

**Middleport Community Input Group  
Meeting at Masonic Lodge Hall – Part I Meeting Summary  
February 17, 2009 – 5:30 to 7 p.m.**

**In Attendance:**

Bill Arnold – CIG Chairman	Dan Watts, NJIT – Technical Consultant
Liz Storch – Resident	Erin Rankin – Arcadis
Larry Lutz – Resident	Brian McGinnis – FMC
Christa Lutz – Resident	Wai Chin Lachell – AMEC
Dick Westcott – Resident	Jim Ward – Sen. Maziarz’s Office
Tom Arlington – Town of Royalton	Debra Overkamp – AMEC
Jennifer Bieber – Town of Royalton	Mike Infurna – EPA
Dick Lang – Town of Royalton	Matt Mortefolio – NYS DEC
Liz Bateman - Resident	Michael Hinton – NYS DEC
Herb Koenig – Resident	Glen Wilson - FMC
Betty Whitney – Resident	Ann Howard, RIT- Facilitator
Karen Pollworth – Resident	Jim Pasinski, Carr Marketing Communications – Meeting Notes
Jeff Wells – Resident	
Harold Mufford - Resident	
Pat Cousins - Resident	
Michael Seefeldt – Resident	

**1. Welcome and Introductions**

- A. Howard began the meeting, reviewed the agenda, and led introductions. She noted that the usual time for the first part of the meeting had been extended due to the Agencies attendance.

**2. Discussion with Agencies**

- A. Howard noted that B. Arnold had some discussions with the Agency representatives and FMC on some of the Agenda items prior to the meeting.
- B. Arnold thanked the Agency representatives for their attendance.
- B. Arnold stated that the CIG had made comments on the Corrective Action Objectives and that feedback has been received from both FMC and the Agencies.
- B. Arnold stated that the CIG is steadfast in its request that the CMS have a risk-based assessment.
- M. Infurna stated that the Agencies do not have a set deadline for comments on the Corrective Action Objectives from other government entities. He stated that they hope to finalize the objectives by the end of February.
- M. Mortefolio stated that the Agencies have had contact with the Middleport Village government, the Town of Royalton and Hartland

supervisors, and the Roy-Hart school board and noted that each entity wants to provide input on the objectives.

- M. Mortefolio stated that the NYS DEC, NYS DOH, and the US EPA have each reviewed the CIG's comments on the Corrective Action Objectives and they have no issues with the comments. He stated that they could move forward with the CIG-revised version as the final draft of the objectives, pending further comments from local governments. He stated that the local governments were asked to review the CIG-revised version of the objectives.
- J. Ward asked who the Agencies consider the "stakeholders" to be. M. Mortefolio stated that they are the Towns of Royalton and Hartland, the village of Middleport, the Roy-Hart board of education, and the Middleport CIG.
- M. Infurna stated that the Agencies did receive a letter from Royalton Supervisor D. Lang who wanted to discuss a few issues and the Agencies planned to talk to him next week.
- B. Arnold stated that there might be an issue with the scope of the current draft Corrective Action Objectives. He asked if they would be used for all Middleport remediation projects. M. Mortefolio stated that the original objectives were drafted to apply to the Air Deposition Area but FMC wanted the objectives to cover all off-site areas and the Agencies agreed. B. McGinnis stated that they desired one set of objectives so that all off-site areas were treated the same.
- B. Arnold stated that the objectives written by the CIG had the air deposition area in mind and not necessarily the other areas of concern.
- B. Arnold stated that the CIG wanted references to the  $10^{-4}$  and  $10^{-6}$  cancer risk removed from the draft objectives because no parameters were set on what those figures meant. He stated that the CIG did not want them included without definitions.
- M. Mortefolio stated that the  $10^{-4}$  and  $10^{-6}$  cancer risk is the range that they shoot for. He stated that the NYS DOH has their statewide risk assessment and the EPA has one also. He stated that using site-specific risk assessment in Middleport means that levels have to fall within that range. He stated that the risk assessment looks at assumptions.
- A resident questioned how the Agencies stay in those parameters if each Agency has a different set of ranges. M. Mortefolio stated that a different set of assumptions could be used if it fits the community. He stated that  $10^{-4}$  correlates to a 1 in 10,000 cancer risk over a lifetime but that the Agencies usually try to start at a 1 in 1,000,000 cancer risk over a lifetime. M. Infurna stated that Agencies are always more conservative when it comes to residential areas, usually  $10^{-4}$  and  $10^{-5}$  cancer risks.
- M. Mortefolio stated that the proposed rewrite from the CIG on that point sounds less confusing. M. Infurna stated that the Agencies have to consider exposure scenarios. He stated that since an FMC bioavailability study exists, they would use data from that, which would help to define factors. He stated that one risk assessment for the area would suffice.

