

**Middleport Community Input Group
Meeting at Masonic Lodge Hall – Part I Meeting Summary
June 9, 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	Kelly McIntosh - AMEC
Dick Westcott – Resident	Erin Rankin – Arcadis
Lynn Andrews – Resident	Andy Twarowski – FMC
Gary Peters – Resident	Matt Mortefolio – NYSDEC
Betty Whitney – Resident	Nathan Freeman - NYSDOH
Tom Arlington – Resident	Mike Infurna – USEPA
Christa Lutz – Resident	Tamara Girard – NYSDOH
Larry Lutz – Resident	Jim Ward – State Sen. Maziarz’s Office
Harold Mufford – Resident	Ann Howard, RIT – Facilitator
Collin Anderson – Student	
Rachel Frank – Student	Jim Pasinski, Carr Marketing Communications – Meeting Notes

1. Welcome and Introductions; Agenda Review

- A. Howard began the meeting, reviewed the agenda, and led introductions.
- W. Lachell explained that B. McGinnis and J. Smeltzer from FMC in Philadelphia were delayed at the airport and did not make it in time for the meeting.

2. Presentation of EPA Award to CIG

- M. Infurna stated that each year the US EPA recognizes groups and individuals who have made contributions to the environment. He stated that the Middleport Community Input Group (CIG) has been an invaluable asset to the Agencies and he was pleased to present the CIG with the EPA Environmental Quality Award in recognition of the group’s hard work. He stated that it is a prestigious award and a great honor for the CIG. B. Arnold accepted the award on behalf of the CIG and thanked M. Infurna for the award.

3. Review of Outstanding Issues with Agency Representatives

- A. Howard noted that the CIG had worked on a list of concerns that the group wanted to address with the Agencies. She noted that a written summary had been sent to the Agencies and was provided to meeting attendees.
- B. Arnold noted that he was told by the Agencies that some of the CIG’s concerns were old and that the group should move on from them;

however, the CIG wanted to raise these concerns again for further discussion with Agency representatives.

- B. Arnold stated that the CIG remains concerned about the Corrective Action Objectives document (CAO) and is unsatisfied as to the way the process was handled. He stated that after numerous discussions with FMC and the Agencies the CIG acknowledged the need to include the 10^{-4} and 10^{-6} cancer risk range in the CAOs as long as a qualifier statement was included. He stated that the last time the CIG had an opportunity to review the CAOs the qualifying statement was included but it was removed from the final document.
- M. Infurna stated that the Agencies provided a draft of the CAOs to the CIG that the Agencies were agreeable to. He stated that the draft was then revised between FMC and the CIG and the Agencies were no longer agreeable to the language being used. He stated that it was impossible for all parties to be 100% pleased with the CAOs.
- B. Arnold reiterated the CIG's concern about the lack of a definition of what 10^{-4} and 10^{-6} relates to.
- M. Mortefolio stated that it is what risk assessment is all about. He stated that the Agencies wanted a broad use of risk assessment as the project nears the Corrective Measures Study (CMS).
- T. Girard noted that it is important to remember that the CAOs are only considerations, they are not specific goals.
- B. Arnold stated that, according to his research, the EPA defines 10^{-4} and 10^{-6} arsenic risk range to be a range of between 0.4 ppm and 40 ppm, while the NYSDOH defines it to range from 0.11 to 11 ppm.
- T. Girard stated that many assumptions would go into risk assessment and a risk number will be determined at the end of that process. She stated that the process would come up with many assumptions that may be acceptable.
- T. Girard stated that when dealing with arsenic a lot of "risk stuff" is irrelevant. She stated that arsenic is a known carcinogen.
- M. Infurna stated that it is possible the EPA's risk-based values for arsenic will be going lower based on a possible new EPA toxicity criterion for arsenic.
- A resident stated that the Agencies have chosen to exclude FMC's Middleport community biomonitoring study, conducted by Exponent, even though that data showed no elevated levels of arsenic in any of the study participants.
- T. Girard stated that FMC would probably consider the Exponent study in their risk assessment and stated that the study was meant to show if there was arsenic in urine and other samples from study participants
- M. Mortefolio stated that FMC's biomonitoring study is a good study but it had data correlated with soil level and exposure and stated that the Agencies do not know if people in the study came into contact with the soil during the study's two-week exposure period.

