

**Middleport Community Input Group
Meeting at Masonic Lodge Hall – Part I Meeting Summary
September 28, 2010 – 5:30 to 7:20 p.m.**

In Attendance:

Bill Arnold – CIG Chairman/Resident	Wai Chin Lachell – AMEC
Larry Lutz – Resident	Erin Rankin – Arcadis
Christa Lutz – Resident	Brian McGinnis – FMC
Dick Owen – Resident	Judy Smeltzer – FMC
Michael Miano – Resident	Debra Overkamp – AMEC
Elizabeth Storch – Resident	Andy Twarowski – FMC
Pat Cousins – Resident	Matt Mortefolio – NYSDEC
Janet Lyndaker – Resident	Nathan Freeman – NYSDOH
Rebecca Hinkson – Resident	Mike Infurna – USEPA
Gary Peters – Resident	Assemblywoman Jane Corwin
Jennifer Bieber – Town of Royalton	Mike Mallia – Assemblywoman Corwin’s office
Dick Lang – Town of Royalton	Steve Whipple – U.S. Rep. Chris Lee’s office
Ann Howard – CIG Facilitator	Jim Ward – State Sen. George Maziarz’s office
Jim Pasinski – Meeting Notes	

1. Welcome and Introductions; Agenda Review

- A. Howard began the meeting, led introductions and reviewed the agenda.
- A. Howard explained that during their last meeting the CIG had decided that it would not be meeting monthly. The group will schedule meetings as needed to coincide with project milestones.
- B. Arnold requested that any elected officials and their representatives stay for both portions of the meeting.

2. FMC Project Update

- W. Lachell noted that there was only one change to FMC’s project status sheet. This change was to note that the Agencies comments on the preliminary draft CMS had been received.
- It was noted that FMC is going to request a meeting with the Agencies sometime in the month of October to discuss the comments the Agencies had provided.
- B. Arnold asked if the schedule would be negatively affected by the comments and the meeting request. W. Lachell stated that both sides would like the meeting to take place in October in an effort to not impact the schedule.
- M. Infurna stated that it would be difficult to tell if the Dec. 15 target date to make the draft CMS available for public comment would be met. He stated they would know more after both sides meet.
- B. Arnold noted that the CIG has previously asked the Agencies to be more flexible on the Middleport project. He noted that the Agencies made

significant comments to FMC's preliminary draft.

3. Review Agency Comments on Preliminary Draft CMS

- A. Howard noted that Bill Arnold had compiled a list of comments in response to the Agencies comments on FMC's preliminary draft CMS.
- B. Arnold stated that he would like the Agencies to discuss their six (6) general comments because there were 108 additional specific comments in the Agency response to FMC and time would not permit a discussion on those.
- M. Mortefolio stated that all of the Agencies concerns are addressed within the six general comments. He stated that in June 2010 FMC submitted a preliminary draft CMS report to the Agencies. He stated that their job is to review the report and get it to the point where it can be presented as a draft for public comment. He stated that at this point FMC can request a meeting to discuss comments (which they plan to do) or comply with each of the comments. He stated that the meeting needs to happen in October.
- M. Mortefolio stated that the Agencies are at the meeting to explain their comments on the preliminary draft CMS and noted that they have not had any discussions with FMC regarding those comments.
- Agency Comment #1: M. Mortefolio stated that the Agencies felt the general tone of the report submitted by FMC was biased towards the direction that FMC wanted to go. He stated that there was too much intermingling of facts and opinions. He stated that FMC has been directed to unlink them and indicate what are facts and what are opinions and conclusions should be placed in a separate section since the parties might not agree.
- B. Arnold stated that he questioned having opinions in the draft report and he feels the draft report should be entirely based on facts. M. Mortefolio stated that it is common practice for a facility to include their recommendations in a report but the Agencies feel it should be listed in a separate section.
- B. Arnold stated that the CIG felt the draft report should have been more available to residents. M. Mortefolio stated that it was accessible from the Agencies.
- W. Lachell stated that report was available from FMC in at the Middleport FMC House were residents could stop in and read one of the copies but FMC did not want it posted online because it was a preliminary draft report and significant changes were anticipated.
- A resident stated that they understood why FMC would not want a draft report online because of how much it might change.
- A resident stated that they would like to see a separation of facts from opinions and a listing of all available options.
- In response to a question about public access to a draft report, M. Mortefolio stated that there would be two opportunities for public

