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CORRECTIVE MEASURES STUDY  
SUSPECTED AIR DEPOSITION AND  
CULVERT 105 STUDY AREAS  
FMC CORPORATION  
MIDDLEPORT, NEW YORK  
JUNE 14, 2011 PUBLIC MEETING  
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REPORTED BY: DOREEN M. SHARICK, Court Reporter  
EDITH E. FORBES COURT REPORTING SERVICE  
21 Woodcrest Drive  
Batavia, New York 14020

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APPEARANCES:

MICHAEL BASILE, Facilitator,  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
186 Exchange Street,  
Buffalo, New York 14202.

BRIAN M. MCGINNIS,  
FMC CORPORATION,  
1735 Market Street,  
Philadelphia, Pennsylvania 19103.

MATTHEW J. MORTEFOLIO, P.E.,  
NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
625 Broadway, 12th floor,  
Albany, New York 12233-7017.

WAI CHIN LACHELL, Senior Engineer,  
AMEC GEOMATRIX, INC.,  
90B John Muir Drive, Suite 104,  
Amherst, New York 14228-1148.

1  
2 MR. BASILE: Good evening, my name is  
3 Mike Basile. I'm the Community Involvement  
4 Coordinator and a Public Affairs Officer with  
5 the United States Environmental Protection  
6 Agency. I'd like to welcome you this evening  
7 to the FMC Middleport meeting. I will serve  
8 as a facilitator this evening. I've been with  
9 the EPA for 24 years. I have an office out in  
10 Buffalo and I work for Region II out of New  
11 York City.

12 I would like to introduce a few folks  
13 that are in the audience that will not be  
14 participating, but I'd like to recognize them  
15 at this time before we start. We have Mike  
16 Infurna, who is the project person with EPA  
17 from Region II, Mike. Right there, Mike.

18 Matt Mortefolio, the project officer,  
19 with the DEC out of Albany, Matt.

20 Mike Canton, New York State DEC Region  
21 IX, out of Buffalo, Michael, in the back here.

22 And Nathan Freeman with the New York  
23 State Department of Health, Nathan.

24 And in the audience this evening is  
25 Mr. Jim Ward from Senator Maziarz's office,

1  
2 Jim.

3 And the FMC Corporation has submitted for  
4 public review and comment a draft report on  
5 the Corrective Measure Study, CMS, they  
6 conducted for certain areas beyond the  
7 boundaries of its Middleport, New York, plant.

8 FMC has undertaken the study as part of  
9 the Environmental Investigation Remediation  
10 Evaluation Program it's conducting under a  
11 consent order with the New York State DEC and  
12 EPA relative to the historic operations of the  
13 release of the contaminants from its  
14 Middleport plant. The Draft CMS Report is  
15 FMC's work product. They have conferred with  
16 the State and Federal regulatory agencies in  
17 preparing the draft and understand that the  
18 Agencies still have to review it as well as  
19 seek public comment and input as we are doing  
20 today and here this evening.

21 The 45 day public comment period began  
22 May 17th to allow for feedback and it will run  
23 through July the 1st. After public comments  
24 have been received, the Agencies will respond  
25 to the comments and provide their

1  
2 determination of the final corrective measures  
3 that should be taken.

4 This evening, FMC and the Agencies will  
5 make some brief presentations and then we will  
6 open the proceedings to the public for your  
7 comments. We have a stenographer present to  
8 record the proceedings and her name is Doreen  
9 Sharick. I will ask that your comments be  
10 held to no more than five minutes each. If  
11 you have prepared written comments, they can  
12 be handed to Doreen as well.

13 Our formal proceedings will end at 8:30.  
14 Agency personnel will be available to  
15 informally respond to questions from the  
16 public immediately following the completion of  
17 the meeting.

18 Once again, the meeting format will have  
19 two presentations followed by simply public  
20 comment because that's what we are here for  
21 this evening, not to answer questions but to  
22 solicit public comment.

23 Following today's public meeting and  
24 availability session that took place this  
25 afternoon, written comments can still be sent

1  
2 by e-mail to Mr. Matt Mortefolio.

3           Upon completion of the comment period  
4 after July 1st, the Agencies will review all  
5 written comments as well as those received  
6 during the sessions and issue a responsiveness  
7 summary.

8           At this time I'd like to call upon Brian  
9 McGinnis with the FMC Corporation for his  
10 presentation.

11           MR. MCGINNIS:   Thanks, Mike.  I really  
12 appreciate it.  I'm not going to use the  
13 microphone.  I hope everybody can hear me.  
14 I'd like to extend a warm welcome on behalf of  
15 the FMC.  I appreciate you coming out tonight.  
16 I flew in this morning from Philadelphia.  It  
17 was raining, drizzly and cold.  I'm glad I  
18 brought a jacket with me.  Now, I don't need  
19 it.  It's a beautiful evening.  I appreciate  
20 you being here.

21           Tonight, we are going to have just a  
22 discussion of our presentation I'm going to  
23 give you.  We are going to talk about an  
24 overview of the Corrective Measure Study.  The  
25 Corrective Measure Study really is a study we

1  
2 put together and presents a lot of different  
3 options for remediation in two different areas  
4 off our plant site.

5 We'll talk about which two areas. It's  
6 really about what are the options going  
7 forward. We will talk about which two study  
8 areas. We'll give you a brief description of  
9 what those options are, those corrective  
10 measures alternatives. We will briefly  
11 discuss what kind of criteria is used to  
12 evaluate the different alternatives. And then  
13 a quick comparison of the different  
14 alternatives and then FMC's recommendation.

15 We actually made a recommendation in the  
16 report, which alternative FMC would like to  
17 see selected as a remedy. Like I said, the  
18 purpose of this report is to layout the  
19 different alternatives and then evaluate them  
20 on a set of criteria. Like Michael said, this  
21 is FMC's work product. The Agencies I thought  
22 really weighed in one way or the other on what  
23 they believe is the correct alternative. They  
24 will do that after the public comment period.

25 The report was actually submitted in May.

1  
2 It's out for public comment. We do request  
3 that the public weigh in. If you have  
4 questions about the complexity of the report  
5 or anything else about the report, we will be  
6 available afterwards to talk.

7 That's this part of the criteria that we,  
8 the Agencies, use to evaluate the report is  
9 the public comments.

10 After the public comments, as Michael  
11 said, the Agencies are going to select  
12 preliminary statement of basis, which is they  
13 are going to have a preliminary opinion about  
14 which alternative they think we should  
15 implement.

16 Next, there is two different off-site  
17 areas we are going to talk about. This report  
18 addresses two of the areas off of our plant  
19 site. One is the Suspected Air Deposition  
20 Area and that's this one. We will talk about  
21 that one. The other one is called Culvert  
22 105.

23 The areas in green are the areas that  
24 would determine -- needed to be evaluated in  
25 this report. There is 244 properties,



1  
2 individual properties, that were evaluated.  
3 The ones in yellow were ruled out as part of a  
4 previous report that we did. There is 75  
5 properties that were ruled out.

6 Included in those 244 properties, that  
7 also includes the properties that were  
8 previously remediated on South Vernon Street.  
9 It also includes the southwest portion of the  
10 school yard and the homes on Park Avenue and  
11 then there is one other piece of property  
12 right here. It was a vacant lot. Had a  
13 burned out building on it. We called it the  
14 wooded parcel because it used to be wooded.  
15 We remediated that in 2007, also.

16 So those properties are also included in  
17 part of this evaluation. We did those as an  
18 interim corrective measure. We didn't do  
19 those as a final remedy. They still have to  
20 be evaluated formally in this report.

21 The next area is called Culvert 105.  
22 Here's the little slice of the Erie Canal,  
23 right here. Culvert 105 is actually a storm  
24 water drainage conveyance that the Village  
25 owns. It starts at the railroad tracks just

1  
2 north of the FMC property. It actually runs  
3 underground south of the canal and then it  
4 goes beneath the canal and then goes north and  
5 the Middleport Village Water Treatment Plant  
6 is right up here. So this is a storm water  
7 conveyance right through here. Part of this  
8 is open ditch especially up in here. And from  
9 Sleeper Street south, it's all piped  
10 underground.

