

Appendix C

Basis for Reasonably Anticipated
Future Land Usages Map for the
Suspected Air Deposition and
Culvert 105 Study Areas

Appendix C

Basis for the Reasonably Anticipated Future Land Usages Determined by FMC for the Suspected Air Deposition and Culvert 105 CMS Study Areas

1. Introduction

FMC Corporation (FMC) is implementing the “Corrective Measures Study Work Plan for Suspected Air Deposition and Culvert 105 Study Areas” (August 2009, AMEC Geomatrix) (CMS Work Plan), which has been approved by the New York State Department of Environmental Conservation (NYSDEC) and the United States Environmental Protection Agency (USEPA) (collectively, “the Agencies”), in consultation with the New York State Department of Health (NYSDOH). Consistent with the Agencies’ Final Corrective Action Objectives Applicable to Off-Site Soil and Sediment (dated March 26, 2009 and contained in Appendix A of the CMS Work Plan and Appendix A of the CMS Report) (“CAOs”), the CMS identifies and considers reasonably anticipated future land uses for the CMS Study Areas.

This document describes the development of reasonably anticipated future land use assumptions and presents the reasonably anticipated future land uses as determined by FMC (hereafter “reasonably anticipated future land uses”) for the CMS Study Areas.

FMC developed reasonably anticipated future land uses consistent with the following guidance documents:

- USEPA Memorandum on *Reuse Assessments: A Tool to Implement the Superfund Land Use Directive*, dated June 4, 2001, OSWER Directive No. 9355.7-06P. (“USEPA 2001”)
- USEPA Memorandum on *Land Use in the CERCLA Remedy Selection Process*, dated May 25, 1995, OSWER Directive No. 9355.7-04. (“USEPA 1995”)

As specified in the USEPA guidance, FMC considered existing information (e.g, current land use, zoning regulations, existing planning documents, etc) and input from the community to determine reasonably anticipated future land uses for the CMS Study Areas.

2. Why Consider Future Land Use in the CMS?

USEPA Memorandum on Reuse Assessments: A Tool to Implement the Superfund Land Use Directive (USEPA 2001) states the following regarding the purpose of considering reasonably anticipated future use when making remedy decisions:

The resulting assumptions of reasonably anticipated future use can be considered as part of the following:

- *The baseline risk assessment when estimating potential future risks;*
- *The development of remedial/removal action objectives and the development and evaluation of response alternative; and*
- *The selection of the appropriate response action required for the protection of human health and the environment.*

Further, consistent with USEPA Memorandum on Land Use in the CERCLA Remedy Selection Process (USEPA1995) reasonably anticipated future land use assumptions would allow the CMS and associated risk assessments “to be focused on developing practicable and cost effective remedial alternatives.”

Accordingly, reasonably anticipated future land usages were considered in FMC’s CMS risk assessments, in our development and evaluation of corrective measures alternatives (CMAs), and in our recommendation of the corrective measures for the CMS Study Areas.

3. Background

The approved CMS Work Plan states that reasonably anticipated future land uses will be identified in consultation with the community and that a Draft Reasonably Anticipated Future Land Usages Map would be developed for review and comment by the community and Agencies. Prior to development of a draft map, FMC held a meeting with the Agencies, Village of Middleport and Towns of Hartland and Royalton officials (including the Village of Middleport Mayor, Town of Royalton Supervisor, planning and zoning officials) on October 15, 2009 to provide information on FMC’s RCRA Corrective Action program and to discuss the development of Reasonably Anticipated Future Land Usages and the use of the future land use assumptions in the CMS for the Suspected Air Deposition and Culvert 105 Study Areas.

By letter dated November 6, 2009, FMC submitted a *Draft Reasonably Anticipated Future Land Usages Map for the CMS Suspected Air Deposition and Culvert 105 Study Areas and Other Environmental Areas South of Pearson/Stone Roads* (included as Attachment C-1) to the Agencies for review and comment. The November 2009 *Draft Reasonably Anticipated Future Land Usages Map* included properties within FMC’s environmental study areas south of Pearson/Stone Roads (i.e., Suspected Air Deposition Areas, Culvert 105 and Flood Zone, Tributary One and Floodplain South of Pearson/Stone Roads, FMC Plant Site, Former FMC Research and Development Property). In addition, FMC distributed information sheets with the November 2009 *Draft Reasonably Anticipated Future Land Usages Map*, comment forms, and meeting notices to affected property owners, Village of Middleport and Towns of Hartland and Royalton officials, and Royalton-Hartland (Roy-Hart) Central School District Superintendent and school board members. Consistent with USEPA guidance (USEPA 1995 and USEPA 2001), FMC held information sessions and/or meetings on November 12 and 17, 2009, December 3 and 9, 2009 to provide information and/or solicit early

input from stakeholders on the November 9 *Draft Reasonably Anticipated Future Land Usages Map* developed by FMC. Representatives from the Agencies attended the December 9, 2009 meeting. FMC also presented and discussed the November 2009 *Draft Reasonably Anticipated Future Land Usages Map* at the November 2009 and December 2009 Middleport Community Input Group (MCIG) meetings, and answered any questions concerning future land uses and the CMS during subsequent meetings.

