

**Middleport Community Input Group  
Meeting at Masonic Lodge Hall – Part I Meeting Summary  
June 15, 2011 – 5:30 to 7 p.m.**

**In Attendance:**

Bill Arnold – CIG Chairman	Dick Owen – Resident
Elizabeth Storch – Resident	Alyssa Cruikshank – AMEC GMX
Michael Miano –Resident	Jim Ward – State Sen. Maziarz’s Office
Dick Lang – Town of Royalton	Brian McGinnis – FMC
Rebecca Hinkson – Resident	Judy Smeltzer – FMC
Lynn Andrews – Resident	Erin Rankin – Arcadis
Herb Koenig – Resident	Wai Chin Lachell – AMEC GMX
Dennis McAvoy – Resident	Mike Hinton – NYSDEC
Janet Lyndaker – Resident	Mike Infurna – USEPA
Thomas Conley – Resident	Matt Mortefolio – NYSDEC
Richard Westcott – Resident	Nathan Freeman - NYSDOH
Jennifer Bieber – Resident	Andy Twarowski – FMC
Christa Lutz – Resident	Ann Howard, RIT – Facilitator
Gary Peters – Resident	Jim Pasinski – Meeting Notes

**1. Welcome and Introductions; Agenda Review**

- A. Howard began the meeting and led introductions.
- A. Howard reviewed the agenda.
- B. Arnold noted that handouts were provided, including two newspaper articles on the 6/14/11 Agencies Public Meeting, FMC’s Keeping You Posted update and copies of an e-mail exchange between B. Arnold and members of the Agencies concerning how the Agencies will select a CMA.

**2. FMC Update**

- W. Lachell noted that FMC’s Keeping You Posted document had been provided and that FMC’s update would coincide with that document.
- W. Lachell stated that FMC had submitted Draft RFI volume X to the Agencies in May 2011. The RFI is for the suspected air deposition area north of the canal and east of the county line.
- B. Arnold asked the Agencies about the status of their review of FMC’ July 31, 2008 schedule for the remaining RFI Volumes.
- M. Mortefolio stated that the Agencies are looking to complete their review of RFI volume X and fold it into other public involvement opportunities sometime this fall.
- W. Lachell stated that the final draft CMS report for the Suspected Air Deposition and Culvert 105 Study Areas was submitted to the Agencies on May 17 and is now in a 45-day public comment period through July 1, 2011.

- W. Lachell stated that RFI Vol. V for Tributary One and Flood Plain has been approved by the Agencies and FMC plans to submit a draft preliminary CMS Work Plan this July.
- W. Lachell stated that there is no change to the proposed CAMU schedule.
- B. McGinnis noted that FMC no longer owns any residential properties in Middleport originally acquired through the former property Price Protection Program.
- A. Cruikshank provided a June 2011 FMC community outreach summary.
  - FMC held informational sessions about the draft CMS report on May 23, 24, 25, and 26 and June 2 and June 17. A CAMU walking tour was held on June 8 at the FMC plant site. A realtor workshop for the Home Value Assurance Program will be held on June 21.
  - The Middleport Walking Tour Map/Guide was announced and the program is in place. FMC awarded three \$500 scholarships to Roy-Hart students. The FMC Middleport Plant made a \$500 donation to the Middleport Fire Department.
  - The Middleport Web site received about 800 unique site visits in March and the MCIG Web site received about 250 unique site visits in March.

### **3. Draft CMS Discussion**

- B. Arnold noted that there was e-mail correspondence between himself and Agency representatives on what parameters were and were not going to be acceptable to the Agencies regarding selection of a CMA. He stated that FMC and the Agencies differ in the approach they wanted to take to perform the risk assessment in Middleport. He stated that in his opinion the NYS soil cleanup objectives are not site-specific and are very conservative. He stated that two years ago all parties agreed to consider site-specific risk assessment but now the Agencies are saying site-specific is not acceptable and there will be no risk assessment. He stated that he feels one and a half years of time has been wasted.
- M. Mortefolio stated that in March 2009 they came up with Corrective Action Objectives (CAO's) that were agreed upon and that included a site-specific risk assessment, which pre-dated any documents submitted by FMC. He stated that at the time the Agencies did not know what kind of approach FMC would take. He noted that in October 2009 FMC submitted their risk assessment approach document and in March 2010 the Agencies provided comments to FMC noting what they thought were the major problems with the proposed approach. He stated that FMC then submitted a risk assessment approach that was not much in line with what the Agencies had commented on. He stated that the Agencies want to review with the MCIG what they disagree on with FMC and why.
- M. Infurna stated that “FMC’s approach of assessing site related risk by subtracting the risk from “background” levels of arsenic in soil is oversimplifying complex environmental conditions and serves to underestimate the true risk posed by arsenic contaminated soil. Once it is

