agencies review time will be and FMC has no control over half of the items in the schedule.
- A resident suggested that assumed Agency response times should be included in a schedule.
- A. Howard noted that the MCIG agenda included a list of topics that FMC is asked to provide updates on.
- RFI Vol. II for Air Deposition Area: W. Lachell noted that this RFI was discussed at length between FMC and the Agencies on Dec. 2 and 3. She stated that they discussed each others comments and positions but there were no conclusions reached. She stated that there were discussions about soil cleanup objectives and Culvert 105 and the information being included in this RFI draft. She further stated that FMC has proposed an aggressive schedule for revisions.
- E Rankin stated that FMC would be submitting document sections throughout the month.
- W. Lachell stated that the draft RFI report will nearly double in size, which is an indication of the significant effort being put into the document. She stated that FMC feels significant progress has been made on getting this RFI document finalized and approved.
- W. Lachell stated that the most significant revision to report is that a task (originally proposed as part of the CMS in the draft CMS Work Plan) has been added to identify properties that will be included in the CMS. She stated that those properties will now be identified in the RFI report and that some properties that were sampled will not be included in the CMS. She stated that the criteria would be based, in part, on arsenic soil concentrations and the potential source of elevated arsenic levels. FMC would need to prove that FMC is not the source of any elevated arsenic levels on sampled properties that are proposed for exclusion from the CMS. She stated that FMC and the Agencies are still discussing the inclusion/exclusion of properties from the CMS.
- D. Watts asked if FMC would conclude that if a property is included in the CMS that it will require remediation. W. Lachell stated that if a property is included in the CMS it only means that it requires further evaluation and not necessarily remediation. She stated that properties that were remediated via an ICM must be included in the CMS based on administrative requirements and that includes residential property remediated in 2003 and 2007-2008 (Vernon Street and Park Avenue), the Roy-Hart school yard and other properties.
- In response to a resident's question, B. McGinnis stated that there is always a chance that a portion of the schoolyard may need further examination.
- B. Arnold stated that residents who have been part of an ICM have already had their property dug up.

- W. Lachell stated that those residential properties that have been remediated would not need further remediation. However, the remediated properties still need to undergo the CMS regulatory process for the Agencies to make a final determination that FMC has completed remediation of the ICM/Early Action areas.
- A resident asked about the status of the Coe property. B. McGinnis stated that FMC believes the owner will keep the property as is. W. Lachell stated that FMC has an agreement with the property owner that will allow FMC to maintain the cover until it is determined that no further monitoring or maintenance is required.
- E. Rankin stated that on RFI Vol. I FMC is awaiting the Agencies comments.
- E. Rankin stated that RFI Vol. II was the basis of the Dec. 2 and 3 meeting with the Agencies and FMC now has a schedule with the Agencies for FMC submission of revisions. She stated that Culvert 105 south of the canal is being added to RFI Vol. II. In addition, FMC submitted in October 2008 the RFI Vol. IV for all of Culvert 105, and that FMC has asked the Agencies to expedite their review of Vol. IV.
- E. Rankin stated that the Agencies are hoping to host a public meeting in late spring or early summer this year to gather comments on RFI volumes I, II and IV. She stated that the Agencies have made Vol. V (Tributary One RFI) less of a priority.
- E. Rankin stated that FMC and the Agencies are working on scheduling a meeting to discuss each side's concerns with the draft CMS workplan. She noted that final Corrective Action Objectives are a key part of the CMS process.
- CMS Pilot Expediter Proposal: B. McGinnis stated that FMC made the proposal for a CMS pilot expediter to the Agencies and offered to provide reimbursement for salary costs. He stated that FMC was informed that there would likely be a problem with routing the money to the NYSDEC and that the USEPA would likely be in a better position to handle it. He stated that FMC is awaiting a decision from the Agencies.
- Corrective Action Objectives: W. Lachell stated that the Agencies are responsible for determining the Corrective Action Objectives under the AOC in consultation with FMC. She stated that FMC provided suggested changes to the Agency draft but ultimately the final decision is the Agencies. She stated that FMC attempted to provide language that meets the needs of both FMC and the Agencies. She stated that FMC wanted to preserve a few principles, including ensuring that site-specific risk assessment can be used in any decision-making, that meaningful community involvement and feedback would be accepted, that any work would be geared towards minimizing disruptions to the community, and that the USEPA's Green Remediation program techniques would be considered. She stated that the Corrective action Objectives are applicable to all off-site soil/sediment study areas, including the air deposition areas, Culvert 105, Tributary One and areas north of Pearson Road. She added

that FMC believes that it is important that all off-site study areas are evaluated using the same objectives and are treated the same.