- B. Arnold asked whether behaviors would be considered in helping to determine the exposure criteria in terms of site-specific risk assessment. W. Lachell stated that different assumptions are included but risk assessments emulate the exposure assumptions and they'd examine the information to determine if anything is different in the area.
- B. Arnold stated that any risk assessment needs to consider how many years people typically live in a home, how many days in a year they may spend in their yard, and how children use the land. W. Lachell stated that there are multiple factors to consider and cited the number of days per year that the ground is frozen as an example.
- M. Mortefolio stated that children ages zero to six-years old would drive the data because they are the ones most likely to be exposed. A resident noted that there are multiple assumptions to consider for Middleport.
- M. Mortefolio reminded the group to look at the Corrective Action Objectives as general goals for Middleport and stated that the purpose is to try to attain those goals. He stated that they all might not be met, but they are the outlined goals for any project.
- D. Watts stated that a general operating principle is site based risk assessment is acceptable to all parties.
- B. Arnold stated that the CIG did not like the inclusion of the phrase "to the extent practicable" in the Corrective Action Objectives. He stated that FMC was not in favor of removing the phrase. B. McGinnis stated that the phrase gives the project more flexibility and gives a chance to determine if something is not practicable, like excavating too close to a foundation. B. Arnold suggested that the phrase be worded differently. B. McGinnis stated that it was included as it is typically used in the establishment of remedial goals. M. Mortefolio stated that the Agencies are agreeable to whatever the CIG and FMC decide regarding the inclusion of the phrase. M. Infurna suggested that FMC and the CIG agree on new language.
- B. McGinnis stated that "to the extent practicable" is usually included to deal with issues that may arise about practicality. He cited an example from an FMC site in San Francisco where there was an issue with contamination 80 feet below the ground next to San Francisco Bay and it was determined that digging 80 feet next to the Bay was not practicable.
- W. Lachell stated an example that if a structure were built in 1980 over contaminated soil, it would not be practical to take that building down to remove soil.
- M. Infurna stated that any remedial work has to make sense.
- A resident stated that the community is fearful of vague language such as "to the extent practicable" because of how the Vernon Street remediation was handled with wide open excavation on properties. Another resident stated that there was no voice from the village when the Vernon Street work took place.
- B. Arnold suggested that the phrase be reworded to indicate that areas with contaminated soil that cannot be reasonably removed may be excluded.

- A resident asked who would determine the practicality. M. Mortefolio stated that it would be resolved through the CMS. M. Infurna stated that the CIG and the community would be allowed to comment on any practicality issue. He stated that at some point there would probably be a disagreement between FMC and the Agencies.
- M. Mortefolio stated that the Park Avenue remediation project had a property-by-property practicality. He stated that property owners could help to decide what is practicable.
- It was noted that FMC comments on the CIG's suggested revisions to the Corrective Action Objectives had been handed out to attendees.
- B. McGinnis stated that the phrase added by the CIG in Objective 1B, which stated "keeping in mind that risk is a function of both contaminant concentration and routes and likelihood of exposure" might limit what the site-specific risk assessment might indicate. B. McGinnis noted that FMC's other comments in the document had already been discussed. He noted that the document is FMC's official comment to the Agencies on the revised Corrective Action Objectives.
- M. Mortefolio stated that the Agencies are awaiting feedback on the CIG draft from other entities but they consider the CIG revisions to be agreeable with some minor wordsmithing.
- B. Arnold noted that the CIG has requested the Agencies provide target dates on several key items. He stated that the group could not understand how things can get done without a schedule. He added that the CIG did not have a sense of where items were in the process. He thanked the Agencies for the document they just provided which offered target dates.
- M. Mortefolio stated that FMC provided the Agencies with submission dates for many documents in the past and met those dates. He stated the proposed target dates provided to the MCIG are very tentative and has not been reviewed by or discussed with FMC. The Agencies tried to develop a schedule for review, revision and approval of the documents with some flexibility. He stated that they wanted realistic dates and will do what they can to meet them but noted that things can happen to delay the process and mentioned that FMC and the Agencies have had a tough time recently trying to schedule some meetings.
- M. Mortefolio stated that the Agencies are working with FMC on the RFI report for the Air Deposition Area and Culvert 105. He stated that they wanted to set a public comment period on the RFI volume in May and running for 45 days. The target dates are May 4 to June 18. He stated that there would likely be a public meeting during that period. Following the comment period the RFI would be finalized and approved and they would get to the next stage, which is the CMS for the Air Deposition Area.
- For the benefit of new attendees, B. Arnold noted that the Air Deposition Area is the area downwind from the FMC plant and Culvert 105 is the ditch that runs from the Coe property on Park Avenue through the village, underneath the canal and goes to the sewer plant. He noted that Tributary One is the creek in the village.