established that the level of a contaminant at a site is significantly greater than background, as it has been for arsenic at FMC, the risk assessment is based on the total amount of the contaminant in the soil because that is what people are exposed to. The idea that FMC can distinguish “their” arsenic from “background” arsenic in a particular soil sample or on a specific property indicates a poor understanding of the variability in soil constituents. Purely background levels of arsenic in soil would vary from one sample to the next making the subtraction of the background level uncertain. The important issue in the Middleport community is that the level of arsenic in soil resulting from FMC off-site contamination is significantly greater than background and any effort to “account” for background in the risk assessment detracts from its purpose – to best estimate risk.”

- FMC was asked for their response. W. Lachell stated that FMC performed risk assessment both incrementally and without taking out background, both methods are in the CMS.
- A resident stated that the Agencies are just changing variables to get the result that they want. He stated that if they use the same formula the end results are the same.
- M. Infurna stated that the Agencies have a different opinion from FMC on what the variables are. He stated that the Agencies and FMC cannot agree on how it should be done.
- A resident stated that at some point the Agencies have to narrow down their variables.
- B. Arnold stated that the Agencies knew a year ago when they saw FMC’s preliminary draft CMS what approach FMC was going to take so the Agencies should have done their own risk assessment at that time. To not to have performed their own assessment and to say now there is no time to do it is not acceptable.
- M. Mortefolio stated that they have NYS specific criteria in place and there are few variables where site-specific would matter. He questioned why soil ingestion in children would differ in New York from Arizona.
- B. Arnold stated that even in New York the climate is much different between upstate and downstate. Soil availability is different.
- M. Mortefolio stated that the NYS formula is not 365 days a year. He stated that the exposure duration in NYS is over the spring through fall seasons but he did not know exactly how many days it was.
- M. Mortefolio stated that the Agencies did not come to the meeting prepared to debate risk assessment and they had only planned on providing an explanation on their differences with FMC.
- M. Mortefolio stated that FMC is using incremental risk to say that there isn’t a big difference in risk between total concentration and background.
- M. Infurna stated that the Agencies do not agree with incremental risk.
- On another item of disagreement, M. Mortefolio stated that in general FMC put in a community-wide approach and used some statistics to condense down into two values [Central Tendency Exposure (CTE) and

Reasonable Maximum Exposure (RME)], which they used to calculate risk. He stated that FMC's way of looking at it would be throughout the community and the Agencies want to look at it as exposure on the property where a child resides. He stated that they do not feel FMC evaluated the child's own property correctly.

- W. Lachell stated that FMC looked at the community as an exposure area instead of doing 250-plus individual risk assessments. She stated that FMC had thousands of soil samples so the 95 percent UCL was used in the RME scenario instead of the maximum.
- B. Arnold asked the Agency representatives what number they want FMC to use.
- M. Mortefolio stated that they want FMC to evaluate risk on each property. He stated that one can do a risk assessment using assumed exposure concentrations (such as 10 ppm, 20 ppm, 30 ppm, etc.) to get a general idea where the risk on each property would be.
- N. Freeman stated that using the Agencies' risk assessment assumptions and methods, the soil cleanup objectives would be in the single digits (0.1 ppm for one in a million risk).
- A resident stated that on the Agencies assumptions they are stating that there is no safe place in NYS when it comes to arsenic in soil. The resident stated that the NYSDOH shouldn't buy into 16 ppm.
- N. Freeman stated that the Agencies do accept 16 ppm because the part 375 Regulations allows them to look at local background and estimate the criteria as they have been in Middleport.
- M. Mortefolio stated that the soil cleanup objectives were to be based on risk, if possible. He stated that this is where the CMS moves forward; that the Agencies and FMC agree to disagree.
- M. Infurna stated that risk assessment is only one small factor and it is not the sole determining factor.
- In response to a question from a resident, M. Mortefolio stated that he is not sure if risk assessment is a stumbling block, but since FMC has proposed remediating 152 properties he feels that they are over the hurdle that is risk. He stated that there may be residents who agree with FMC and residents who agree with the Agencies on the approach.
- B. Arnold stated that the Agencies have known for a long time that the MCIG wanted a risk assessment and FMC's risk assessment is the only one they have to go on.
- M. Infurna stated that there is a lot of possible interpretation and many variables that factor in.
- B. Arnold stated that the MCIG believes they know which CMA the Agencies are going to select and have had in mind for a number of years. He stated it will either be option #2 or option #8.
- A resident questioned where the village might be if they had stayed on the path of performing ICM's annually. The resident stated that FMC would likely be out of streets to clean and there would be no properties left to remediate.