- A resident stated that the draft Corrective Action Objectives are not specific enough, with use of words such as “practical” and “relevant.”
- B. McGinnis stated that the CIG can provide feedback to the Agencies and that the Agencies are seeking their feedback.
- B. Arnold stated that his overall impressions of the Corrective Action Objectives is that they are too vague in some areas and have requirements in others that are not achievable therefore he finds them to be unacceptable. He stated that references of 10^{-4} and 10^{-6} cancer risk relate to contamination levels below background and a Hazard Index of one or non cancerous risk leaves no flexibility.
- W. Lachell stated that the Agencies have given the CIG and local governments the opportunity to review the Corrective Action Objectives and comment on them and FMC encourages the community to do so.
- M. Hinton stated that the Corrective Action Objectives started out as just two points several months ago and they have grown from there. He stated that the objectives are intentionally vague to allow for flexibility.
- A. Howard stated that the CIG has issues with references to 10^{-4} and 10^{-6} .
- M. Hinton stated that those references were initially not included in the objectives and NYSDEC Region 9 does not want them included.
- A resident stated that in business and education, objectives that were that vague would never be accepted.
- Another resident stated that the objectives should be specific and measurable.
- B. McGinnis stated that the Corrective Action Objectives act more like guiding principles. M. Hinton stated that the lack of specifics allow for different evaluations and flexibility.
- A resident questioned why the majority of the objectives were vague except for point B, which gets very specific.
- B. Arnold stated that the human health exposure risk of one would determine most existing soil to be unsafe and he is concerned about that being included in the objectives.
- E. Rankin stated that the value of “one” refers to non-cancer risk – not cancer risk. She explained that for non-cancer risk a detailed calculation is done and if the calculated value for non-cancer risk is at or below one then remediation would likely not be necessary while a risk above one suggests remediation may be necessary.
- W. Lachell stated that 10^{-4} and 10^{-6} for excess cancer risks are generally included in Corrective Action Objectives for CMS’s, based on the USEPA’s rules, regulations and guidelines. She stated the CMS will evaluate and compare proposed corrective measures alternatives based on the effectiveness of each alternative to meet Corrective Action Objectives.
- B. Arnold noted that in the June meeting with the Agencies, the DOH stated that a more restrictive guideline would be used concerning those cancer risks, not the EPA guidelines.

- Culvert 105 Sediment Chamber (Catchbasin): E. Rankin explained that the sediment chamber in Margaret Droman Park was cleaned in 2007 by FMC when a certain amount of sediment and soil was built up in it over time. She stated that FMC was then required to submit a maintenance plan for future maintenance. She stated that the Agencies want FMC to collect more data from the catch basin and the two sides will have a call later in January or early February to discuss the issue.
- B. Arnold expressed concern that if an agreement on how to handle a cement chamber buried in the ground to collect sediment was going to be difficult to achieve, how will it be for the more complicated aspects of this RCRA project.
- W. Lachell stated that FMC is requesting the meeting as part of the AOC process. She stated that sediment samples collected from the chamber show that it is not a hazardous waste and FMC believes the Culvert 105 Sediment Chamber maintenance and monitoring plan would not be a significant issue.
- M. Hinton stated that the Agencies requested additional monitoring of the chamber to ensure that contamination does not travel.
- W. Lachell noted that the chamber was installed by the Canal Corp.
- Wood Parcel Site Management Plan: E. Rankin noted that FMC submitted a maintenance plan to the Agencies and the Agencies have replied with many comments. B. McGinnis indicated that FMC will be sending a reply to the Agencies.

3. Proposed 2009 Work Schedule

- B. McGinnis noted that FMC has not submitted any plans for ICM's to take place in 2009 and that FMC does not anticipate doing so. He stated that CMS process needs to be completed in the study areas before any further remediation can be identified. FMC and the Agencies need to determine the significance of the arsenic levels and discuss what may or may not be attributable to FMC. He stated that the farther away the study areas are from the FMC plant, the task of identifying the scope of any remediation becomes more difficult.
- B. McGinnis stated that previous ICM's were done in areas where FMC contamination was obvious.
- B. McGinnis stated that it is likely there will be no remediation construction work performed in 2009. Instead, he stated that FMC would be focusing its efforts and resources on additional sampling required by the Agencies, completion of currently proposed documents and studies and continued discussions with the Agencies.
- B. McGinnis stated that FMC would like the CIG to review and comment on the format of the Keeping You Posted document made available at the meeting.
- B. Arnold stated that he'd like the document to have end points and target dates.

4. Meeting Schedule

- The February meeting will take place on Tuesday, February 10.
- The March meeting is scheduled for Monday, March 9.
- The April meeting is scheduled for Tuesday, April 14.

**THE NEXT MEETING OF THE CIG IS SCHEDULED FOR FEBRUARY 10.
ALL MEETINGS WILL BE HELD FROM 5:30 to 8 P.M. AT THE MASONIC
LODGE.**