- M. Mortefolio stated that this RFI report would define the properties that will be evaluated in the CMS. He stated the report would clearly indicate which properties would not be evaluated.
- D. Watts stated that not every property that will be evaluated would necessarily need remediation. M. Mortefolio stated that the investigation would result in a further delineation of properties.
- M. Mortefolio stated that the Agencies would put together a time period for review, fact sheet and other documents and schedule the public meeting.
- A resident requested that the Agencies revise the schedule provided at the CIG meeting to include two additional columns, one for new target date if necessary, and one to indicate the reason why the initial target date was not met. M. Mortefolio stated that the Agencies could adjust the document and keep it up to date and provide revisions to B. Arnold.
- M. Mortefolio stated that a comment period is tentatively scheduled for the fall for the Tributary One RFI. He noted that the schedule arrives at a potential August date for FMC to begin to put together the CMS for the Air Deposition Area.
- B. McGinnis stated that FMC would implement the CMS once there is an approved work plan. He stated that FMC would put together a schedule and share it with the CIG.
- M. Mortefolio stated that there would be no construction activity in 2009.
- In response to a resident question about upcoming remedial construction work, M. Mortefolio stated that the Agencies are not requiring FMC to perform any additional ICMS, nor has FMC proposed any. He stated that they are on track to finish the investigation and get to the CMS for the Air Deposition Area.
- B. Arnold asked if the CMS would be completed in 2009. W. Lachell stated that once FMC completes the CMS, the Agencies would have a public comment period and either approves the CMS and recommended remedy or request changes to the CMS and recommended remedy. After that period, FMC then creates a design for the remediation project, a schedule, and then must get property access agreements. She stated that the odds of any construction work in 2010 are pretty slim.
- B. Arnold stated that they must get moving. He stated that it is not acceptable to just keep negotiating. He stated that FMC and the Agencies have reached the time where they need to think outside of the box so that remediation can get started in 2010.
- B. McGinnis stated that FMC would complete the CMS and work with the Agencies to determine which properties need to be cleaned and what methods will be used. He stated that they have to do a design, bid the project out to contractors and take a number of other steps, which are all an essential part of the process.
- B. Arnold asked if FMC could have a boilerplate design beforehand to get a start on the process. B. McGinnis stated that FMC has done work in the village previously so they are not starting from scratch, but a design is still

- required. W. Lachell noted that every property is different so property specific items must be addressed. She stated that FMC could talk to the Agencies about shortening the periods between each step in the process.
- B. Arnold stated that FMC and the Agencies should be in the same room and hammer out all of these specifics.
  - M. Mortefolio noted that the Air Deposition CMS and Culvert CMS and remediation would not be delayed by preparations for work on documents for the Tributary One work.
  - B. Arnold stated that the Agencies and FMC should attempt to get some remediation activity started in the summer of 2010.
  - M. Mortefolio stated that the schedule the Agencies provided lists the major projects and reminded the group that there are many smaller, ongoing issues that are taking place at the same time. He stated that even though they may be lower priority they could interrupt things.
  - A resident asked M. Mortefolio if he ever sees an end to the project. He stated that the Agencies do see an end point but they cannot project anything beyond 2009. The resident stated that the project is going into 2011 or longer at this point.
  - A resident stated that the RFI would define the properties to be evaluated. The resident asked M. Mortefolio if a more defined timeline on the entire project could be identified once that takes place. M. Mortefolio stated that it is possible.
  - E. Rankin noted that there are ten volumes to the RFI report.
  - M. Mortefolio noted that the New York State budget could affect certain things also.
  - In response to a question, M. Mortefolio noted that FMC's CAMU application is in the Agencies hands. He stated that the CAMU application is a separate and lengthy process and has been held up by the CMS and investigation process.
  - B. Arnold noted that the CAMU is a potential location on the FMC plant site to permanently store remediation soils.
  - J. Bieber asked if the Town of Royalton has been approached by the Agencies yet in regards to the CAMU, since it is located in the town. She stated that she is not aware of any communication.
  - M. Mortefolio stated that the Agencies are in the very early stages of reviewing the application. He stated that it is not a landfill, it is a CAMU, so while it is different they have to follow a similar landfill application and review process. He stated that he does not think Agency regulations supercede Town codes. T. Arlington noted that the Town of Royalton feels out of the loop on the CAMU issue.
  - M. Mortefolio stated that zoning is definitely an issue and noted that when the time comes there would be a public meeting on the CAMU application.
  - J. Bieber noted that the Town of Royalton has no official opinion on the application at this point because they do not have much information and it has been more than one year since the town met with FMC and their

attorneys on the issue. D. Lang stated that Town supervisors are not equipped to answer resident questions because they do not have sufficient information.