11 In 2007, we, also, did some other  
12 corrective measures to address a few areas  
13 north of the canal as part of Culvert 105, but  
14 all those properties, there is 25 of them,  
15 those were evaluated as part of this study.

16 So there's actually eight alternatives.  
17 6 and 7 were chopped up in two different  
18 pieces. So there's really ten. But briefly,  
19 one of the things that differentiates the  
20 different alternatives is what the remedial  
21 goal is. What's our goal for clean up for  
22 arsenic? Okay. We always have to evaluate no  
23 further action in the regulations. We always  
24 look at that, what if you do nothing. Compare  
25 that against the evaluation criteria and then

1  
2 Alternative 2 is 20 parts per million. So we  
3 would remediate to 20 parts per million. No  
4 point in any of these properties have anything  
5 greater than 20 parts per million. That is  
6 actually the standard we use when we did  
7 interim corrective measures.

8 If you will see alternatives 3, 6 and 7,  
9 see a bunch of different types of property  
10 uses. What those alternatives propose is --  
11 we will just step through number 3 real quick.  
12 For residential property, we are going to  
13 clean up to an average of 20 parts per million  
14 with a maximum of 40. So no point could be  
15 higher than 40, but the average of across an  
16 individual piece of property has to be less  
17 than 20.

18 For public and institutional, 30 parts  
19 per million average, 60 max.

20 And then agricultural, commercial,  
21 industrial, railroad utility is 40 parts per  
22 million with 80 parts per million maximum.

23 Now, anything except residential would  
24 require what we call an institutional control.  
25 We did that wooded property I just talked

1  
2 about just north of the FMC property on the  
3 other side of the tracks. We actually put an  
4 institutional control on that piece of  
5 property. We excavated two feet off the top  
6 and replaced it with clean backfill and  
7 replaced the culvert underneath with Culvert  
8 105. And with the agreement of the property  
9 owner, we were able to put an institutional  
10 control on that particular piece of property.  
11 We did not clean it up 20 parts per million  
12 everywhere. Okay. But the key to that is  
13 that on that particular piece of property, we  
14 were able to put an institutional control on  
15 it. The property owner agreed to it.

16 If someone owns a piece of agricultural  
17 property that was in the study area, we said,  
18 oh, well, we'd like to clean up your property  
19 to 40 on average with an 80 maximum and they  
20 said, well, I don't want an institutional  
21 control on my property. Well, we are back up  
22 to residential. Okay. So if the property  
23 owner doesn't want that institutional control,  
24 we can't force them to do it. It's really up  
25 to them. Now, in the future what would happen

1  
2 is that any time, FMC would have to go back on  
3 a regular basis and look at those properties.  
4 If any of those properties were going to be  
5 switched say from agricultural to residential,  
6 at that time we have to go back and look at  
7 what we did and say, does this really meet,  
8 you know, what we did? Does that meet the  
9 residential criteria or not? If it doesn't  
10 and it's going to switch uses, we are going to  
11 have to go back and do more work so that we  
12 make sure that it meets this residential  
13 standard.

14 You can see Alternative 4 and 5, it's  
15 just every property gets cleaned up to the  
16 same cleanup goal.

17 6 and 7, you have their various property  
18 uses.

19 And then 8, every property gets cleaned  
20 up to 20 on average, with a 30 maximum.

21 This slide really kind of lays out what's  
22 going to happen with the remainder of the  
23 Royalton-Hartland school yard. Okay. Of  
24 course, there is no further action. Okay.  
25 And then there is a couple of those where if

1  
2 it meets the criteria, 1, 4 and 5 actually  
3 meet the criteria where you wouldn't have to  
4 do anything else. It's fine the way it is  
5 based on the clean up goals. Number 2, you  
6 still have to excavate out more. 6, 6B, 7B  
7 and 8, you have to do more work and then 3, 6A  
8 and 7A, we would try and put an institutional  
9 control on that piece of property and then if  
10 it changed uses in the future, then we'd have  
11 to go back and probably do some more work.  
12 That's how the school yard is evaluated and  
13 the different alternatives. Some of the  
14 common elements of each of these alternatives,  
15 so this is something we are going to do no  
16 matter what. These are the alternatives just  
17 to give you an idea.

18 Proposing no further work for that wooded  
19 parcel. The 31 properties that we have  
20 already cleaned up. South of the canal, Park,  
21 Vernon, no further action. We are proposing  
22 no further action is going to be required  
23 there.

24 The method of clean up. Each of these  
25 properties is going to be soil excavation and

1  
2 on some particular properties, might use soil  
3 tilling or blending. That was a technology  
4 that we evaluated as part of this process  
5 where soils are mixed, blended and placed down  
6 to how many, three feet, four feet?

7 MS. LACHELL: Four feet.

8 MR. MCGINNIS: About four feet and by  
9 doing that, we can bring the average value of  
10 that soil down below 20 parts per million on  
11 some properties. So that is kind of a  
12 selected method, but the major method is going  
13 to be soil excavation. The only place you can  
14 do the soil tilling and blending is on like a  
15 large piece of property, say an agricultural  
16 piece of property. The equipment is just  
17 really too big to get on a residential lot.  
18 The other thing is you have to be worried  
19 about especially, everybody knows this, it's  
20 like you wouldn't want us doing that in your  
21 front yard. We'd probably tear up your gas  
22 line, water line and your sewer line. So stay  
23 away from that.

24 Institutional controls, these particular  
25 alternatives and then tree preservation

1  
2 wherever possible. We evaluated a couple  
3 different techniques of trying to preserve  
4 trees. The thing about trees is we found out  
5 from other properties that we have done, it  
6 really depends on the particular property and  
7 then it depends on the individual trees.  
8 Whenever we have done this in the past, we  
9 have looked individually tree by tree by tree  
10 and talked to the property owner and consulted  
11 with them about what the best thing might be  
12 to do. Some trees are just past their  
13 expected life. They are really old. You  
14 know, they are rotted out in the middle.  
15 Probably best that they come down.

16 Other trees you may be able to save  
17 depending on how old they are, how big their  
18 roots are and what work we have to do based on  
19 whatever cleanup criteria is selected. So we  
20 are going to try and work that in when we do  
21 our design. It's really going to be on a  
22 property specific basis and then really a tree  
23 by tree evaluation.

24 So other common things, Alternatives 2  
25 through 7. We talk about the buried culvert



1  
2 pipe mostly south of the canal. In  
3 alternatives 2 through 7, where the sample  
4 data indicates, we are going to excavate out  
5 the culvert and the soils around it and  
6 replace the culvert. If there's no data in a  
7 section, we are going to propose to leave that  
8 where it is. So if it's not warranted, we are  
9 not going to replace it.

10 Alternative 8 though actually  
11 contemplates replacing the entire underground  
12 culvert all the way through from actually from  
13 Park all the way up to the canal.

14 Property restoration is always an element  
15 of all the things that we have done. It's  
16 hard to say. I can't even generalize. It's  
17 really an individual thing. We have always  
18 gone to individual property owners and talked  
19 about restoration. I can say in general what  
20 we have done in the past is try to replace  
21 things in kind. Except for if you've got a  
22 really nice tree and it's this big around and  
23 it's healthy and unfortunately, there's no way  
24 around taking it down, we can't give you a  
25 tree that big. I have to give you a smaller

1  
2 tree that has to grow later. We have been  
3 successful in, you know, trying to replace  
4 things in kind whether it's fencing or whether  
5 it's sheds or other things like that. We sit  
6 down and talk to property owners about what  
7 the plan is and what works best. We try to be  
8 very conscious about that.

9 Soil disposal, for each of the  
10 alternatives there's two different soil  
11 disposal methods. One of them is off-site  
12 disposal. That would be at a commercial  
13 landfill. The way we looked at doing that was  
14 we said that we assumed, and this is an  
15 assumption on our part, that 25 percent of the  
16 soil could be used for what's called day  
17 cover. Landfills at the end of the day have  
18 to put a soil cover over whatever they put in  
19 there that day. And then 75 percent of it  
20 would be just disposed off in a landfill.