comment on FMC's draft CMS. He stated that the first opportunity is meant to gather input and revise the report as necessary and the second opportunity is to gather input after revisions are made.

- A resident stated that they feel their comments and others were ignored previously and the residents have a history of feeling ignored.
- M. Mortefolio stated that the Agencies do listen and attempt to accommodate public comments but there will be cases when they do not agree with those comments, especially in cases of science and scientific opinions. He stated that the Agencies would be more apt to accommodate comments when it comes to individual property issues.
- Agency Comment #2: M. Mortefolio stated that the Agencies felt that FMC's evaluation of disposal options was too focused towards on-site storage (CAMU) and there was not enough information provided on truck and rail transport options.
- M. Mortefolio stated that FMC has proposed permanent on-site storage with a permanent landfill-type cover, otherwise known as a CAMU. He stated that the Agencies have made no decisions about a CAMU and they are aware of public concerns about it so they have asked FMC to look at both 15-foot and 25-foot maximum CAMU heights.
- B. Arnold stated that the CIG as a group agrees with the Agencies that FMC has not adequately investigated other options.
- A resident stated that they are concerned about psychological impacts on the community from a CAMU.
- M. Mortefolio stated that the CAMU would only house non-hazardous wastes.
- A resident asked if there were any leaching concerns when it comes to a CAMU. M. Mortefolio stated that regulations do include a specific liner design for CAMUs and FMC is exploring an option that allows for liner differences on areas that already had contamination.
- M. Mortefolio stated that the Agencies have asked FMC for more options on the volume of soil proposed to be stored in the CAMU.
- A resident stated that residents are concerned that the CAMU could have soils placed in it all the way from Lake Ontario if the Agencies determine that the project extends that far.
- B. McGinnis stated that FMC's CAMU proposal limits soil to be disposed in the CAMU to remediation from south of Pearson Road.
- M. Mortefolio stated that the Agencies can examine an exception like that if there is public sentiment towards it. He stated that, if an area is determined to be impacted and it is linked to FMC, theoretically it could be stored in the soil storage unit. He stated that there are areas with some very high arsenic levels that likely are not linked to FMC. He stated that if certain areas are determined to not be linked to FMC then the Agencies have no authority to force a cleanup.
- B. Arnold asked about property owners with soil sampling data showing arsenic contamination that FMC is not responsible for. M. Mortefolio

stated that the information would need to be disclosed at a sale of the property.

