

Middleport Community Input Group

Meeting at Masonic Lodge Hall – Part I Meeting Summary

May 6, 2009 – 5:30 to 7 p.m.

In Attendance:

Bill Arnold – CIG Chairman Dan Watts, NJIT – Technical Consultant

Elizabeth Storch – Resident Debra Overkamp – AMEC

Elizabeth Bateman – Resident Wai Chin Lachell – AMEC

Dori Green – Resident Brian McGinnis – FMC

Dick Westcott – Resident Andy Twarowski – FMC

Dick Owen – Resident Erin Rankin – Arcadis

Gary Peters – Resident Mike Hinton - NYSDEC

Betty Whitney – Resident Ann Howard, RIT – Facilitator

Janet Lyndaker – Resident Jim Pasinski, Carr Marketing Communications – Meeting Notes

1. Welcome and Introductions; Agenda Review

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

2. FMC Update

- W. Lachell cited FMC's Keeping You Posted document, which provides a list of current tasks, documents and activities along with status updates.
- W. Lachell stated that the 2007 Early Action Construction Reports are being reviewed by the Agencies.
- W. Lachell stated that FMC is in the process of finalizing language with the NYSDEC regarding deed restrictions for the Coe property. She stated that restrictions on the future use of the land are necessary in order to protect the cover system in place. When asked about what the property owner planned to do with the property, she stated that the property owner does not want anyone using the property and FMC is unaware of any plans that the owner may have for the property. The property owner does have an agreement with FMC allowing for deed restrictions.
- W. Lachell stated that the Agencies previously approved RFI Vol. I for public comment.
- W. Lachell stated that revised draft RFI Vols. II (Historic Air Deposition Area) and IV (Culvert 105) have been mailed to the Agencies today. She stated that the public comment period on those volumes would be between May 18 and July 2, 2009. She stated that the Agencies are sending a fact sheet and a notice to residents of the Roy-Hart School District regarding the comment period and public meeting scheduled for June 10th at the Middleport Fire Hall.
- D. Watts noted that FMC drafted the RFI reports, and the Agencies reviewed them and are now going to seek comment on them. W. Lachell stressed that the RFI volumes are currently in draft

form and the Agencies are seeking public comments. She stated that final decisions on each property would not be known until the end of July.

- W. Lachell stated that maps are available showing the status of each property in those two study areas. She stated that 27 properties (of which 15 have soil sampling data) in the air deposition study area are not proposed for inclusion in the Corrective Measures Study (CMS). She noted that 46 properties previously received letters from the Agencies stating that no further action was necessary on their property. She noted that the Agencies will likely write letters to the 27 properties after approval of the final RFI reports, but FMC does not know what those letters will say.

- B. Arnold stated that he was not comfortable with the fact that the 15 property owners who allowed sampling on their property will be left out on their own. He stated those owners would have to disclose the sampling data if the property is sold and would be responsible for their own remediation if the Agencies say that it is necessary.

- W. Lachell stated that the draft RFI reports will be available online at the CIG Web site (www.middleport-future.com), a copy will be at the Document Repository at the Middleport Fee Library, and a copy will be available to loan out at the FMC Neighborhood House at 17 Vernon St.

- B. McGinnis stated that FMC believes that the arsenic present on those 27 properties is not attributable to FMC.

- A resident stated that it is not fair to those property owners to be held responsible for cleaning up the soil if they allowed sampling. A. Howard noted that the Agencies made the final decision on which properties were to be sampled. A resident stated that they would refuse to allow sampling if they had known they could be left with data showing elevated arsenic levels and being responsible for cleaning it up.

- B. Arnold stated that he believes any property that was sampled should be a part of the CMS and stated that the CIG would discuss the issue further in the CIG-only portion of the meeting.

- E. Rankin explained that the draft RFI reports would explain why the soil arsenic is not attributable to FMC. W. Lachell stated that some reasons might include past use of the land, fill material being placed on the property, the wind pattern at the property in proximity to the FMC plant, distance from the FMC plant and the level of and distribution pattern of soil arsenic concentrations. She stated that in the past arsenic was widely used and noted that many products contained arsenic.