- M. Mortefolio stated that there was pushback from the community on taking the ICM approach and there is nothing to say FMC would have agreed to that approach.
- M. Infurna stated that the Agencies feel FMC's schedule for construction and remediation work can be condensed such as the 10 years to do CMA-2.
- In response to a residents question if there is any safe place in NYS in regards to soil arsenic contamination, N. Freeman stated that there is probably no place in NYS where arsenic is less than 1. He stated that the state's risk assessment led to their results.
- A resident stated that the Agencies have ignored FMC's study performed, by the consulting firm Exponent, about 7 years ago. The resident stated that the study clearly showed that people who live in Middleport showed no elevated arsenic in their body. The resident stated that they have talked about the study, they have talked about bioavailability, Dr. Roz Schoof has been to Middleport many times and yet the Agencies continue to ignore scientific results provided to them.
- M. Mortefolio stated that as they have stated in the past FMC chose to perform the Exponent study on their own with many types of participants and the Agencies concerns with the study were that it was open to all residents living in and out of the study areas. He stated that some people lived in properties that had contamination at 20 ppm or less and looked at exposure over a smaller period of time.
- B. Arnold noted that in studies there is usually a control sample. FMC just bunched the control sample with those in study areas and there was no difference in the results. He does not see any validity to the Agencies problems with the Exponent study.
- A resident stated that they want a minimal cleanup on their property.
- M. Mortefolio stated that each property owner will have a choice. He stated that the Agencies have never stated that properties could be forced to get deed restrictions and that the Agencies cannot do this. He stated that there has been talk that people in Middleport would like a letter stating that their property is clear of contamination but they cannot do that for everyone.
- B. McGinnis stated that FMC would have to get an agreement from the property owner that they want a deed restriction. A deed restriction could be applied if a property owner did not have his property cleaned up to residential standards. He stated that if a resident does not want a deed restriction or remediation FMC would not do either. He further noted that if the property is sold in the future and the new owner wanted remediation FMC would be responsible for cleaning the property.
- M. Mortefolio stated that the Agencies and FMC have to consider future property owners as well.
- In response to a question about FMC's timeframes for remediation, M. Mortefolio stated that he believes FMC's timeframes are based on the timeframes used for previous ICM's in Middleport. He stated that FMC

used those timeframes to calculate the amount of time it would take for the project.

- B. McGinnis stated that FMC based their calculations on the number of homes that can be remediated in a construction season on previous work in Middleport along with other local cleanup projects, including one recent lead contamination remediation project in Depew, N.Y.
- W. Lachell stated that it takes an extended period of time to excavate, backfill and restore a single property. She stated that they have to include several factors including the length of the construction season, weather, size of the property, the equipment needed, the size of the cleanup, truck traffic, street congestion, pedestrians and the school calendar.
- W. Lachell stated that FMC's estimates are based on a May through October construction season.
- B. Arnold stated that FMC's estimate of 181 properties remediated in 10 years averaging to 18 properties remediated during a single construction season does not sound reasonable. He stated that the Historic Air Deposition Area is small and if enough equipment and people were used the project could be expedited.
- W. Lachell stated that they can remediate 20-30 properties a construction season based on their estimates, which is calculated on a standard ¼ acre lot of land. She stated that the estimate is weather permitting.
- E. Rankin noted that they also have to consider the backfill, which has certain standards that must be met.
- A resident stated that FMC might need 70,000 cubic yards of acceptable backfill, which could be difficult to find.
- B. McGinnis stated that FMC may have to stop excavating earlier in the construction season because of the backfilling work and the additional restoration work required.
- W. Lachell stated that only a certain amount of equipment will fit in a space. She stated that FMC typically uses three crews, one to excavate, one to backfill and one to restore the property. She stated that the average property takes five days to excavate and backfill and the restoration depends on the size of the property, site conditions, and property features.
- E. Rankin stated that each property owner receives specific attention as a part of the process.
- B. McGinnis stated that all of the site prep work also needs to be addressed (such as utility mark outs, surveying, etc.) before excavation can begin and that work usually takes longer than excavation and restoration.
- B. Arnold stated that the project can be expedited if there were enough crews used to do so.
- M. Mortefolio stated that the schedule will be set when the remedy is selected. He noted that Agency management wants a tight schedule.
- A resident asked if the Agencies see any reason why the CMS would need any major overhauls following the end of the public comment period on July 1. In response, M. Mortefolio stated that the Agencies need to review