- M. Mortefolio stated that the CAMU application is located at the library and online for anyone who would like to review it.
- A. Howard noted that the CIG is aware of the Agencies restrictions on travel due to budget issues. She asked if there would be any way to attempt to schedule future meetings with them in attendance.
- M. Infurna noted that the EPA and federal budget is not as bad as the New York State budget. He stated that he might be able to come to Middleport quarterly and for special meetings. He noted that it is impossible for the Agencies to attend monthly with the exception of M. Hinton.
- M. Mortefolio stated that it is possible he might be able to attend quarterly. He noted that the NYS Department of Health has an even more restrictive budget and they are an important part of the project.
- M. Mortefolio stated that the Agencies would be willing to take part in the meetings, monthly even, if the technology were made available for them to take part in their offices. He stated that the Agencies couldn't assist with getting the technology because of the budget.
- B. Arnold stated that years ago the Agencies were very active in pushing this project and they need to find a way to have at least one key player at the CIG meetings.
- M. Infurna stated that one Agency cannot make decisions for other Agencies since each have different regulations. M. Mortefolio stated that they could give an idea of the opinion each Agency might have.
- M. Infurna stated that the CIG could submit questions to the Agencies prior to CIG meetings and the Agencies could submit written answers.
- B. Arnold again requested that the Agencies try to determine a way to have at least one representative at every CIG meeting.
- J. Ward suggested that computer technology be investigated to determine if the Agencies can participate via videoconference. B. Arnold noted that those technologies do not always work smoothly.
- On other concerns, B. Arnold asked what happens to properties that are determined to not need further evaluation in the CMS.
- M. Mortefolio stated that after the RFI is approved and some properties are not going to be a part of the CMS, the Agencies would likely be able to send a second letter to the property owner indicating that their property is not affected. He stated that the letter would compare their data to the arsenic background level and note that the soil is within the background level.
- B. Arnold asked what happens to residents who have higher levels of arsenic in soil that is not attributable to FMC. M. Mortefolio stated that there might be properties with elevated arsenic levels that are not attributable to FMC. He stated that they would receive a letter with that information and that the data would have to be disclosed in the event of a sale of the property.

- B. Arnold stated that it is a problem that property owners, in good faith, gave FMC access to their properties to have their soil tested and they will now be left hanging if they need to sell their property and it has elevated levels of arsenic.
- A resident stated that they would have a right to know if the property they are buying has high arsenic levels. Another resident stated that if that is the case it is the property owner's problem, not FMC's.
- M. Infurna stated that the overall goal is to not leave any contaminated properties in the village.
- B. Arnold stated that a letter needs to specify that the elevated arsenic level is not necessarily a health hazard.
- M. Mortefolio stated that the letter would have the data along with a list of suggested precautions. He stated that the Agencies authority relates to what FMC has contaminated. He stated that the individual property owners would need to make decisions on what to do for their property in non-FMC contamination situations.
- A resident asked if they could make improvements to their property prior to any potential remediation work and what would happen if remediation is needed after they make improvements. M. Mortefolio stated that there are no restrictions on what residents can do. W. Lachell stated that residents could get arsenic data on their property from D. Overkamp.

### **3. FMC Update**

- G. Wilson noted that Dana Thompson has taken a new position within FMC. He stated that she is working locally and her new job will help keep the Middleport plant operations viable.
- G. Wilson stated that the process is in place to find a new plant manager and in the interim residents can come to him with any plant-related questions.

### **4. Meeting Schedule**

- The March meeting is scheduled for Monday, March 9.
- The April meeting is scheduled for Tuesday, April 14.
- The May meeting is scheduled for Wednesday, May 6.
- The June meeting is scheduled for Tuesday, June 9.

**THE NEXT MEETING OF THE CIG IS SCHEDULED FOR MARCH 9. ALL MEETINGS WILL BE HELD FROM 5:30 to 8 P.M. AT THE MASONIC LODGE.**