- T. Girard stated that the biomonitoring study was an exposure study, not a health and cancer study.
- M. Mortefolio stated that it is very likely that risk assessments would be performed during the CMS. He stated that once the Agencies approve FMC's CMS work plan FMC would start the CMS.
- A. Howard questioned if there would be explicit assumptions agreed upon by FMC and the Agencies. M. Mortefolio stated that FMC would submit a technical memo to the Agencies on assumptions to be used in risk assessment to see if they can come to a preliminary agreement. He stated that they want to agree upfront.
- D. Watts asked if references to 10^{-4} and 10^{-6} cancer risk range refer to any specific soil arsenic cleanup numbers for the Middleport project from the Agencies viewpoint. Each Agencies representative stated that the risk range is not specific to Middleport. T. Girard stated that it is a global risk range not tied to Middleport and that a risk range for Middleport will not be known until a risk assessment is performed.
- A resident stated that they did not follow the Agencies logic on this issue.
- T. Girard stated that risk is one issue the Agencies consider and stated that it is a tool used to help make decisions along with the levels, use of the property and future use of the property. She said that legislation states a risk range of 10^{-4} to 10^{-6} and the Agencies cannot get away from that.
- M. Mortefolio stated that the law is not linked to a specific cleanup number. T. Girard stated that in the CMS 20 ppm would be considered as will 16 ppm. M. Mortefolio stated that 20 ppm would be one of the options that will be based on the CMS. T. Girard stated that other factors would be considered.
- M. Mortefolio noted that quite a few properties in Middleport had data at 16 ppm and many others had data in the single digit numbers.
- A resident stated that if arsenic was so dangerous people would no longer be able to purchase potting soil.
- When asked if Middleport would eventually be considered a data point, M. Mortefolio stated that there has not been a cancer study in Middleport. A CIG member replied and said there was a study done, and T. Girard stated that a cancer incident study was conducted in 1987. She stated that the study took data of actual cancers in the U.S. along with expected cancers; the study showed expectations to see fewer cancers in Middleport.
- A. Howard stated that it appeared that CIG and the Agencies would have to agree to disagree on the use of the 10^{-4} and 10^{-6} cancer risk range in the CAOs.
- B. Arnold stated that another CIG concern relates to the appearance of a trigger number of 20 ppm to determine remediation; whereas, it was previously identified as a basis for delineation in the RFI.
- M. Mortefolio stated that 20-ppm is a cleanup objective to be considered in the CMS work plan because it is believed to be the arsenic background number for residential properties in Middleport. He stated that they are

doing an evaluation of 20 ppm just as they are doing an evaluation of taking no action at all.

- T. Girard stated that the Agencies have a universal set of requirements to evaluate a range of options.
- B. Arnold stated that the wording thus far indicates a predetermined cleanup number of 20 ppm.
- K. McIntosh stated that cleanup to 20 ppm is only one alternative that will be evaluated in the CMS and that a wide range of scenarios will be evaluated to determine the benefits of each outcome. B. Arnold stated that the MCIG feels 20 ppm should not be an alternative at all. T. Girard stated that the Agencies must evaluate 20 ppm since it is the background number. B. Arnold stated that any selected cleanup number should indicate what the benefit to human health is if there is cleanup to that number.
- K. McIntosh stated that the CMS process starts with a risk assessment for existing Middleport and Gasport data to determine the background risk and the current risk in the study area. He stated that they then start to identify and develop alternatives and take into consideration the cleanup numbers.
- A resident stated that they were confused by the discussion. Another resident asked why, if arsenic issues in Middleport are so bad, have the Agencies waited decades to cleanup contamination that only goes 12-18 inches below the surface.
- M. Mortefolio stated that elevated levels (above background) of arsenic exist at the soil surface down to 12 inches below. He stated that exposure is at the surface.
- A resident asked why millions of housing developments have been built on old orchards in the U.S. yet Middleport is under the gun for a long period of time.
- M. Mortefolio stated that Niagara County studies soil on larger development projects. T. Arlington stated that the village/town had never heard of these types of studies being done.
- M. Infurna stated that the Agencies couldn't assume orchard land was sprayed with materials containing arsenic. He stated that some historic orchard land in Middleport had levels that were not above residential background.
- A resident stated that it may be a function of when the land was used as an orchard, because pesticide applications have varied over time.
- A resident stated that it appears the Middleport project is being held to a different standard and is under a microscope. M. Mortefolio stated that FMC is not treated differently than other sites.
- B. Arnold stated that there were also some questions regarding the study areas and properties included and excluded in the upcoming CMS.
- D. Watts stated that the CIG has had regular questions about the validity and assumptions of the air models that served as the basis for the soil

sampling program and areas that should have been included that were not included.