all comments both verbal and written and then prepare their draft responsiveness summary. He stated that they also need to prepare their draft Statement of Basis with the selected cleanup and disposal measures, which will go out to public comment. He stated that they hope to have the cleanup and disposal option selected in the winter or spring of 2012. Construction would then start at a determined time later.

- B. McGinnis stated that the design phase also needs to be considered in timeframes.
- A resident stated that the CMS was supposed to include a deadline for this work to be done and was supposed to get Middleport to the end of this project. The resident asked if the Agencies see June 2012 as a time when a firm completion date can be scheduled for the entire project.
- M. Mortefolio stated that once they select the remedy they have to set a schedule. He stated that the Agencies think FMC's schedule should be shorter but it will take mutual cooperation to make that happen.
- A resident asked if the process can be shortened once the Historic Air Deposition Area is completed and referenced shorter public comment periods as an example. M. Infurna stated that the Agencies have received complaints over the years that people needed more time to review project documents and even noted that the 45-day timeframe was not enough. He stated that 30 or 45 days does not matter to the Agencies but previous complaints have been made.
- In response to a question about who has complained about insufficient review periods, M. Infurna stated that one example was residents on Vernon Street, some of whom felt they did not have enough time to review documents.
- A resident stated that FMC and the Agencies should work together to shorten the process in the future. M. Mortefolio stated that there might be slight differences in other CMS's but he envisions the time periods will be shorter moving forward. He stated that they are going to try to meld things together when possible.
- A resident stated that the residents of Middleport are in a continual state where nothing happens. The resident stated that there are people who are trying to market the village everyday but it is difficult. The resident stated that the village needs a clear cut path moving forward and no one sees any light at the end of the tunnel.
- A resident stated that Middleport residents are being held hostage.
- M. Mortefolio stated that once a remedy is chosen the only major discussion point will be the schedule. He stated that once there is an agreed-to schedule the Agencies will hold FMC to it.
- M. Mortefolio stated that the Agencies have not made up their mind on a selected remedy, despite what some residents think.
- J. Ward stated that the Agencies have never once listened to the public. He stated that he never hears the Agencies reference doing what is best for the residents and the community and what they want and need. He stated that the Agencies only ever reference what they want FMC to do.

- B. Arnold stated that the MCIG agreed and stated support for what they wanted in the CAO's and now the Agencies say they cannot do what the residents want. He stated that the Agencies do not listen to scientific information provided to them.
- M. Mortefolio stated that the Agencies were using the CAO's to reach a decision. He stated that there are other experts involved in the projects other than those that FMC puts forward.
- A resident stated that the Agencies have proven they are not listening to the community. Another resident stated that the Agencies do not address the wishes of residents.
- A resident stated that the people who live in the village want this project over and done with as quickly as possible.
- B. Arnold stated that everyone wants the project completed with the least amount of disruption to the community and damage to the natural landscape.
- M. Mortefolio stated that he needed to clarify that when they talk about soil ingestion it is important to note just how small of an amount of soil that the average child consumes in a day. He provided a bottled sample for residents to look at.
- M. Mortefolio stated that every property owner will have the ability to choose to have remediation and have input and how remediation will be performed.
- M. Infurna stated that residents need to remember that the Agencies cannot place deed restrictions on a property without the permission of the property owner.

**THE NEXT MEETING OF THE CIG IS TO BE DETERMINED. ALL REGULAR MEETINGS WILL BE HELD FROM 5:30 to 8 P.M. AT THE MASONIC LODGE.**