21 I should go back and tell you that from  
22 our experience, all of the debris and all the  
23 soils that get excavated out, more likely, I  
24 can tell you 99 percent sure are going to be  
25 nonhazardous. Okay. It's not a hazardous

1  
2 waste. It's soil that's got high levels of  
3 arsenic in it and the same for the debris. So  
4 that the off-site disposal would be at a  
5 commercial landfill.

6 The other option is to put the soil back  
7 on the FMC plant site in what's called a  
8 Corrective Action Management Unit or CAMU. We  
9 are proposing to build that to a height of 28  
10 feet. It would cover approximately 17 acres  
11 on the plant site. We have already placed  
12 close to 97,000 cubic yards of material there.  
13 We did all these other remediations from the  
14 school yard, Park and Vernon. All the  
15 material came back to the plant site. It's on  
16 the eastern side of the plant and that's where  
17 it sits today.

18 And what we are proposing to do is under  
19 the rules and regulations of the State and  
20 federal guidelines, FMC can apply for what's  
21 called a CAMU and that's something that's  
22 afforded the company through the rules and  
23 regulations. You can see this is a footprint  
24 of it right here. That would give us -- if we  
25 built it out 28 feet high, that would give us

1  
2 a capacity of approximately 230,000 cubic  
3 yards of soil that can be brought back and  
4 placed in the CAMU.

5 One thing is this CAMU will be, like I  
6 said, 28 foot high all the way across. We got  
7 a couple over here on the side. A couple of  
8 views where I don't know how they photoshopped  
9 this. They photoshopped in a 28 foot high  
10 CAMU into those photos. You're welcome to  
11 come up and take a look and then on this  
12 aerial view, they photoshopped in what it  
13 would be like. We plant trees and shrubs  
14 around it and try and model it a little bit so  
15 that it looks nice. And right now, I think  
16 the highest spot on there is 25 feet high.  
17 Not all of it's 25 feet high. A couple spots  
18 that are already 25 feet high. So it would be  
19 three feet higher than it already is. It  
20 would be a much larger footprint.

21 Just to give you a comparison, here's a  
22 few facts and figures about the different  
23 alternatives. This first column -- you guys  
24 have a copy of the presentation and you do not  
25 have to follow along. You can look at it when

1  
2 you get home. The number of properties that  
3 need to be remediated is in this first column.

4 The second column is the volume of the  
5 soil. So if you look at alternative two,  
6 which is 20 parts per million maximum, you get  
7 228,000 cubic yards.

8 This fourth column is how many feet of  
9 culvert pipe have to be replaced.

10 And then this last column is our  
11 engineer's best estimate of how many years it  
12 would take to implement that particular  
13 remedy.

14 So you can see there's a lot of different  
15 numbers in there, but it kind of gives you a  
16 comparison of some of the important numbers we  
17 think that are in the report to use for  
18 comparison.

19 Here's another one. Again, number of  
20 alternatives, number of properties. This  
21 shows the number of properties that require  
22 some type of institutional control. Like I  
23 said before, those institutional controls FMC  
24 might propose them. The property owner has to  
25 agree to them.

1  
2           This fourth column gives you what the  
3 average arsenic concentration will be after  
4 the excavation is done. That was a number of  
5 particular properties. If you looked at  
6 column two of those 181 properties, when we  
7 were through excavating, if you looked at the  
8 remaining data that still remains, you have an  
9 average of seven parts per million.

10           And then the last two columns give the  
11 cost. One is to do the remediation putting  
12 those materials in the CAMU. The other column  
13 is doing the remediation and trucking the  
14 soils off-site to a commercial landfill.

15           The evaluation criteria that we have  
16 used, it's something that the Agencies have  
17 stipulated in the regulations and it's common  
18 across not only New York State, but it's  
19 common across different programs all across  
20 the United States. So these are really common  
21 things that we run into all the time.

22           First one up there is community or  
23 property owner acceptance. Your opinion  
24 counts. So please make sure you voice your  
25 opinion tonight or send in a comment card.

1  
2           Technical which is how effective is it?  
3           Is it reliable? How easy is it implementable?  
4           Is it safe to do? The environmental impacts  
5           short and long-term, human health impacts  
6           short and long-term, institutional costs and  
7           what the green remediation practices are  
8           incorporated into the alternatives.

9           We always love these little happy charts,  
10          the little circles. A blank circle is not  
11          favorable. A filled in circle is favorable  
12          and then half is moderate. So this shows all  
13          the different evaluation criteria and how FMC  
14          sees these things stacking up with the cost on  
15          the bottom.

16          FMC preferred alternative is Alternative  
17          3. I'm going to go through it real quick.  
18          Soil removal with soil tilling and blending  
19          where it makes sense. Post-remediation  
20          arsenic cleanup goals, we already kind of went  
21          through those based on land use. No further  
22          action on the Roy-Hart School property.  
23          Institutional controls on certain properties.

24          No further action on properties we have  
25          already remediated. Soil debris would all go

1  
2 into the CAMU on the eastern side of the plant  
3 site.

4 After the Agencies comes out with their  
5 final decision, there are some pre-designed  
6 and design activities. We have to figure out  
7 how we're going to do this. Depending on  
8 which alternative we have got to talk to, we  
9 have probably over a 100 property owners and  
10 make specific plans for each of the property  
11 owners. That will take a while. That's next  
12 up.

13 We will do tree preservation wherever  
14 possible and then the property restoration.

15 Thank you. Matt Mortefolio is up next.  
16 Matt, it's all yours.

17 MR. MORTEFOLIO: I will go through  
18 especially the first few slides real quickly.  
19 Two reasons, one, I want to get you guys up  
20 here to issue your comments. Two, is some of  
21 this is because Brian and I prepared our  
22 presentations separately, some duplication, so  
23 I'm not going to go over things twice, but  
24 this slide here is the first. What I'll do is  
25 go over the purpose of the CMS and the areas



1  
2 that were already covered. Summarizing each  
3 of the Agencies' Corrective Action Objectives,  
4 which is part of your handouts. To go over a  
5 little bit of our perspective on the draft  
6 report so far and hit some the important  
7 points we see in the report. And go over the  
8 public input opportunities and what happens  
9 after tonight with regard to that. And then  
10 the important next steps, what happens after  
11 we get passed the public comment period.

12 Purpose of the CMS, basically, there is  
13 two parts of it. As Brian said, evaluating  
14 alternatives of cleanup which there are eight  
15 as Brian covered and then also evaluating  
16 what, you know, some of these will generate.  
17 2 through 8 will generate soils that have to  
18 be dealt with and the other part of this  
19 decide on proper transportation and disposal  
20 of that soil.

21 I'll skim right through this. This is  
22 the exact same thing as Brian showed you  
23 before only we put together the two areas:  
24 Air Deposition area here, Culvert 105 here and  
25 this same thing Brian had as far as what each

1  
2 of these colors means so we will skip through  
3 that.

4 Corrective Action Objectives. That's  
5 part of your handouts. It kind of looks like  
6 this. The Agencies came up with these in 2009  
7 before FMC did the CMS. We came up with a  
8 version of this in draft. We showed it to  
9 FMC. They commented on it. We also shared it  
10 with the Middleport Community Group, who  
11 commented on it.

12 We eventually finalized it in May of  
13 2009, a set of what we call a Corrective  
14 Action Objective. What we wanted to see the  
15 objective of this corrective action be. It's  
16 important to remember that objectives are  
17 goals, what we strive for. They are not  
18 actual standards that we have to accomplish  
19 necessarily, but this is where we are going  
20 and they are detailed in the handout. I'll  
21 just touch upon them briefly.