- B. Arnold asked if the Agencies are considering the possibility of leaching at the CAMU. M. Mortefolio stated that water at the CAMU site would need to be pumped off and discharged or treated and discharged. W. Lachell stated that FMC has proposed a liner system and treatment system for the south side of the CAMU. M. Mortefolio stated that the north side already has a groundwater collection and treatment system.
- A resident stated that while some residents might want to limit the CAMU to soils from within the village, the CIG should consider the situations of other communities that could have remediation related to the FMC Middleport facility.
- A resident stated that they are unhappy with FMC's use of statistics. The resident feels that the arsenic issue has had a negative impact on residential property values.
- B. Arnold stated that while the overall economy has been bad for quite some time, he also suspects the contamination has had an impact on property values.
- A resident stated that a CAMU so close to the school will give more reason for the Roy-Hart School District to want to move the Middleport campus.
- Agency Comment #3: M. Mortefolio stated that the third comment relates to the remediation of all soils above 20 ppm background levels. He stated that their comment focuses on properties that they feel FMC left out prematurely, the largest of which is the Roy-Hart School District campus. He stated that the Agencies agree with the School District that there could be a potential for the possible future land use of the school property as a residential area and they agree that it should be evaluated as such.
- M. Mortefolio stated that the Agencies stand by their position that the soil levels at the school campus are acceptable for use as a school but it should still be evaluated as possible future residential land.
- In response to a question, M. Mortefolio stated that the soil contamination levels range from below 20 ppm to somewhere in the 30s and the average is around 30 ppm.
- A resident stated that they have lived in Middleport for 35 years and people have not and are not tearing down buildings and building residences. Another resident stated that if the schools were to ever close the property would likely become an elder care facility or sit vacant.
- M. Mortefolio stated that the Agencies comment and directive asks FMC to evaluate the property further and indicate what it would take to clean up the property as residential. He stated that the school district wants the property considered residential because the future use of the property is limited.
- W. Lachell stated that the issue has nothing to do with zoning changes; it simply addresses reasonably anticipated future land use.

- A resident stated that they are talking about the difference between 20 ppm and 30 ppm, which is splitting hairs.
- A resident stated that they were confused about how the Agencies could determine that 30 ppm at a school is safe for kids yet 30 ppm is not safe at residences when many kids have more exposure outdoors at school than they do at home.
- M. Mortefolio stated that the risk assessment looks at ages, soil uses, etc. and it makes residential vs. school property different.
- A resident asked if there could be a designation for the school property that states that cleanup levels would only be different if the property were to be used for residential purposes. M. Mortefolio stated that there are cases where remediation was based on current use and at a later date additional cleanup was performed due to a change in property use.
- Agency Comment #4: M. Mortefolio stated that this comment relates to the proposal to clean up individual properties so that the average soil concentration is below 20 ppm but has no spot higher than 40 ppm. He stated the Agencies are requesting FMC to look at cleanup alternatives if 40 ppm were lowered to 35, 30 and 25 ppm. He stated that it gives them more options to consider.
- B. Arnold stated that that this Agency request is counter-productive and that changing the calculations by 5 ppm does not seem necessary.
- M. Mortefolio stated that the best outcome is to get levels below 20 ppm or as close to 20 ppm as possible. He said that they want to see how much work it takes to get to that level. He stated that in most cases FMC would not be able to get a spot at 40 ppm and still get an average of 20 ppm on a property.
- J. Corwin stated that with this request it appears that the Agencies are splitting hairs in terms of scope and cost and she does not see the value in this when considering the need to get this project moving forward and completed. She stated that a request like this from the Agencies only complicates matters.
- B. Arnold stated that he felt the request would slow progress and complicates things, not simplify them.
- J. Ward stated that he felt the Agencies are stopping progress with a request like this. He stated that he does not see any real rational decision-making when requesting 20 variations of data. He stated that elected officials might have to speak with higher-level Agency authorities on these issues because the Agencies are always slowing progress. He stated that they are being nitpicky on the entire process.
- J. Corwin stated that, coming from outside this project, she feels the process is unjustifiable. She stated that she could not believe the questions that have been answered for 25 years and yet they have gone nowhere. She stated that Middleport could be a test center for the rest of the country at this point. She stated that splitting hairs doesn't benefit the community or get the project moving.

