

**Middleport Community Input Group
Meeting at Masonic Lodge Hall
Feb. 7, 2008 – 5:30 to 8 p.m.**

In Attendance:

Village Mayor Julie Maedl
Village Coordinator Dan Dodge
Village Code Enf. Tom Arlington
Village Attorney Dan Seaman
MRAG – Dan Watts
MRAG – Pat Cousins
CAP – Dick Westcott
CAP – Christa Lutz
CAP – Larry Lutz
CAP – Lisa Allen
Geomatrix – Wai Chin Lachell
Geomatrix – Debra Overkamp
FMC – Brian McGinnis
FMC – Dana Thompson
Arcadis – Erin Rankin

Elizabeth Bateman – Village Board
John Swick – Village Police Chief
Bill Arnold - Resident
Elizabeth Storch - Resident
Jennifer Bieber – Town of Royalton
Dick Lang- Town of Royalton
Barb Albone – Resident
Tom Conley – Village Board
Jim Ward – Sen. Maziarz Office
Mike Hinton – NYS DEC (Buffalo)
Facilitator – Ann Howard, RIT
Meeting Notes – Jim Pasinski
Carr Marketing Communications

1. Welcome and Introductions

- Mayor J. Maedl welcomed those in attendance and stated that these meetings are becoming more and more important, urging continued attendance.

2. Review Proposed Agenda

- A. Howard requested that everyone introduce themselves. She then ran down the list of agenda items.
- A. Howard stated that everyone was asked to complete a CIG survey. She asked that those surveys be turned over to D. Overkamp, who is collecting them.

3. Recap of Where We Are/Recap of CIG accomplishments to date

- A. Howard stated that it is important to review the accomplishments of the CIG and asked for input from the group as to what they think has been accomplished over the past year of meetings.
- J. Maedl stated that a big accomplishment is finally starting the CMS process. She said it is going to be an important step in moving Middleport forward. W. Lachell stated that having the CMS has geared the Agencies to use an operable approach. B. Arnold stated that the group now has a better understanding of the entire process. He said that at the beginning everyone was agreeing with what the Agencies were stating but now everyone has been educated and has a better understanding of all of the issues. J. Maedl stated that because of the monthly CIG meetings, more

people in the community have an understanding of what is going on, more people than ever before are getting involved, and now more participation is needed. W. Lachell stated that another accomplishment was the feedback provided on the CAMU design and the 2007 remediation project. She stated that the feedback was very helpful in moving those projects forward. T. Arlington stated that the work of the CIG has opened the doors to grants for the village.

- A. Howard said the CIG should be proud of the accomplishments. She said that much has been done in only 13 meetings. She mentioned the visits by Dr. Bowers and Dr. Schoof, the October panel discussion, the list of questions that Sen. Maziarz sent to the Agencies, securing funding for the MRAG, using the technical expertise of Dan Watts, the creation of a CIG brochure, increasing attendance of the community, helping to set priorities for grants, sending updates to the community in the mail, providing a forum for others to share the information they've researched, working with residents in cleanup areas to ensure their needs are heard, conducting surveys of the group's effectiveness, playing a role in the Coe cleanup, CAMU design, and phytoremediation plan, having trees planted on Rt. 31 in front of the FMC plant, and moving the CMS process forward.
- E. Rankin stated that the group has voiced an interest in including the valuation of environmental impact into the CMS and has shown concern for other non-technical issues such as aesthetics and quality of life, which helps everyone to think of the bigger picture. B. Arnold stated that more has been accomplished than he had realized. A. Howard stated that the research residents have completed outside of the CIG meeting has been remarkable and should be noted. J. Ward stated that he and Sen. Maziarz have seen an open atmosphere of learning and understanding the issues. He stated that the CIG has empowered the citizens to do comprehensive research on their own, which has allowed them to make their own assessment of the issues.
- E. Storch stated that she is concerned that all of the work the CIG has done and is doing will not matter in the end with the agencies and they will just do what they want. L. Lutz stated that in his opinion the Agencies want to prolong the job in Middleport. He said that this is a job for life for a lot of people. B. Arnold stated that he doesn't understand how after 20 years we are still dealing with these issues in Middleport. E. Storch stated that, especially in the air deposition area, the Agencies have been overreacting and have not listened to the public in detail. D. Dodge stated that for 25 years the Agencies have not been doing their homework. He said that they have been directing an onsite cleanup process off-site. J. Maedl stated that people do not know that an onsite process is being used for offsite cleanup and she believes that using the RCRA process offsite does an injustice to the area. B. Arnold stated that the Brownfield legislation being used doesn't apply to Middleport. M. Hinton stated that legislation allows for Brownfield cleanup numbers to be applied in Middleport. W. Lachell