22 The first one is, of course, to protect  
23 human health in the environment and they had  
24 some subgoals and one of the things we hear a  
25 lot of in the community, we wanted to achieve

1  
2 or try to achieve unrestricted residential use  
3 on all the properties that are out there that  
4 are part of the CMS. Of course, reduce  
5 potential human health risk. One way to do  
6 that in the goals was to basically have a  
7 corrective measure that took the arsenic  
8 levels in the soil back to their original  
9 state or background.

10 We also considered, as Brian touched  
11 upon, some controls, institutional controls.  
12 He touched upon would be considered for  
13 nonresidential properties on a limited basis  
14 based on owner desires basically. Reduce the  
15 ecological impact especially for Culvert 105,  
16 which does have some wildlife areas downstream  
17 of it. And of course, if there is any  
18 contamination left, control its migration to  
19 where it's not supposed to go is always the  
20 goal.

21 Number 2 is to minimize community  
22 disturbance as much as we could and whatever  
23 remedy was selected.

24 Third, maximize property owner  
25 involvement. Make sure each property owner

1  
2 that is involved in this has a good say in  
3 what happens on his or her property.

4 And the last thing, the fourth thing,  
5 which is, again, employ green remediation  
6 practices which are things like trying to  
7 conserve land for future use, also boils down  
8 to emissions from equipment, how to reduce  
9 that during the remediations so there is not a  
10 lot of greenhouse gases being emitted, things  
11 like that.

12 This is, again, our perspective. This is  
13 FMC's report and what we're doing here,  
14 basically, at this point we've reviewed the  
15 report. We consider it basically complete in  
16 terms of what it's supposed to have in it. So  
17 we thought this would be a good time to put it  
18 before the public before we make any final  
19 judgments on it to get your perspective.

20 To give you an idea what we're doing  
21 tonight and through this comment period is  
22 something additional than we usually do.  
23 Usually, the process goes where the report or  
24 feasible study is given to us, we review it  
25 and then we come out with what we think that

1  
2 the Agencies should be done and then we  
3 present it to the public and say this is what  
4 we plan to do, what do you think. We haven't  
5 gotten to that point yet. We are at the point  
6 of simply having FMC's report for you to  
7 review. We want to know what you think before  
8 we start making any even tentative judgments  
9 about where we want to go with this. That is  
10 the purpose of tonight.

11 Again, I have to state that just because  
12 we're presenting the report doesn't mean that  
13 you agree with everything in it. We don't  
14 basically frankly. We agree with some things  
15 but not all things.

16 And again, like I said, we are not at  
17 this point making any judgments on corrective  
18 measures that are needed or not needed or  
19 making any pre-judgments on any of the eight  
20 of the alternatives provided to us.

21 This is some of what Brian had a little  
22 bit of a comparison on what each of these  
23 CMAs, how it's different from the others. One  
24 of the important points, again, I won't go all  
25 through these. One of the important points I

1  
2 want to stress on, this is that CMAs 2 and 8  
3 basically result in an unrestricted  
4 residential use for all properties. The  
5 others aside from, basically, have certain  
6 properties where there may be institutional  
7 controls involved where we would ask the  
8 property owner to do that. Since one of our  
9 goals is unrestricted use, there are  
10 alternatives in here that address that goal.

11 And as Brian said, the last one here, all  
12 CMAs, all the options have varying degrees of  
13 ways of preserving trees, some more than  
14 others. For example, where we are looking at  
15 possibly doing averages as opposed to taking  
16 everything on a point by point basically  
17 provides us with some flexibility on what  
18 parts of the properties may need to be  
19 remediated and what properties don't and  
20 therefore, that it gives us a little  
21 flexibility on tree preservation.

22 Also, there are manual techniques that  
23 can be used if a tree is, like Brian said,  
24 still viable to remove the soils without  
25 having to remove the tree. So those things

1  
2 are something that would still be considered  
3 probably under any of the CMAs that we pick  
4 that will still be a part of the final remedy.

5 The other thing I wanted to clarify is  
6 the Roy-Hart school property, the property  
7 that has part of it that was not remediated in  
8 1999, which would be the part outside of the  
9 football field and outside the soccer fields.  
10 Just to clarify, the Agency came out and said  
11 after that was done, was that it was the  
12 arsenic levels left in the school yard were  
13 not of concern to us based on the usage of the  
14 school as a school property, because we  
15 evaluated through a risk analysis kids playing  
16 there from ages six to 18, which is basically  
17 school age years and we came out with that.

18 So people are saying why do we need to go  
19 back. What we didn't look at that time which  
20 we said we would look at in the future what if  
21 the school property wanted to be developed for  
22 residential purposes and that's what these,  
23 basically, options 2.

24 Again, 2 and 8 would allow right now if  
25 we follow that unrestricted residential use of

1  
2 the school property, that's the way they  
3 wanted it done. The other options have  
4 varying degrees of controls and as Brian said,  
5 possibly future remediation in an event of the  
6 property usage change for the school property.  
7 So that's why we are looking at it again.  
8 It's not because there's any issues with its  
9 current usage. It's looking at what possible  
10 future usage might be and see if there's  
11 anything we have to worry about in terms of  
12 that future usage.

13 Brian did cover, too, the other part of  
14 this. The other decision we will have to make  
15 with the Agencies besides which of the eight  
16 options to pick for corrective measures or a  
17 hybrid of some of the options and we don't  
18 have to pick exactly one, the other decision  
19 we have to make is for the options which  
20 generate soil, whether that soil would be  
21 disposed of on the plant site as a CAMU, which  
22 is here, which would be transported by truck  
23 or would it be taken to an off-site commercial  
24 facility to be either disposed of either as a  
25 solid waste or possibly part it of used for



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beneficial use as a daily cover.

And as far as the transportation routes, as far as the second option here, the report looks at both taking it from the plant site which it would be brought to initially and then either taking it into larger trucks to the final off-site disposal or putting it into rail cars and sending it on its way down the rail line, which is adjacent to the FMC plant and has rail spurs running in.

And again, this is the point in the process where we'll make the on-site/off-site basically decision. So that will be part of what we are going to present the next time as far as what we think it should be, on-site or off-site.

We are getting near the end. Tonight, public input opportunities includes accepting oral comments, which will be transcribed and you also have a comment form which you can use if you just want to write it down and leave it at the desk on the way out or if you want to mail it in later, that's fine.

After tonight, you can e-mail me and once

1  
2 I have all the comments, it's my job to make  
3 sure I get all of them and make sure all of  
4 them get addressed. So use my e-mail address  
5 to do that or if you want to use regular mail,  
6 that's my mailing address. That is in the  
7 back of the fact sheet that is part of your  
8 handouts. It's the larger three page thing.  
9 All that information is back there for you.

10 Next steps, which is everybody's -- where  
11 do we go from here after the end of the  
12 comment period. We, of course, review the  
13 comments like we said. They have to generate  
14 what's called a Responsive Summary, responding  
15 to the comments that each person commented on  
16 and basically, have access to that  
17 Responsiveness Summary.

18 The next thing is a preliminary, like I  
19 said, selection what corrective measures we  
20 would choose and the transport and disposal  
21 options that are in there. Again, let me  
22 caution you on these dates. We have got some  
23 dates on the slides or time frames. Everybody  
24 is concerned how long this will take. I don't  
25 know what you want to call them. They are

1  
2 anticipated as in what we hope the time frame  
3 will be for all of this. May not work out  
4 that way. There are various things that could  
5 make it longer as we go through. Anyway, we  
6 hope to have preliminary selection done by  
7 fall/winter of this year, which we would  
8 present to the public for their comment. So  
9 we would present just like we have done now  
10 and that would be our tentative way we think  
11 of going forward. We want you guys to take a  
12 look at that and comment on it.

13 After we get those comments, again,  
14 another responsiveness summary on both the CMA  
15 option and disposal options. We'll make our  
16 final selection of both of those and we  
17 anticipate that winter/spring of 2012. After  
18 the final selection, we basically will go  
19 through the legal document of the order that  
20 FMC signed with us requiring FMC to implement  
21 the selective remedy. And that will involve  
22 some of the detailed work plans that have to  
23 be submitted, schedules that will have to be  
24 worked out and we're looking at hopefully to  
25 begin the process of actually implementing

1  
2 this spring/summer of 2012.