- A resident stated that FMC should not be held responsible for soil arsenic on someone's property if it was not generated by FMC. The resident stated that it should be cleaned up in those instances but the community would need to figure out how to do it.

- W. Lachell stated that FMC collected approximately 250 soil samples in April 2009, as directed by the Agencies, on the north side of the canal and east of the Niagara County line. She stated that FMC expects to receive the data in June and noted that the Agencies collected some split samples. E. Rankin stated that they would review the quality of the data before any preliminary

data is provided. M. Hinton stated that it normally takes three months after the data is received before a report is issued. W. Lachell stated that the Agencies and FMC agreed that the areas sampled would be evaluated separate from Vol. II.

- W. Lachell stated that FMC is currently reviewing and revising the draft CMS work plan for the Air Deposition Area and Culvert 105 after having received comments from the Agencies on FMC's March 23rd submittal.

- B. Arnold stated his concern regarding a flowchart included in FMC's communication to the Agencies dated March 23, 2009. He stated that he personally objects to the use of 20 ppm as the compliance level in sample documents because the 20 ppm number is supposed to be meant as a delineation number, not a cleanup number. W. Lachell stated that FMC agreed to provide the Agencies with a chart showing examples of alternatives that would be evaluated in the CMS. She stated that use of 20 ppm point by point would be the most health-protective or most conservative corrective action alternative to be evaluated. In addition, no further action and several other potential risk-based alternatives would also be evaluated.

- Responding to a resident question, B. McGinnis noted that the 20 ppm number came from Gasport residential study data. It was noted that the school district property was remediated in 1999 using a background number of 30 ppm. The 30 ppm was questioned in some comments from the public during the 1999 schoolyard remediation program, which resulted in the performance of the Gasport study. Based on the Gasport study, the Agencies determined that the background number should be 20 ppm.

- W. Lachell stated that properties or areas already remediated would not be remediated again.

- B. Arnold cited a response to an email he had received from Matt Mortefolio at the NYSDEC regarding the use of a risk assessment. A portion of the response stated, "The Agencies will likely use the results of these risk assessments in concert with other established mechanisms/criteria for evaluating potential human health risks of each corrective measures alternative." B. Arnold stated that he found the statement very troubling and was under the assumption that the CMS would feature only a risk-based scenario. W. Lachell stated that the use of 20 ppm as a cleanup number will be evaluated in the CMS as required by the Agencies. When questioned, M. Hinton stated he agrees that the Agencies are focused on a cleanup number of 20 ppm. A resident stated that the Agencies would not back off of 20 ppm.

- D. Watts stated that a decision on 20 ppm has not been made. B. McGinnis stated that nothing would be final until the CMS is approved. W. Lachell stated that the community has the opportunity to provide input to the Agencies regarding a cleanup number of 20 ppm.

- A. Howard stated that the Agencies must provide a rationale for a cleanup number of 20 ppm. W. Lachell stated that in turn FMC must provide a rationale for why 20 ppm should not be the cleanup number. M. Hinton stated that in the past the law did not set the cleanup number. He stated that with revised laws there is still some flexibility but there are numerous hoops to jump through now. He stated that 16 ppm is the cleanup target but he has seen various ranges in the past.

- W. Lachell stated that FMC is scheduled to submit the revised CMS work plan to the Agencies on May 15th. She stated that FMC would like a discussion about the work plan to be on the agenda for the June CIG meeting.
- B. McGinnis stated that the Agencies have asked FMC to continue with another year of the phytoremediation study. He stated that FMC is still discussing its options. He stated that the Agencies would like a smaller scale study in 2009 using fewer properties and fewer species of plants than were used in 2008. W. Lachell stated that the Agencies want data from two growing seasons to fully evaluate the technology.
- A resident thanked FMC for going along with the idea of the phytoremediation study and noted appreciation for the time, effort and expense that FMC has put into a study that not many residents believe in.
- B. McGinnis noted that another season of a phytoremediation study would not have any impact on the progress of the RFI and CMS process. D. Watts stated that any phytoremediation study would need to start soon because of the growing season. D. Overkamp stated that some plants planted in 2008 are starting to show new growth. A resident stated that many community members believe the study is useless.