stated that the Agencies can use Brownfield cleanup numbers but they do not have to.

- C. Lutz stated that it is important to get more community members involved because a lot of people in the community do not care about what is happening or think that it does not apply to them. B. Arnold stated that the Agencies left everyone guessing with their process of mailing letters to residents. He stated that many people think they shouldn't bother getting involved because the Agencies will get what they want in the end.
- P. Cousins stated support for the CAMU. E. Storch cited a table salt study, which shows that it has higher health risks than the arsenic levels in Middleport. D. Seaman agreed that the Agencies take too much time to take action and make decisions but he is not ready to sell them down the river. D. Seaman stated that if there were no Agency involvement Middleport would simply be seen as a contaminated place. He stated that he is frustrated but FMC took a long time to get off the blocks. He stated that the current FMC people working on the project have been very proactive and he sees a light at the end of the tunnel. B. Arnold stated that the Agencies are not working with the community. He stated that he wants some cleanup, he doesn't want levels of 100 or 200 ppm. He stated that there is no reason to cleanup land with levels of 30 or 40 ppm just to get to 20 ppm.
- A. Howard thanked everyone for their feedback on the CIG.

4. Review of October Meeting

- A. Howard stated that a couple of CIG members had reviewed the transcript from the Oct. 1 meeting and B. Arnold had a few points to make relating to that. A handout of B. Arnold's comments was made available.
- B. Arnold stated that he felt the Agencies should have been better prepared to answer Sen. Maziarz's questions and some of the questions were answered at the meeting while others were not; he felt that having the questions answered was one of the reasons for the Oct. 1 meeting. B. Arnold suggested that the Agencies should be less disingenuous when making statements. He stated that the Agencies did not offer alternatives when responding to resident's opinions and observations. He stated that he felt the Agencies have an agenda, which does not have the best interests of the community in mind. B. Arnold stated that the few residents who spoke out in favor of a cleanup do not have property that is at risk of being torn up. B. Arnold stated that in one-on-one conversations with Agency members he was told they did not want to tear up property. He stated that the Agencies want to blame FMC for everything. He stated that the Agencies attack on the ATSDR report concerning the Omaha cleanup and why it should not apply should have included some DOH criteria and he cited Agencies rationale for work in Boulder. B. Arnold stated concern with the manner in which 13 ppm was derived and stated that several surveys have been done throughout the state to determine what the safe level should be. B. Arnold stated that he wanted to know how many points

were taken in Niagara and Orleans counties where orchards and farming are historically prevalent.

- E. Storch asked how agency employees are hired. J. Ward stated that the commissioner and immediate staff are appointed by the governor. M. Hinton stated that regional directors are appointed and all others are hired via civil service.
- W. Lachell stated that FMC reviewed and sent a letter to the agencies in response to the FAQ document that the Agencies distributed at the Oct. 1 meeting. W. Lachell stated that the response document corrected misconceptions that the agency raised and clearly lays out FMC's issues and responses to it. D. Watts asked if there had been a response to FMC's letter. W. Lachell indicated that there has not been a response. B. Arnold asked if there had been a response to the July letter. W. Lachell indicated that it was part of a meeting set for Feb. 14 in New York. E. Storch commented that she does not believe the Agencies are responsive and asked how to make them more responsible. She asked if there were any angles that could be used to make high ranking Agency people feel more pressure. B. Arnold stated that the Agencies called a public meeting in May to discuss the work on Park Avenue because they claimed to want public input. He stated that after the meeting the Agencies would only consider written comments, not verbal, which he feels proves the Agencies do not care about comments.