3           Let me mention here, Brian showed you a  
4 series of durations for each the options.  
5 Those durations are each based on kind of a  
6 level of effort put forth in other words. And  
7 I don't exactly know for sure exactly what  
8 level of effort we are talking about here.  
9 Let's say if they had assumed that it would  
10 take eight years if they have one crew working  
11 on a area instead of three or four crews, then  
12 it would take eight to ten years. If you have  
13 three or four crews, you can obviously see  
14 working on various areas of the village  
15 simultaneously, we cut those time frames down.  
16 So we do hope to cut those time frames down.  
17 That's part of scheduling. That will come  
18 later. Just to let you know that those time  
19 frames are not necessarily carved in stone as  
20 far as the duration goes. It all depends on  
21 what is agreed upon as far as the schedule.

22           And I think that is it. I'll turn it  
23 back over to Mike Basile, who's our moderator  
24 and since we kind of ran over a little bit, if  
25 you want to go a little passed 8:30, I think

1  
2 that's fine with us if there's people that  
3 want to speak.

4 MR. BASILE: Thank you. Brian, thank  
5 you very much. Matt, again, thank you.

6 Again, just a reminder, as Matt indicated  
7 in his presentation, this evening we're  
8 soliciting public comments. There will be no  
9 questions and answers. If do you have  
10 questions for either the FMC representatives,  
11 EPA, Department of Health or DEC, we are more  
12 than happy to informally answer those after  
13 the public comments solicitation is completed  
14 at about 8:30.

15 We do have a court stenographer, Doreen  
16 Sharick, that is here this evening. I ask  
17 that when you come up to the microphone one at  
18 time. I know there's a group of you that have  
19 comments that are prepared. I'm going to try  
20 to keep you to five minutes. Please say your  
21 name, spell your name, give your address, and  
22 of course, then make your comments. If you do  
23 have written comments that you could provide  
24 the stenographer, we'd appreciate that. Okay.  
25 All set. Thank you.

1  
2 MR. ARNOLD: Good evening. My name is  
3 Bill Arnold, A-R-N-O-L-D. I live at 10160  
4 State Road in Middleport. I'm also chairman  
5 of the Middleport Community Input Group. We  
6 are a group of residents and property owners  
7 who are interested in this remedial project  
8 and we are trying to shape the project to run  
9 in a way that will be satisfactory in the end  
10 to the residents of Middleport. I have  
11 several comments that we worked on as a group  
12 to read into the record and then there's about  
13 five or so other members who also will read in  
14 some comments.

15 The Agencies need to identify what has  
16 changed or if any new data has been discovered  
17 that alters the conclusions of the study on  
18 comparative cancer incidences in Middleport  
19 performed by Dr. Holley L. Howe for the DEC in  
20 1987. This study estimated health risk due to  
21 the environment to be about five percent of  
22 all other risks with smoking and diet being  
23 the highest risk. Hereditary factors were not  
24 mentioned in the study but today, it is known  
25 that this is a significant factor to cancer

1  
2 risk.

3 Referring to the USEPA risk base soil  
4 screening levels, does .1 to 10 parts per  
5 million of arsenic soil concentration now  
6 correspond to the cancer risk range of one in  
7 a million to one in 10,000 expected incidences  
8 of cancer over a lifetime rather than the .4  
9 to 40 parts per million of soil concentration  
10 as we have had in the past or currently have.

11 If so, the Agencies must explain the  
12 study or studies that were used to arrive at  
13 the new criteria including the effect of any  
14 new criterion has on the New York State  
15 background level of 16 parts per million,  
16 which would be outside the new risk range. If  
17 the new criterion is to be used as a standard,  
18 then the Agencies should explain why it is not  
19 a health risk to live in New York State. To  
20 expedite the remediation phase of the project,  
21 Region IX of the DEC should be given the main  
22 authority for the process. This would reduce  
23 the time required to make decisions or resolve  
24 problems when they arise since local agents  
25 would not have to keep consulting with Albany

1  
2 to resolve issues.

3           The MCIG, the Middleport Community Input  
4 Group, disagrees with the use of a  
5 bioavailability factor of one in the  
6 calculations of risk assessment as being  
7 unrealistically and unnecessarily  
8 conservative. Studies have shown typical  
9 bioavailability to be less -- much less than  
10 one for arsenic in soil. And that's not  
11 arsenic and drinking water, which is a  
12 different factor. Using a factor of one could  
13 result in remedial alternatives that are  
14 unnecessarily intrusive and that fail to  
15 reflect actual conditions in Middleport.

16           There must be a plan for FMC to assure  
17 that replanted trees, shrubs, grass and  
18 flowers get well established and that any tree  
19 that has its roots disturbed is given  
20 sufficient care to recover. This should not  
21 be left to the property owner to spend their  
22 time and money. Village water is not free.

23           The MCIG objects to the consumption of  
24 home grown produce as a factor in risk  
25 assessment. The Agencies need to demonstrate



1  
2 that home grown produce is a significant  
3 threat to residents. FMC study, which was  
4 done by Exponent, an outside group, indicated  
5 it was not.

6 The final remediation study indicated  
7 that plants used in the study with the  
8 exception of break ferns had no significant  
9 arsenic uptake. Data needs to be provided  
10 that shows common garden plants uptake  
11 sufficient amounts of arsenic to cause health  
12 problems and simple washing is not enough to  
13 reduce the risk.

14 Some extensive open areas of land are  
15 part of the study area. An Environmental  
16 Impact Study should be performed to determine  
17 the local ecosystem especially a loss of small  
18 animal species.

19 I've got one other thing that was  
20 unprepared. This is my own. Matt, you showed  
21 your Corrective Action Objectives. You left  
22 out that human health -- site specific human  
23 health risk was part of that as we agreed to  
24 when those objectives were drafted. The MCIG  
25 would object to those being left out.

1  
2 MS. LUTZ: My name is Crista Lutz,  
3 L-U-T-Z, and I live at 51 State Street in  
4 Middleport, New York. And the Middleport  
5 Community Input Group supports FMC's approach  
6 to site specific risk assessment in the draft  
7 CMS report and believe basing the assessment  
8 on New York State soil clean up objective  
9 results in an overly conservative finding that  
10 does not reflect the true environment of  
11 Western New York or how Middleport residents  
12 live and are exposed to arsenic.

13 It seems that the Agencies do not agree  
14 with FMC's risk assessment evaluation. It is  
15 not sufficient just to say that there is not  
16 an agreement. The Agencies need to explain  
17 why there is not an agreement and where FMC  
18 went wrong. Statements used for explanation  
19 such as we are trying to protect human health,  
20 it is all a bunch of assumptions and the  
21 calculations are not correct, are really not  
22 sufficient.

23 Just on a personal note, when I saw the  
24 number of years on this, I'd like to put into  
25 perspective to all of you how long this has

1  
2 been going on. I had an eight year old who  
3 was tested when this madness all started. If  
4 you go with this and you agree tonight which,  
5 of course, isn't going to happen and you go  
6 with the number 2, ten years, that eight year  
7 old will have reached the age of 45.

8 MR. OWEN: Richard Owen, O-W-E-N, 12  
9 Locust Drive, Middleport. Since there's been  
10 no concrete evidence or statistical data that  
11 point to the health hazards in Middleport,  
12 community acceptance should carry the most  
13 weight in the CMA evaluation criteria. What  
14 solutions will be provided to property owners  
15 who agree to have their property sampled have  
16 elevated levels of arsenic, but are not  
17 included in the CMS, to leave them on their  
18 own is unacceptable.

19 Property owners should be part of the  
20 discussion when selecting a CMA alternative  
21 for their property. Owners should be allowed  
22 to a less stringent CMA knowing that  
23 restriction may be applied to their deeds and  
24 that FMC would still be responsible for  
25 cleanup if property usage were to change in

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the future.