The Agencies, in consultation with the New York State Department of Health (NYSDOH), provided comments on the November 2009 *Draft Reasonably Anticipated Future Land Usages Map* by letter dated December 17, 2009. The Agencies' comments and FMC's responses are presented in Attachment C-2. Community comments on the November 2009 *Draft Reasonably Anticipated Future Land Usages Map* and FMC's responses are presented in Attachment C-3.

Current land usages in the CMS Study Area are depicted in Figure C-1. With consideration of comments received from the Agencies and the community, FMC prepared a revised map (Figure C-2) limited to the Suspected Air Deposition and Culvert 105 study areas (CMS Study Areas) that depicts reasonably anticipated future land usages as determined by FMC. The basis and/or rationale for reasonably anticipated future land usages determined by FMC are described in the sections below and in Attachments C-2 and C-3.

4. Reasonably Anticipated Future Land Use Assumptions

FMC identified reasonably anticipated future land usages for the CMS Study Areas consistent with USEPA guidance (USEPA 2001 and USEPA 1995). The USEPA encourages the development of reasonably anticipated future land use assumptions with input from the community in an effort to use realistic assumptions regarding future land use.

The following information was used to identify reasonably anticipated future land usages for the CMS Study Areas

1. Final RCRA Facility Investigation Report Volume I – Background and Related Information (RFI Report Volume I), dated September 2009 (ARCADIS 2009a)
2. Final RCRA Facility Investigation Report Volume II – Suspected Air Deposition Area 1 (South of the Erie Canal and west of the Niagara/Orleans County Line) and Culvert 105 Study Area South of the Erie Canal (ARCADIS 2009b)
3. Final RCRA Facility Investigation Report Volume IV - Culvert 105 and Flood Zone (ARCADIS 2009c)
4. Village of Middleport Zoning Map (updated in January 2002) and associated zoning codes
5. Town of Royalton Zoning Map (updated in October 2002) and associated zoning codes
6. Town of Hartland Zoning Map (updated in January 2008) and associated zoning codes

7. Village of Middleport Local Waterfront Revitalization Program (Adopted by Village of Middleport Trustees, August 19, 2002; Approved by New York State Secretary of State Randy A. Daniels, January 27, 2003), including Map 8 – Proposed Land and Water Uses
8. Town of Royalton Comprehensive Plan (Final Draft, March, 24, 2009)
9. Comprehensive Plan for the Town of Hartland (Adopted August 14, 1998)
10. Location of wetlands based on information from the United States Fish and Wildlife Service's Wetland Mapper, November 2009
11. Location of floodplains and flood zone based on appropriate FEMA flood insurance rate maps for the Village of Middleport and Town of Hartland
12. Location of waterways (i.e., Erie Barge Canal, Tributary One)
13. Current land usages in the CMS Study Area (see Figure C-1)
14. Agencies' December 17, 2009 comments (see Attachment C-2)
15. Written and oral comments from owners of properties within the CMS Study Area, MCIG members, Roy-Hart school district superintendent and school board members, community members and Village of Middleport and Towns of Hartland and Royalton officials (see Attachment C-3)

The current land usages for properties in the CMS Study Areas (see Figure C-1) were used as the basis for identifying reasonably anticipated future land usages. Figure C-2 presents the reasonably anticipated future land usages determined by FMC for properties in the CMS Study Areas. The areas where the reasonably anticipated future land usages are different from the current land usages are also identified on Figure C-2.

A description of the land use categories is presented below:

- **Commercial:** commercial and business uses (e.g., offices, motor vehicle sale/service, funeral/undertaking establishment, hotel/restaurant)
- **Industrial:** industrial, light industrial and factory uses
- **Recreational/Open Land/Agricultural:** publicly owned recreational areas (i.e., parks), open green spaces, agricultural or farm lands
- **Public/Institutional:** Schools, churches and other institutions (e.g., library,)
- **Railroad/Utility:** Electrical transformer stations, power line and other utility right-of-ways, railroad tracks and associated right-of-ways, Village of Middleport sanitary sewage treatment facility
- **Residential:** residential uses (e.g., single and multi-family dwellings)

The above land use categories were identified for the purposes of the CMS (i.e., risk assessment, identification, evaluation and selection of CMAs) as discussed in above Section 2.0.