5. Review Steps of CMS Process/Proposed Quarterly Schedule

- W. Lachell stated that a handout was available with a summary of the update on various projects. She stated that they had determined that the CIG meeting might run better with a written summary rather than a presentation. She stated that they could return to a presentation if it was desired.
- Regarding the RFI/CMS, W. Lachell stated that they are meeting with the Agencies and discussing several issues next week. She stated that there is agreement on proceeding in the air deposition area, tributary, and culvert and they will be meeting with the Agencies to discuss the 20 ppm directive. W. Lachell indicated that the Agencies have requested additional sampling, which FMC does not believe is necessary. There have not been any letters sent to property owners. B. Arnold stated that additional sampling could open Pandora's box. W. Lachell stated that they will be discussing the issue with senior management of the Agencies on 2/14.
- W. Lachell ran down a list of document submissions. She stated that volume I of the RFI Report is targeted for March 2008; the CMS work plan for the air deposition area is targeted for April 2008; volume II of the RFI Report is targeted for May 2008; volume IV of the RFI Report is targeted for July 2008, and volume V of the RFI Report is targeted for September 2008. W. Lachell stated that these dates are preliminary.

- W. Lachell stated that delineation in the RFI identifies the possible extent of the arsenic that could potentially be related to historic FMC activities and that the Agencies believes that the soil arsenic delineation criterion should be 20 ppm. B. Arnold stated that there are historic orchard areas on his property and that arsenical pesticides could have been used, which have nothing to do with FMC. W. Lachell stated that the topic is on the agenda for 2/14. She stated that the 20 ppm number doesn't need to be the same number that leads to remediation. W. Lachell stated that there does not need to be a completed RFI to proceed with the CMS for the air deposition area and FMC plans to perform the CMS concurrently with the RFI.
- D. Seaman asked how much longer FMC and the Agencies can dispute the delineation number. B. McGinnis said that the 2/14 meeting is FMC's last chance to make their case. He stated that FMC can opt for dispute resolution if necessary, which they do not want to do. He stated that a 1996 dispute resolution took nearly one year and everything else came to a stop. B. Arnold asked if Sen. Maziarz can get involved. J. Ward stated that they could get involved if necessary. B. McGinnis stated that FMC has 15 days from the date of the Agencies decision to decide their next step. T. Conley stated that the village is a victim and will suffer with this work in progress. He stated that Middleport is a test field for the Agencies and he does not know how much longer the village can go on trying to promote itself with this cleanup going on. D. Seaman stated that he felt it would be important to avoid dispute resolution to make sure things go faster and stated that dispute resolution could drag the process out. W. Lachell stated that the dispute with the Agencies concerns the RFI. A. Howard stated that if there is no agreement it does not mean that things will come to a standstill. D. Watts said that this issue is about delineation, not cleanup levels. D. Seaman asked if it was possible that they could go through this many more times. B. McGinnis stated that FMC has received numerous Agency directives that they do not agree with but they always call for a meeting over dispute resolution. He stated that FMC certainly does not want to go to dispute resolution.
- W. Lachell stated that at the request of the CIG she will go through a sample CMS process and she provided a brief overview of the CMS process.
- W. Lachell then began a presentation on the Vasquez Boulevard and Interstate 70 Superfund Site in Boulder, Colo. She stated that approximately 4000 residential yards contained elevated arsenic and lead levels. The US EPA and state of Colorado performed the Remedial Investigation and Feasibility Study. There was a stakeholder group, similar to the CIG, involved starting in 1998. The Operable Unit approach was used with industrial, commercial and residential sites. The EPA conducted human health risk assessments including bioavailability studies. Those studies came back with a 42% bioavailability number, anything greater than 240 ppm was considered an unacceptable cancer risk and