MR. MIANO: My name is Michael Miano, M-I-A-N-O. I live at 97 South Main Street in Middleport. This first point was touched upon by Crista. When selecting a CMA, the Agencies must be aware that some of the alternatives will require a lengthy amount of time to complete according to FMC's estimation. For example, FMC estimates CMA 2 to require ten years to complete. CMA 8, eight years. This amount of time for construction activities to be carried out within the village could be detrimental to the viability of the community. This project continues to drag on with avoidable delays such as the need to rewrite this CMS. What will be done to insure that this project moves forward at a reasonably expedited rate and that the selected CMA does not cause unreasonable delays? Thank you.

MS. STORCH: My name is Elizabeth Storch, S-T-O-R-C-H. I've been a resident of Middleport since 1972. The MCIG, the Middleport Community Input Group, opposes the CAMU as a disposal option. This position is

1  
2 not because of technical issues or potential  
3 health risks. Rather, there is a concern  
4 regarding the aesthetic and the psychological  
5 impact that the CAMU would have on the  
6 community. A lower height for the CAMU or  
7 camouflaging with vegetation will not resolve  
8 these concerns since the CAMU will still be  
9 there as a reminder and next to a public  
10 school athletic field.

11 Currently, Middleport suffers from the  
12 stigma that its residential neighborhoods are  
13 contaminated with chemicals. It will not help  
14 to eliminate that stigma if the quote unquote  
15 chemicals are merely relocated somewhere else  
16 in or near the community.

17 And I'd like to just say, off what the  
18 written thing is, that like Brian said, that  
19 there would not be hazardous waste in that  
20 CAMU. I have arsenic of an unacceptable rate  
21 according to the Agencies in my yard. I feel  
22 no fear at all and I've researched this  
23 extensively, but outsiders coming in aren't  
24 going to understand why would they have to  
25 remove it from my property and put it to a

1  
2 different place. It's just against logic for  
3 the outsiders who don't know what's going on.  
4 And so that's why we are concerned about  
5 people from the outside.

6 I have no fear of my property at all.  
7 And if I didn't have to do anything because of  
8 deed restrictions placed on my property, I  
9 would not do anything. I would not accept  
10 remediation, but I don't want that deed  
11 restriction on my property.

12 In the past, comments and concerns from  
13 residents have been addressed in a less than  
14 satisfactory manner by the Agencies leaving  
15 those comments unanswered and concerns  
16 unresolved. During this and subsequent  
17 comment periods, all comments and concerns  
18 should be resolved so that the residents'  
19 concerns are satisfactorily addressed or they  
20 acknowledge that agreements cannot be reached.

21 Agencies' responses that do not directly  
22 address residents' concerns or that appear to  
23 be evasive will not be acceptable. It will  
24 also not be acceptable for the Agencies to be  
25 dismissive and then cut off discussion with

1  
2 the phrase, quote, the Agencies have made  
3 their decision and are moving on, unquote.

4 In that regard, for instance, in the past  
5 we've had a comment about the Gasport study  
6 which was dismissed by the Agencies. And I'm  
7 commenting now from the text, the Agencies and  
8 FMC claim the Gasport study was peer reviewed.  
9 However, in a letter from John E. Vena,  
10 V-E-N-A, Ph.D., and others on behalf the  
11 Environment and Society Institute to Mr. Mike  
12 Infurna, dated June 12th, 2000, there is a  
13 statement that the study was not peer  
14 reviewed. There were also negative comments  
15 concerning some technical aspects of the  
16 Gasport study. The MCIG requests an  
17 explanation.

18 Another situation that developed, the  
19 MCIG does not believe that it is good science  
20 for the Agencies to rely on studies relating  
21 to cancer risk and arsenic exposure performed  
22 in China that were based on arsenic intake  
23 from drinking water, not exposure to soil  
24 contamination. Those green areas on that map  
25 where further remediation is expected, a lot

1  
2 of that is we call Air Deposition Area. Air  
3 deposition is arsenic in the soil. That is  
4 what is in my property. I don't eat or drink  
5 from my soil.

6 The MCIG would expect the Agencies to  
7 understand and help residents understand  
8 exposure to arsenic dissolved in drinking  
9 water is a much higher risk concern than  
10 arsenic bonded to soil and has different  
11 affects when consumed. The MCIG understands  
12 that ingestion is a signature pathway for  
13 human exposure. However, the scientific  
14 evidence points to a result different for  
15 arsenic in soil versus arsenic in water. And  
16 again, the Agencies just recently said that  
17 their conclusions were based on studying water  
18 and arsenic together and intake from that from  
19 studies from China. Thank you.

20 MS. BIEBER: Jennifer Bieber,  
21 B-I-E-B-E-R, 9269 Chestnut Ridge Road,  
22 Middleport. I'm wearing two hats tonight.  
23 First, I'll make a statement on behalf of the  
24 CIG group. To assist property owners in  
25 making an intelligent decision on remediation,



1  
2 the Agencies need to explain with data not  
3 theories or assumptions that the arsenic  
4 levels in typical residential yards is a  
5 health risk. They also need to demonstrate  
6 with hard evidence the significant benefit to  
7 reducing an average of 30 parts per million  
8 per residential yard to 20 parts per million  
9 and 40 parts per million to 20.

10 If it is so important to lower arsenic  
11 levels in residential yards and agricultural  
12 fields to 20 parts per million in Middleport,  
13 the Agencies need to provide rationale as to  
14 why it is not just as important to lower  
15 levels in Gasport that were found to be well  
16 above 20 parts per million and as high as 122  
17 parts per million.

18 What are the Agencies plans for Gasport?  
19 How can more rigorous cleanup standards for  
20 Gasport be justified given evidence of  
21 elevated arsenic levels in Gasport?

22 Next, I'm speaking on behalf of the Town  
23 of Royalton. A resolution was passed last  
24 night at our board meeting. I would like that  
25 to go on public record, whereas, FMC has

1  
2 proposed to locate a Correction Action  
3 Management Unit, CAMU, on property located  
4 within the Town of Royalton and whereas, FMC  
5 proposes to use the CAMU to store ARSENIC  
6 contaminated soils removed during the various  
7 FMC remediation projects for permanent storage  
8 and whereas, the Town of Royalton Zoning  
9 Ordinance does list a CAMU as one of the  
10 permitted or specialty permitted uses for the  
11 proposed CAMU site and whereas, locating a  
12 CAMU for storage of arsenic with a mound that  
13 is proposed to be 35 feet, will represent a  
14 potential hazard to the health, safety and  
15 economic welfare of the Town of Royalton  
16 residents will further stigmatize the area of  
17 the town that because of prior FMC generation  
18 of hazardous waste is known as an area that  
19 has been polluted and may violate the Town's  
20 Zoning Ordinance. Now, therefore, it is  
21 hereby resolved that the Town of Royalton Town  
22 Board opposes the existence of a CAMU on any  
23 property located within the town.

24 MR. ARNOLD: You heard from about six  
25 members of the MCIG tonight. We are really a

1  
2 group of over 25 official members and there  
3 are over 55 people on our e-mail distribution  
4 list. People that have asked us to  
5 communicate with them what we're doing and  
6 what's going on. Some of them come to our  
7 meetings. We used to have meetings once a  
8 month. We now have them as called for.  
9 Anyone who would like to be on the  
10 distribution list, there is a table back over  
11 here for the MCIG with some material on it.  
12 There's also a business card with my e-mail  
13 address on it. You can just send me an e-mail  
14 and I'll get you on the distribution list.  
15 Thank you.

16 MR. WESTCOTT: Richard Westcott,  
17 W-E-S-T-C-O-T-T, Village Mayor. I'd like to  
18 address first the item of CAMU. This letter  
19 was sent on January 17th. We just want to  
20 enter it into the record. Dear Sirs, this  
21 will advise you of the fact that the Village  
22 Board is opposed to the placement of a CAMU at  
23 the FMC facility because it would be  
24 detrimental to the Village and to its  
25 residents. The placement of said CAMU at the

1  
2 FMC facility would degrade the overall  
3 aesthetics of the community and further lower  
4 the property values in the area and discourage  
5 outsiders from taking up residence, starting a  
6 business within the Village.