3. FMC Outreach

- D. Overkamp noted that the FMC Neighborhood House is open Thursdays from 9 a.m. to 4 p.m. or by appointment.
- D. Overkamp noted that the FMC Middleport plant and some plant staff have purchased three bricks as part of the Middleport sesquicentennial events.
- D. Overkamp noted that there were 1,000 unique visitors to the Middleport community Web site (www.middleport-ny.com) and 230 unique visitors to the CIG Web site (www.middleport-future.com).
- D. Overkamp noted that FMC mailed postcards for the CIG meeting.
- D. Overkamp noted that the FMC community newsletter should be in the mail in a few weeks.
- D. Overkamp noted that the FMC Property Price Protection Program (PPP) Spring Tour of Homes is May 30th.
- D. Overkamp noted that FMC is sponsoring a contest in cooperation with the Middleport Sesquicentennial Committee to name the Top 10 Reasons to Live, Work, Learn and Play in Middleport. She stated that the list would be unveiled Labor Day weekend. Forms are available at several Middleport businesses and online at www.middleportny.com.
- D. Overkamp noted that FMC officials would be meeting with the Niagara County Center for Economic Development on May 7th to review the phase 1 report on the Norco property and the former FMC Research and Development property. She noted that the intent of the meeting was to clarify misconceptions regarding soil sampling data on those properties.

4. FMC Communications Efforts for the RFI

- D. Overkamp noted that FMC personnel would be making personal visits to each home that is tentatively set to be included in the CMS for further evaluation. She stated that they would have a brochure with more information, a map indicating where the individual's property lies, and a comment postcard. The postcard is already stamped and addressed to Matt Mortefolio at the NYS DEC.
- D. Overkamp stated that the FMC Neighborhood House would be open to answer residents questions on May 14 and 15 and again throughout the week of May 18th from 9 a.m. to 4 p.m.
- W. Lachell noted that letters are being sent to other residents in the Air Deposition and Culvert 105 study areas. She stated that those residents have not been communicated to on this issue since they received their soil sampling data.
- B. McGinnis stated that it is very important for residents to submit comments in writing with their opinion on the draft RFI reports (he indicated that comments can be positive or negative). He stated that the comments would go to the Agencies who are responsible for reviewing all comments and creating a responsiveness summary.
- W. Lachell noted that there is a summary and conclusion section at the end of each RFI report volume. She noted that the public comment period runs through July 2, 2009.
- W. Lachell noted that the Agencies are mailing a fact sheet and public meeting notice to all Roy-Hart residents. The public information session and public meeting are scheduled for June 10th at the Middleport Fire Hall.

5. Discussion to Prepare for June 9th CIG Meeting with the Agencies

- B. McGinnis stated that he is not aware of what the Agencies would like to talk about at the June 9th CIG meeting.

6. Other Discussion

- A resident questioned FMC regarding the orange snow fence around a Park Avenue property. D. Overkamp noted that the fence is needed to protect the property while it is being over-seeded. At the resident's request FMC will explore placing a sign on the fence to advise of the activity.
- B. Arnold stated that the CIG spoke in April about the exterior maintenance of some of the FMC-owned properties in the village. He stated that he had since learned that one of the properties in question was no longer owned by FMC. He again requested that more attention be paid to properties FMC does own in terms of lawn maintenance and general property upkeep to give the appearance that people live in the homes.

- W. Lachell requested that any resident with maintenance concerns on an FMC-owned property take the concern to FMC's 15 Main St. office.
- A resident asked if there was any increase in the number of homes entering the PPP since it was ending soon and being replaced by the Home Value Assurance Program. B. McGinnis stated that FMC has not noticed any such activity.
- A resident asked if FMC was considering additional deed restrictions on properties in the village. B. McGinnis stated that they would only be on properties on Tributary One which FMC would need in order to access the properties in the event that it is determined that remediation is needed on any of the properties. He stated that FMC would be in contact with village government if the need for such documents arises.

7. Meeting Schedule

- The June meeting is scheduled for Tuesday, June 9.
- The July meeting is scheduled for Wednesday, July 1 and is a CIG only meeting beginning at 5:30 p.m.; it will end at 6:30 p.m.
- The August meeting is scheduled for Tuesday, August 11.
- The September meeting is scheduled for Tuesday, September 15.

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