anything greater than 47 ppm was considered an unacceptable non-cancer risk. The feasibility study identified possible remedial actions that were protective of health and environment, complied with federal and state laws and standards, and the actions available consisted of no action, soil tilling, soil removal, and community health programs. Initially, five cleanup alternatives were listed in the study; however, a sixth and preferred cleanup alternative was added based on public comment. It was a risk based assessment and all properties were based on soil sampling. The first cleanup alternative was no action. The second option was soil sampling, soil tilling above 540 ppm, soil removal above 240 ppm, and a community health program. The third option was soil sampling, soil removal above 240 ppm, and a community health program. The fourth option was soil sampling, soil removal above 128 ppm, and a community health program. The fifth option was soil sampling and soil removal above 47 ppm. The sixth and preferred alternative, created through public comment, was soil sampling, soil removal for arsenic levels above 70 ppm, and a community health program.

- J. Maedl asked what makes a Superfund different since we are all human beings. B. Arnold stated that the Agencies here can make FMC pay for all of the costs; with a Superfund they are paying.
- A. Howard asked if the CMS is similar to this example. W. Lachell stated that the CMS plan includes risk assessment, community input, a public forum, and the recommendation for an alternative. L. Lutz asked if the Agencies would agree with that approach. W. Lachell said that there are no guarantees that they would.
- D. Seaman stated that the Agencies should act solely on what is best for the community and that they are charged with using their judgment for the cleanup. He stated that since there was no agency representation at this meeting it is a one-sided argument. A. Howard stated that the CIG asked FMC for an example of a CMS. D. Seaman stated that there is no Agency involvement though. J. Maedl stated that the Agencies are invited to every meeting. W. Lachell stated that FMC's intent is to show how a CMS is done and that they will do something tailored specifically to Middleport. She stated that they want to know how much the community wants to be involved. D. Seaman stated that the village answered that four years ago. He stated that they want information and involvement from day one. B. Arnold stated that the Agencies do not listen even when they are at meetings. D. Watts stated that the Vasquez Boulevard site was a risk-determined solution and no cleanup number was initially set. He said that the same process can be applied to Middleport and it makes sense to insist that it be applied. M. Hinton stated that what has happened elsewhere will have no determination on what happens in Middleport. B. McGinnis stated that they are not saying the Vasquez Boulevard example is the right answer, it was just a summary of the outcome of the process at that site. M. Hinton stated that what happens in Middleport will be based on New York State guidelines and bringing up other sites in these meetings is just

going to confuse the people here. A. Howard stated that the group asked FMC for an example and FMC responded. E. Storch stated that M. Hinton and D. Seaman were incorrect and citing an example is not confusing. W. Lachell stated that she chose Vasquez Boulevard because the entire report is available online and she disagrees with M. Hinton's assertion that citing examples from other areas causes confusion. B. Arnold stated that examples show precedent and if numbers in Middleport are lower then maybe New York State is being too stringent. M. Hinton stated that New York is not on the low end in the northeast. He stated that usually arsenic cleanup is 20 or 25 ppm. He stated that the reasons for what people do in other regions do not apply here.

6. Discussion: Proposed CIG Strategy Session/Setting CIG Agenda for 2008

- A. Howard stated that there had been a suggestion for the group to meet together without any FMC or Agency members present to talk about moving forward. She said they could talk about how to become more active since there were opinions that the CIG meetings were too heavily based on presentations and not enough on actions. She stated that herself and D. Watts would be willing to facilitate a meeting without FMC and the Agencies.
- D. Watts stated that the CMS process does not mandate heavy community involvement. He stated that brownfields can include a high level of community participation led by citizens and the town government. He stated that the EPA is encouraging in pilots of having higher levels of participation in Superfunds, to be a part of the planning. He stated that there is an opportunity here to do something similar. He said that there is an opportunity to determine what the community will look like when this project is done. He stated that there is nothing in RCRA that prohibits public involvement even though decisions are ultimately made on a technical basis.
- E. Storch agreed with the option for this meeting and stated that all village residents should get a letter. C. Lutz stated that everyone is frustrated and it is time to get a group together to go after politicians. She stated that the CAP is painted as being a part of FMC and the politicians only give them some leadership. She stated that the mayor needs help in the fight and people behind her.
- J. Ward stated that Sen. Maziarz's office has spent a lot of time staying involved in the issue, questioning the Agencies, and he stated that they will help however they can. He encouraged more residents to attend CIG meetings.
- J. Ward stated that people with their own agenda on Middleport meet at the senator's office. He stated that a group of about a dozen and a half people meet with them regularly. He stated that the senator is supportive of what the CIG has done and he hopes a new DOH or DEC commissioner would help.