- M. Infurna stated that some properties could go either way. He stated that it is a model and is not concrete but the data speaks for itself.
- M. Mortefolio stated that the data indicate decreasing levels of arsenic with distance moving away from the FMC plant. He stated there were some anomalies but in general the data was consistent. He stated that the Agencies have reached tentative agreement, as indicated based on the figures included in the respective RFI reports, regarding which properties are included in the air deposition and Culvert 105 study areas.
- W. Lachell stated that there are many property owners who do not know what happened on their property prior to current ownership; therefore historic land use is sometimes hard to judge.
- M. Mortefolio stated that the Agencies would evaluate the properties they believe are impacted by FMC and as part of the CMS to determine what, if any, action needs to be taken.
- M. Mortefolio stated that the Agencies could send letters down the road to property owners if it is determined that there is no risk on the property.
- D. Watts asked about properties in the study areas with elevated levels of soil arsenic but are not included in the CMS. M. Mortefolio stated that those particular properties would not be further evaluated by FMC in the CMS. He stated that the Agencies are talking about sending a letter to all who were sampled and those (indicated in green) on FMC's maps of the properties to be evaluated in the CMS would be told that they are included in the CMS process and those not included (indicated in white) will be told that they are out of the CMS process. He stated that other properties would get recommendations and precautions about their property.
- A. Howard asked if everyone sampled would get a letter from the Agencies. M. Mortefolio stated that the Agencies are still discussing sending a letter to everyone. M. Infurna stated that they have not made a final decision but they are leaning towards sending letters. M. Mortefolio stated that they are considering three types of letters.
- J. Ward asked M. Mortefolio to explain the hierarchy of Agency responsibility. M. Mortefolio stated that FMC is under an order of consent with the USEPA and NYSDEC. He stated that the USEPA and NYSDEC are joint partners on the project and the NYSDOH is a partner to them. J. Ward stated that even though the NYSDOH is not the lead agency they seem to lead everything and start and stop everything. T. Girard replied that the NYSDOH provide recommendations and consultation only.
- M. Infurna stated that the three Agencies are on the same page the great majority of the time.
- J. Ward stated that in 20 years of working in the NYS Senate he has never seen the NYSDEC or NYSDOH admit to going too far on anything.
- In response to a risk assessment question, K. McIntosh stated that FMC is going to try to be as site specific as they can with the risk assessment and they fully intend to evaluate other land uses.

- W. Lachell stated that an exposure assumptions memo will be developed and would make the approach more clear.
- A. Howard stated that there is confusion among CIG members and in order to get a common understanding the group may need something to illustrate how the risk assessment would work and suggested FMC present a summary of the CMS process at the August CIG meeting.
- W. Lachell stated that FMC would have a lot of community interaction during the CMS and risk assessment processes. She stated that FMC's first submittal to the Agencies as part of the CMS would be in September and will identify assumptions that will be used in the risk assessment. She stated that Dr. Roz Schoof would be in Middleport to discuss the assumptions and meet with property owners.
- A. Howard noted, as indicated in the earlier written communications to the Agencies, that the CIG was concerned about what appears to be limited options for acceptable remediation technologies, namely excavation only.
- M. Mortefolio stated that the problem is that arsenic is an element that cannot be broken down so they have to focus on removal options such as excavation and phytoremediation. He stated that there is no way to make arsenic less toxic so it needs to be removed. He stated that tree preservation techniques would also be examined. E. Rankin stated that FMC would also evaluate a soil mixing and blending option.
- A. Howard noted that the range of options would become more defined as they get into the CMS. D. Watts asked if new options could be considered if they arise but are not in the final work plan. M. Infurna stated they would be open to that.
- A. Howard noted that the MCIG has asked for the Agencies rationale on wanting a second season of the phytoremediation study.
- M. Mortefolio stated that the Agencies have looked at the data provided by FMC. He stated that they agreed with FMC that the plants studied (except for the ferns) should not be used again. He noted that there were measurable increases of arsenic in the ferns and that the Agencies felt that those results warranted a second year of the study. He stated that there was not much measurable change in the amount of arsenic in the soil but the results showed an increase in the plants.
- M. Mortefolio stated that they would look at a second year of data to evaluate if phytoremediation is an acceptable option. He stated that they would need to determine if it is feasible. He stated that if they have a species that would re-grow every year it would be considered.
- In response to a resident question about the types of plants used, E. Rankin stated that FMC had performed a bench scale study with Cornell University to evaluate which plants would uptake arsenic. W. Lachell stated that the plants selected to be a part of the study in Middleport were previously tested by others and showed some ability to uptake arsenic.