- M. Mortefolio stated that the Agencies previously gave FMC comments on their future land use report and on risk assessment and in a lot of those cases FMC did not follow the Agency guidance.
- M. Mortefolio stated that the Agencies have had an order with FMC since 1991 which delineates timeframes and rights and they are following that order and the legal process. He noted that in the past it has even sometimes taken 5 months to get a meeting scheduled but they realize that is no longer acceptable.
- J. Ward asked M. Mortefolio how many projects he has. M. Mortefolio stated that he has two major projects, one of which is FMC Middleport, and a few smaller ones.
- B. Arnold stated that the CIG has previously wondered what gets accomplished at meetings between the Agencies and FMC because it seems like they never agree on anything. He stated that the CIG believed the CMS would be finished in September 2010 and now it is pushed back until December or later and he personally no longer sees light at the end of the tunnel.
- Agency Comment #5: M. Mortefolio stated that this comment relates to the human health risk assessment. He stated that a risk assessment is not cut and dried nor is it an exact science so it requires some opinion. He stated that the Agencies disagree with FMC's risk assessment and their opinion. He stated that the Agencies want FMC to put forth data using the state risk assessment process as well as FMC's. He provided some detail of the state risk assessment.
- B. Arnold stated that garden vegetables, which M. Mortefolio mentioned, are not a main source of arsenic. He stated that FMC had a garden study conducted and it showed no difference in arsenic levels between produce purchased at a local grocer and produce grown in Middleport.
- B. Arnold stated that the criteria provided for cancer risk in the Agencies comments appear to be new (10⁻⁶ to 10⁻⁴ cancer risk corresponding to 0.1 to 10 PPM contamination instead of 0.4 to 40 PPM) and the CIG objects to the Agencies changing ranges at this point. He stated he feels that the Agencies data essentially claims that living in New York State is in itself a cancer risk since the state average of 16 PPM is above the new range.
- M. Mortefolio stated that the Agencies request helps determine the background base and has nothing to do with cleanup. He stated that legislative action led to the state data and they came up with 16 ppm based on averages.
- J. Corwin stated that the Agencies are talking about ignoring site-specific data from studies that have already taken place and instead using broader, average-based numbers based on state calculations. She stated that it does not make any sense when you already have local data available.
- M. Mortefolio stated that the Agencies do not agree with all of the conclusions reached in those studies. He stated that they follow what state scientists indicate. He stated that assumptions are being evaluated by the EPA and the science supports an even lower direction.

- A resident asked if 20 ppm is the only cleanup number the Agencies would allow. M. Mortefolio stated that this CMS doesn't go lower than 20 ppm and that would be the most extensive cleanup there would be in Middleport.
- M. Mortefolio stated that as far as health risk is concerned, soil cleanups need to be somewhat background-based and FMC wants to have it site specific. M. Infurna stated that the Agencies request simply gives another alternative to look at.
- M. Mortefolio stated that they do not agree with FMC's risk assessment and with the Agency risk assessment the number of properties involved in the process would be different.
- M. Mortefolio stated that FMC's recommended alternative is to cleanup to an average of 20 ppm. He stated that the Agencies want a background-based cleanup. He stated that in terms of actual cleanup numbers the two sides are not far apart.
- A resident stated that the Agencies would not accept the biomonitoring study performed in Middleport despite the fact that the study showed not one person had elevated arsenic levels in their system. The resident stated that they have lived in Middleport for 38 years. The resident stated that the Agencies enjoy letting FMC and the community twist in the wind.
- J. Corwin stated that the Agencies should do their own study if they do not accept FMC's studies, but any study should use local data, not state samples.
- N. Freeman stated that the state study did include some samples from Niagara County.
- B. Arnold stated that he reviewed the different state studies that led to the 16 ppm background level for the state and one study included approximately 200 samples across the whole state. The other studies primarily included the Capitol Region and lower Hudson Valley so there were not enough samples from Western New York.
- A resident asked why the state doesn't just force a large-scale community cleanup if they feel the situation is so bad in Middleport. M. Mortefolio stated that there are so many unknowns, which lead them to being more conservative.
- M. Infurna stated that the Agencies do not solely rely on science and they are open to interpretation.
- J. Corwin stated that if one were to look at Western New York they would realize that 98% of the area has some sort of chemical presence. She stated that the Agencies do not have to make an assessment of risk when they have 25 years of existing Middleport data to look at.
- B. Arnold stated that the NYSDOH cancer occurrence study completed in 1987 showed that there was no statistical difference in the occurrence of cancers between Middleport residents and those outside of Middleport. He stated that the Agencies do not like to look at those studies, including their own.