7           There is no question that the proposed  
8 CAMU would be seen either rightly or wrongly  
9 by the general public as a landfill and one  
10 containing hazardous material at that. This  
11 perception will most assuredly develop  
12 regardless of FMC's efforts to mask, screen or  
13 otherwise, to minimize the aesthetic impact of  
14 the CAMU. It is highly likely that this  
15 sediment would stigmatize the Village and that  
16 this stigma would be highly detrimental to the  
17 Village, its commerce and its residents. The  
18 Village Board believes that this devastating  
19 consequences to the Village resulting from the  
20 FMC and its predecessor's actions and a 30  
21 year paul cast over the Village as a result  
22 would be perpetual by a CAMU.

23           However, the Village echoes the concerns  
24 raised by the New York State DEC in its  
25 November 2009 comments on FMC's 2008 CAMU

1  
2 application regarding the legality of storing  
3 contaminated soils and materials from off-site  
4 locations a a proposed CAMU. It is the  
5 Village's position that such waste currently  
6 existing outside the boundaries of the FMC  
7 facilities do not fall within the definition  
8 of a CAMU eligible waste as set forth in 40  
9 CFR Section 264.552 and would thus be  
10 precluded from the placement within the  
11 proposed CAMU.

12 Accordingly, it is the Village's position  
13 that FMC and the Agencies should explore  
14 alternative means for further remediation of  
15 the area and that the establishment of a CAMU  
16 should not be entertained or allowed in as an  
17 alternative in the CMS.

18 The other issue or other point, rather,  
19 that I'd like to make, is on the future land  
20 use of all industrial properties. We disagree  
21 that all of the industrial property would  
22 remain that since it was never intended to  
23 have a perpetual status and that the Village  
24 Planning Board was not involved and the  
25 assumptions were based on the current maps and

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uses.

As we look to the future, some of these industrial properties might be designated for other uses. Last, we also disagree with any sort of deed restriction or institutional controls being placed on any residential, public or commercial property in the CMAs being proposed. A further explanation will be coming in the written form during the comment period on all the points. Thank you.

MR. BASILE: Thank you, Mr. Mayor. Thank you, ladies and gentlemen. Are there any further public comments from any others other than from the group?

MS. RIZZO: My name is Julie Rizzo, J-U-L-I-E R-I-Z-Z-O. I live at 4268 Freeman Road in Middleport and I would just like to voice my opposition against a CAMU being put right behind a school site. Along with Mrs. Storch's opinion of the CAMU, I agree a hundred percent. It will further lower property values, further stigmatize Middleport. I am one of those outsiders, who moved to Middleport ten years ago. And have

1  
2 since pulled my kids from the  
3 Royalton-Hartland School system as they were  
4 becoming of fifth grade age moving over to  
5 Middleport because I didn't want them at that  
6 site because of the arsenic content.

7 It would be wonderful for me to be able  
8 to send my children to the community that I  
9 moved into that I love. They are wonderful  
10 people here. It's a shame that this has to be  
11 right on the school property. Uphill, you're  
12 proposing a CAMU. It just doesn't make any  
13 sense and to put the soil that can only -- 25  
14 percent of that soil be even eligible to cover  
15 a landfill, it doesn't make any sense. You're  
16 going to put it next to the school. Thank  
17 you.

18 MS. HUGHES: Hi, Sue Hughes,  
19 H-U-G-H-E-S, 4797 Cottage Road. Most of you  
20 know me as on the school board; however, I'm  
21 not here representing the school tonight. The  
22 school has gone on record with its opinion of  
23 the arsenic levels on the school yard, but I  
24 do have a few comments.

25 First off, hazardous waste fit for human

1  
2 exposure and hazardous waste for a landfill  
3 are two entirely different things. What  
4 you're removing from people's properties is  
5 hazardous. It's just classified differently  
6 when you landfill it.

7 In some of the discussions about this  
8 you're talking about institutional controls.  
9 I don't believe the school district by law can  
10 do that. So you might want to look into that.

11 The school building is a hundred years  
12 old. Realistically, at some point it's not  
13 going to become cost effective to maintain  
14 that building. So it will not always be a  
15 school. That's something that needs to be  
16 considered. Enrollment continues to drop  
17 despite some of the numbers that you have  
18 published. I have them here if you'd like to  
19 look at them.

20 And I think enough's been said on the  
21 CAMU. What else can be said other than you  
22 want to put it right behind the school yard.  
23 I think that's about it.

24 Oh, I have a letter here from Dr. Joe  
25 Cardella of UB and I'm just going to submit it



1  
2 and not read it. If one of you gentlemen  
3 wants to read it, that's okay with me. Thank  
4 you.

5 MR. BASILE: Thank you. Any other  
6 comments from any other members of the public?

7 MS. WITRYOL: Amy Hope Witryol,  
8 W-I-T-R-Y-O-L, 4726 Lower River Road,  
9 Lewiston, New York. I just wanted to comment  
10 to the DEC to let your colleagues in Albany  
11 know, Matt, that I will be reading the  
12 responses to the public comments in great  
13 detail and with great interest. Thank you.

14 MR. BASILE: Are there any other  
15 comments to be received this evening from  
16 anyone in the room?

17 MR. ARNOLD: I am Bill Arnold, again,  
18 from the Middleport Community Input Group. In  
19 determining the perfect corrective measure --  
20 or preferred corrective measure, the  
21 Middleport Community Input Group urges the  
22 regulatory Agencies to give significant weight  
23 to community acceptance based on the MCIG's  
24 review of CMAs in the draft CMS and other  
25 related documents and several months of

1  
2 discussion within the group and among  
3 Middleport residents. The MCIG believes  
4 community acceptance is contingent upon a  
5 reasonable time to complete the remediation to  
6 avoid many years of disruption in Middleport,  
7 protect human health based on hard evidence  
8 and actual risk, flexibility for property  
9 owners to protect trees and other landmarks  
10 and consideration of reasonable expectation of  
11 future land uses.

12 Based on these criteria, CMA 2 and CMA 8  
13 are not acceptable because the time to execute  
14 is excessive. The cleanup trigger is too  
15 conservative. They are not site specific.  
16 There is no flexibility for property owners  
17 because there is a limited ability to save  
18 trees or other landmarks and there is no use  
19 of future land use criteria. Last, there is  
20 too much soil to remediate causing excessive  
21 truck traffic in the Village over an extended  
22 period of time.

23 Given the only health risk assessment we  
24 have, which is included in the CMS, the MCIG  
25 believes CMA 1 is most appropriate for

1  
2 Middleport because satisfies the community  
3 acceptance criteria; there is no health  
4 concerns as shown by past studies such as the  
5 1987 DEC study on cancer incidences in  
6 Middleport; a 1987 DEC study on arsenic in  
7 Roy-Hart school students and environmental  
8 exposure study, and the Middleport  
9 bioavailability study.

10 The CMA preserves the neighborhood  
11 character with no loss of trees. They take no  
12 more time to complete, avoids truck traffic in  
13 the Village, negates concerns over practices  
14 to support green remediation and there's no  
15 institutional controls necessary.

16 Other appropriate CMAs would be CMA 4, 5  
17 and 3 as they satisfy some of the community  
18 acceptance criteria, such as, all three  
19 protect human health according to the human  
20 health risk assessment in the CMS. CMA 3 and  
21 4 are the simplest ones to execute as they  
22 involve the least number of properties. CMA 3  
23 and 4 require the shortest amount of time to  
24 execute excepting CMA 1. CMA 3 and 4 affect  
25 the least number of properties. CMA 3

1  
2 utilizes future land use data and CMA 3  
3 requires half the time to execute as compared  
4 to CMA 2.