4. Discussion on June 10 RFI Public Meetings

- M. Mortefolio stated that the community is invited to public meetings

scheduled for the next day at the Middleport Fire Hall to discuss FMC's RFI report volume submissions. He stated that the first session would be to answer residents' questions individually and would run from 2 to 4 p.m. He stated that the second session runs from 6:30 to 8:30 p.m. and would consist of brief presentations by FMC and the Agencies and a public comment opportunity. He stated that it is not a question and answer session.

- B. Arnold stated that some residents might have questions. M. Mortefolio stated that residents can ask the questions publicly and that the Agencies could answer those questions afterwards but the point of the session is to give the Agencies a written record of any comments and the Agencies need to respond to those comments in writing, addressing every comment.
- M. Infurna stated that the Agencies are looking for comments on the RFI report volumes only, not on other topics that people might bring up.
- M. Mortefolio stated that the Agencies would look at other ways of providing the responsiveness summaries since B. Arnold noted that many residents in the village do not have Internet access.
- A resident questioned if the Agencies have any idea of when this project would be over. M. Mortefolio stated that they have a schedule and there are a lot of things to do. He stated that much of that would be determined while the CMS is progressing. He stated that there is a light at the end of the tunnel.
- M. Infurna stated that it is important to remember that RCRA (Resource Conservation and Recovery Act) was not created for a facility like FMC.
- M. Mortefolio stated that in 2010 he believes two things could happen. He stated that FMC and the Agencies will come to a final agreement on the CMS and the final remedies or the two sides cannot come to an agreement and the process will continue longer. He stated that he feels that answer will come in 2010.
- In response to a resident question, M. Mortefolio stated that the Agencies might consider having shorter public comment periods on additional RFI volumes. He stated that the decision might be made based on the number of comments submitted on the current volumes under public comment.
- J. Ward stated that the sad thing for the Middleport community is that this project has taken longer and cost more than the construction of the Erie Canal and that is a disgrace.

5. FMC RCRA Update

- W. Lachell noted that the Keeping You Posted document is updated and has been provided to the group.
- B. Arnold asked why there is an Agency delay to commenting on RFI Vol. 5. M. Mortefolio stated that they are very busy with multiple documents and projects and stated that the volume would be reviewed during the summer months.

6. FMC Outreach Update

- D. Overkamp reported the following FMC community updates:
- The FMC House is open Thursdays from 9 a.m. to 4 p.m. or by appointment.
- FMC made a \$100 donation to the Middleport Area Tourism and Beautification Committee.
- FMC award three Roy-Hart scholars \$300 scholarships (one Math, Chemistry, and Biology) at the Roy-Hart awards ceremony on June 4.
- FMC printed & mailed CIG postcard meeting reminders to 360 homes in study areas on May 28 and assisted with tonight's meeting setup.
- FMC is providing MCIG magnets, brochures, and copies of the CIG Mission Statement for the June 10th Public Availability Session.
- FMC is providing the hall rental for the meeting, the meeting set up as well as the services of the transcriptionist.
- FMC Community Connection Newsletter was mailed out in Mid-May.
- A Plant Tour was held on June 3 as announced in the newsletter, Web site and in the Lockport newspaper.
- Property Price Protection Program (PPP) May 30th Spring Tour of Homes was a great success – approx. 275 people went through the 15 homes on the tour. Resulted in meaningful offers and interest.
- FMC officials met with the NCCED on May 7th to discuss the NORCO and former R&D Facility properties. They discussed the Phase I reports for these properties.
- FMC in cooperation with the Sesquicentennial committee announced a contest for local residents to help name the Top 10 Reasons to Live, Work, Learn, and Play in Middleport. Entrants can win one of 5 \$50 gift certificates to a local business. Contest ends on Aug. 3 and winners announced Sept. 5.
- Web site traffic (FMC sponsors two sites) - the Middleport Community site had 745 visitors in May and the CIG site had 278 visitors.

7. Meeting Schedule

- 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 JULY 1 AND WILL BE ONLY 5:30 TO 6:30. ALL REGULAR MEETINGS WILL BE HELD FROM 5:30 to 8 P.M. AT THE MASONIC LODGE.