- J. Corwin stated that the Agencies should perform those studies again, using Middleport samples.
- M. Mortefolio stated that above all, the Agencies are very aware that what the community wants is an outcome of a cleanup that addresses arsenic contamination and removes the stigma from Middleport. He stated that it is also the Agencies goal.
- M. Infurna stated that the Agencies do not agree with everything the CIG and FMC believe, but, if they want the project to move along agreements have to be made.
- B. Arnold stated that with the Agencies it is either their way or the highway there hasn't been much room for compromise in the past.
- J. Ward stated that they are back to the beginning with the Agencies ignoring the community.
- A resident stated that the Agencies give the residents lip service.
- M. Infurna asked how they ignore the community.
- M. Mortefolio stated that while the Agencies do not incorporate all of the comments provided by residents, they have listened and they do accept some of the ideas. He stated that two examples previously included limiting the height of the CAMU and tree preservation. He stated that traditionally tree preservation is ignored but the Agencies understand that it is important to the community so they are looking at it. M. Mortefolio stated that they Agencies cannot make a deal when it comes to arsenic risk.
- B. Arnold stated that the perception among the community is that the Agencies are looking out for their best interests and not the interests of the community. He stated that the Agencies give the impression of wanting to prolong the project. He stated that while the Agencies do listen to the comments from the community more than previously, the perception is that in the end they will just force their decision.
- A resident asked if FMC acknowledges that some things do need to be addressed. The resident stated that the community is not sold on the idea of the CAMU and the preliminary draft CMS doesn't separate facts from opinions. B. McGinnis stated that FMC knows there are some things in the report that will need to be fixed.
- A resident stated that all the Agencies and FMC need to agree on is to do what is best for the community of Middleport.
- B. Arnold stated that there needs to be an honest human health risk assessment and a conclusion made on how to make Middleport a typical community.
- M. Infurna stated that the Agencies believe that with a little tweaking both sides will be a lot closer to agreement.
- B. Arnold asked what bioavailability factor the agencies want to use in the risk assessment. When told it was one, he stated that he felt the Agencies bioavailability of arsenic is unreasonable. It is well known that not all ingested arsenic is kept in the body and past studies have shown factors

well below 1.

- M. Mortefolio stated that they are trying to get as low as possible and they are asking FMC for an evaluation to try to see what 25, 30 and 35 ppm would be and they want both scenarios evaluated in this report.
- Agency Comment #6: M. Mortefolio stated that this comment deals with ecological risk assessment and is similar to previous comments already made. There were no other comments.

4. Additional Discussion

- M. Mortefolio stated that they would meet in October with FMC and likely come to some agreements and disagreements and then send a follow-up letter to FMC with some directives and FMC will have 15 days to agree to comply with those directives or file a dispute.
- B. McGinnis stated that FMC has requested senior level management be a part of the meeting.
- J. Corwin asked who would make decisions on the Agency end. M. Mortefolio stated that decisions will come from senior management and the three Agencies will meet to come to a consensus. M. Mortefolio stated that if senior management is not a part of the meeting the project team would meet with them the next day.
- A resident asked if there is a possibility for an agreement by the end of the year. M. Mortefolio stated that it is feasible if they have agreements on revisions.

5. Meeting Schedule

- A. Howard stated that with the strong likelihood of an Agency/FMC meeting during the month of October, the CIG should schedule their next meeting after that.
- A meeting was scheduled for Thursday, December 9.
- B. Arnold requested that the Agencies attempt to attend that meeting.

**THE NEXT MEETING OF THE CIG IS SCHEDULED FOR DECEMBER 9, 2010.
ALL REGULAR MEETINGS WILL BE HELD FROM 5:30 to 8 P.M. AT THE
MASONIC LODGE.**