- A. Howard stated that a separate strategy session would make it clear that FMC is not leading the CIG.
- J. Ward stated that people on the other side of the issue need to sit down with the CIG. He stated that the senator's office would be glad to assist with mailings.
- J. Bieber asked how to get the people on the other side of the issue to be comfortable to come to these meetings and try to reach some middle ground.
- J. Ward stated that one person from the other side of the issue who came in to meet with the senator asked J. Ward to leave because this person stated that J. Ward was on the side of FMC and the CIG.
- E. Storch stated that the people on the other side of the issue who were at the Oct. 1 meeting were from outside of the community. J. Ward stated that those on the other side of the issue are starting from ground zero. J. Maedl stated that the Oct. 1 meeting was the best attended and 300 letters were sent out to people whose property was tested.
- A. Howard stated that the CIG needs a plan of action and D. Watts and herself would like to help them determine how to go forward. B. Arnold stated that they need to be doing more than they are doing here and get more community involved. He stated that perhaps they should hold a meeting with just citizens to see where they want to go. P. Cousins stated that it is a good idea to meet and see where they stand and try to present a united front.
- A. Howard stated that there are two steps to take. First, they need a plan of action and second they need to address how to get more involvement. B. Arnold stated that they should get those with other opinions involved. J. Ward said that there are people who have a growing concern about the children in the schools in Middleport. J. Maedl stated that if those people are out there they are keeping their concerns under wraps. D. Westcott stated that the CIG is a non-binding group with no legal obligations and they do not represent the village. He stated that they can set a course of action but it will be limited. He stated that it is a major stumbling block. A. Howard stated that they have the opportunity to work on behalf of the community. B. McGinnis stated that if questions are raised at the strategy session FMC will answer them afterwards. A. Howard stated that there is an inference that CIG meetings are controlled by FMC and that they only want to schedule this one strategy session without the Agencies or FMC. D. Seaman stated that it would be a good idea to have the first strategy session with just the group, excluding FMC, but he is unsure about creating a plan of action and they can discuss the relationships with FMC and the Agencies at the meeting.
- It was determined that the strategy session will be held at 5:30 p.m. on Feb. 21st
- It was determined that the next two CIG meetings would be held on Monday, March 10th and Thursday, April 10th, both at 5:30 p.m.

- D. Seaman asked that the CIG impress on the Agencies the importance of their attendance at the March 10th meeting. J. Ward stated that they can ask the Albany contingent to attend the March 10 meeting, but he said they will not attend. B. Arnold asked about State Rep. Mike Cole attending. J. Maedl stated that he is invited to every meeting along with a representative from Congressman Tom Reynolds' office who had been attending but has not lately.

7. PPP Update

- D. Overkamp provided the January 2008 Property Price Protection program update and noted that a handout was available. She stated that there were 76 listings in 2007, the most ever. The average list price was \$86,868 and the average sale price was \$82,063, both higher than any other year.

8. Grant Funding Update/Other Funding Opportunities

- D. Dodge stated that the village did not receive a RestoreNY grant. He stated that someone from the program has offered to assist with the next writing. J. Bieber suggested that the village of Middleport and the town of Royalton partner for grant applications as they can share services and accumulate more points. D. Dodge stated that it would be better if they could partner together.

12. Open Discussion/Community Concerns

- No additional questions or comments

13. Adjourn

- A. Howard thanked everyone for their attendance and reminded that the next meeting will be held on March 10, 2008.