5 As a group, the MCIG and believing the  
6 Agencies will not select CMA 1, we feel that  
7 CMA 3 is the most appropriate alternative for  
8 Middleport. However, whatever the Agencies  
9 select as an alternative, the group wants to  
10 know how the choice meets this MCIG criteria  
11 for community acceptance. Regardless of which  
12 CMA is selected by the Agencies, the MCIG  
13 urges that the CAMU application be denied.

14 MS. STORCH: Elizabeth Storch, again.  
15 I've lived in Middleport since 1972 and in  
16 1979, I moved over on State Street. I was one  
17 of 450 some people, Bill would be able to get  
18 you all the statistics, on an exponent study  
19 where my bodily fluids and my hair and my toe  
20 nails were examined along with 450 other  
21 people including children I believe. There  
22 was not one person that showed elevated risk  
23 or elevated arsenic in their system. I have  
24 had no sickness. I had neighbors that, while  
25 they have since passed away, my immediate

1  
2 neighbors lived here all their lives. Mr. and  
3 Mrs. Elmer Vary, they were in their high  
4 nineties like 97 or 98.

5 To the lady here who said she pulled her  
6 child out of the school district and this  
7 isn't the first time that I heard that, I wish  
8 I could speak to you. I wish you could be a  
9 member. You are welcome to join our MCIG  
10 because those kind of fears are totally  
11 unnecessary. And I would say to you that my  
12 background includes a Master's of Library  
13 Science from the University of Buffalo and a  
14 Master's of History from the University of  
15 Buffalo. I've done research of the very  
16 professional nature on this whole thing since  
17 I have been involved with this -- notified  
18 that my property was cited for arsenic  
19 concerns because I didn't want to live in  
20 danger either.

21 And I got on web sites. I have Time  
22 Warner cable internet service and I almost  
23 worn my computer out searching. I can tell  
24 you unequivocally, I don't feel in danger  
25 living where I live and I live right across

1  
2 from the school. I don't think there is one  
3 child or one teacher that is in danger, but it  
4 goes back to what I said to Brian McGinnis is,  
5 people come in and, I believe it's, you know,  
6 not being educated on the scientific data,  
7 that they are afraid of that soil that would  
8 be put into the CAMU. My objections to the  
9 CAMU are not that I'm afraid of the soil, but  
10 what other people, you know, the perception.

11 Also, I'm laughing because it was quite a  
12 deal and Brian was very instrumental. I  
13 wanted my property. I'm a very scientific  
14 person. What was it? It was two or three  
15 years for the final remediation. We could not  
16 get that arsenic up in those plants. I went  
17 out there and I watered them and I gave them  
18 tender loving care because I've got like  
19 something in the 40 parts per million. And  
20 after all the data was done and after, the  
21 Agencies said let's repeat it. Let's do it  
22 another year. Couldn't get the darn stuff up.  
23 Now, if we can't get it up by doing an  
24 official and that was very official.

25 I've got a multi-page document and you

1  
2 should see the statistics and the scientific,  
3 you know, and the money that FMC spent on that  
4 final remediation. That arsenic is buried in  
5 the soil. It's not going anywhere.

6 Now, if it were in water and there are  
7 some places in Middleport they have cleaned up  
8 and there were some places that still need  
9 addressing because there's water involved with  
10 the arsenic. But in the Air Deposition Area,  
11 and again, whenever I hear of anybody being  
12 afraid of the Air Deposition Area or the  
13 school, I have to disagree. And it's not a  
14 casual disagreement. It's from study and very  
15 valid research done and not just on my part.  
16 In that MCIG, we have other teachers. We have  
17 Bill, who is a retired electrical engineer  
18 from IBM. We have got just a wealth of people  
19 that have put a lot of hard work into this.  
20 So thank you very much.

21 MR. BASILE: Thank you, again. Another  
22 comment?

23 MR. ARNOLD: I'd just like to continue a  
24 little bit what Liz was saying. Is Ms. Rizzo  
25 still here? Did she leave? I'm sorry that

1  
2 people feel that they have a fear of what's in  
3 our yards that could cause a lot of illness,  
4 but I have to blame the Agencies for that  
5 fear. The Agencies have not helped educate  
6 the people in Middleport of what we should be  
7 concerned with and why we should be concerned  
8 with it. All they've got is a bunch of  
9 assumptions and numbers that they use to say  
10 that your soil can cause illness and yet they  
11 ignore all the testing that's been done in  
12 Middleport that shows that it is not. There  
13 are people that have large concerns about the  
14 soil in their yards. And it's just too bad  
15 that they have to be in fear living in their  
16 own homes and they shouldn't be. Yet the  
17 Agencies have a facts sheet on growing garden  
18 vegetables in contaminated soil and they say  
19 grow it and wash it and all that, but yet when  
20 you ask them if you should grow a garden?  
21 They'll say no, you shouldn't grow a garden in  
22 that. But why? Their facts sheet doesn't say  
23 that.

24           Somebody said the other day at a time in  
25 our meeting that what happens if your little



1  
2 girl drops her hot dog in the soil. Well,  
3 what does happen? If your soil wasn't  
4 contaminated, would you let your little girl  
5 eat the hot dog she just dropped in the soil?  
6 The neighbor's cat may have just been there.  
7 So the Agencies have not really dealt  
8 aboveboard with us on what we should fear and  
9 what we should not fear.

10 The typical elevation in our yards is to  
11 my mind and to many other residents whoever  
12 looked at this not a real concern, not a real  
13 hazard. It is a concern. It's not a real  
14 hazard. If you look at various areas in  
15 Western New York, you will find elevated  
16 levels of arsenic because most of the areas in  
17 Western New York were at one time apple  
18 orchards and apple orchards were sprayed with  
19 arsenic containing pesticides.

20 The Gasport study that's been talked  
21 about sampled areas of orchard and found  
22 levels as high as 122 parts per million, which  
23 is higher than most people's yards in the Air  
24 Deposition Area, but yet they are not  
25 concerned about that. There's no plan to

1  
2 remediate that. There's no plans to look at  
3 that. They are only here look at Middleport  
4 trying to get 30 parts per million down to 20  
5 parts per million trying to rip up everybody's  
6 yard and when they do it, they are going to  
7 take out every movable building in your yard  
8 except your house and the garage, all the  
9 shrubs, all the trees, all the flowers, all  
10 the sheds, all the pools, all the swing sets.  
11 Everything will go. Your yard will be dug up  
12 a foot deep or so. You will get clean fill  
13 brought in, new grass. Hopefully, it will  
14 grow in the dirt that they brought in. It  
15 didn't on Vernon Street. And for what?  
16 Wouldn't have any more shade trees in your  
17 yard. That will be gone and just to lower it  
18 to 20 parts per million from 30 or 35,  
19 whatever it is.

20 So to my mind and to a lot of minds, this  
21 is not a project that needs to take place at  
22 the scale that we have been lead to believe it  
23 needs to take place at. We just wish the  
24 Agencies would deal with us and not talk in  
25 scare tactic terms to get people to think that

1  
2 we really got to do something here. Do it  
3 with hard facts.

4 MR. BASILE: Thank you once again. If  
5 no one has any further comments or input this  
6 evening, we want to thank you on behalf of our  
7 folks at FMC, the EPA, New York State  
8 Department of Health and the DEC. Just,  
9 again, to remind you, that our agency folks  
10 will be here. If you have any questions, an  
11 informal session following this public  
12 hearing.

13 In addition, July the 1st is the last day  
14 for public comment. That will end a 45 day  
15 public comment period and Matt Mortefolio's  
16 information is on the screen. Thank you for  
17 taking the time. I think the Agencies have  
18 heard you this evening and have a good night.  
19 Thank you.

20 (Proceedings concluded.)  
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I, DOREEN M. SHARICK, do hereby certify that I have reported in stenotype shorthand the proceedings of the Corrective Measures Study Suspected Air Deposition and Culvert 105 Study Areas, held at the Middleport Fire Hall, Middleport, New York, on June 14, 2011.

That the transcript herewith is a true, accurate and complete record of my stenotype notes.

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Doreen M. Sharick,  
Notary Public.