XREFS: 37665X01
IMAGES:
PROJECTNAME:

LEGEND:

- CULVERT 105 (OPEN DITCH SECTION)
- CULVERT 105 (BURIED PORTION)
- VILLAGE OF MIDDLEPORT MUNICIPAL BOUNDARY (APPROXIMATE)

APPROXIMATE BOUNDARY OF PROPERTY OR AREA INCLUDED IN THE CMS STUDY AREAS

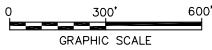
CURRENT LAND USAGES (SEE NOTE):

- COMMERCIAL
- INDUSTRIAL
- RECREATIONAL/OPEN LAND/AGRICULTURAL
- PUBLIC/INSTITUTIONAL
- RAILROAD/UTILITY
- RESIDENTIAL

AC5 PROPERTY IDENTIFICATION NUMBER

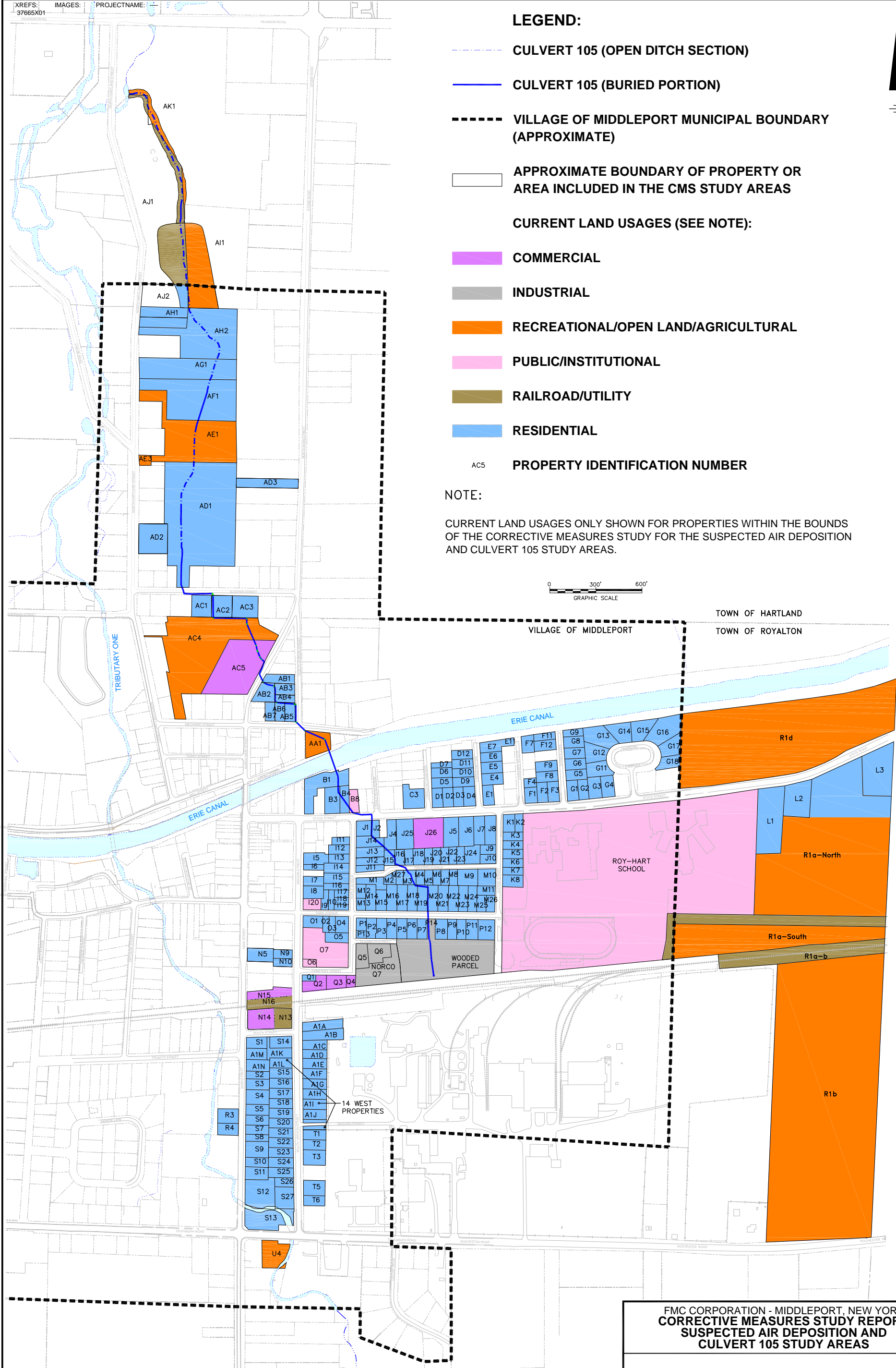
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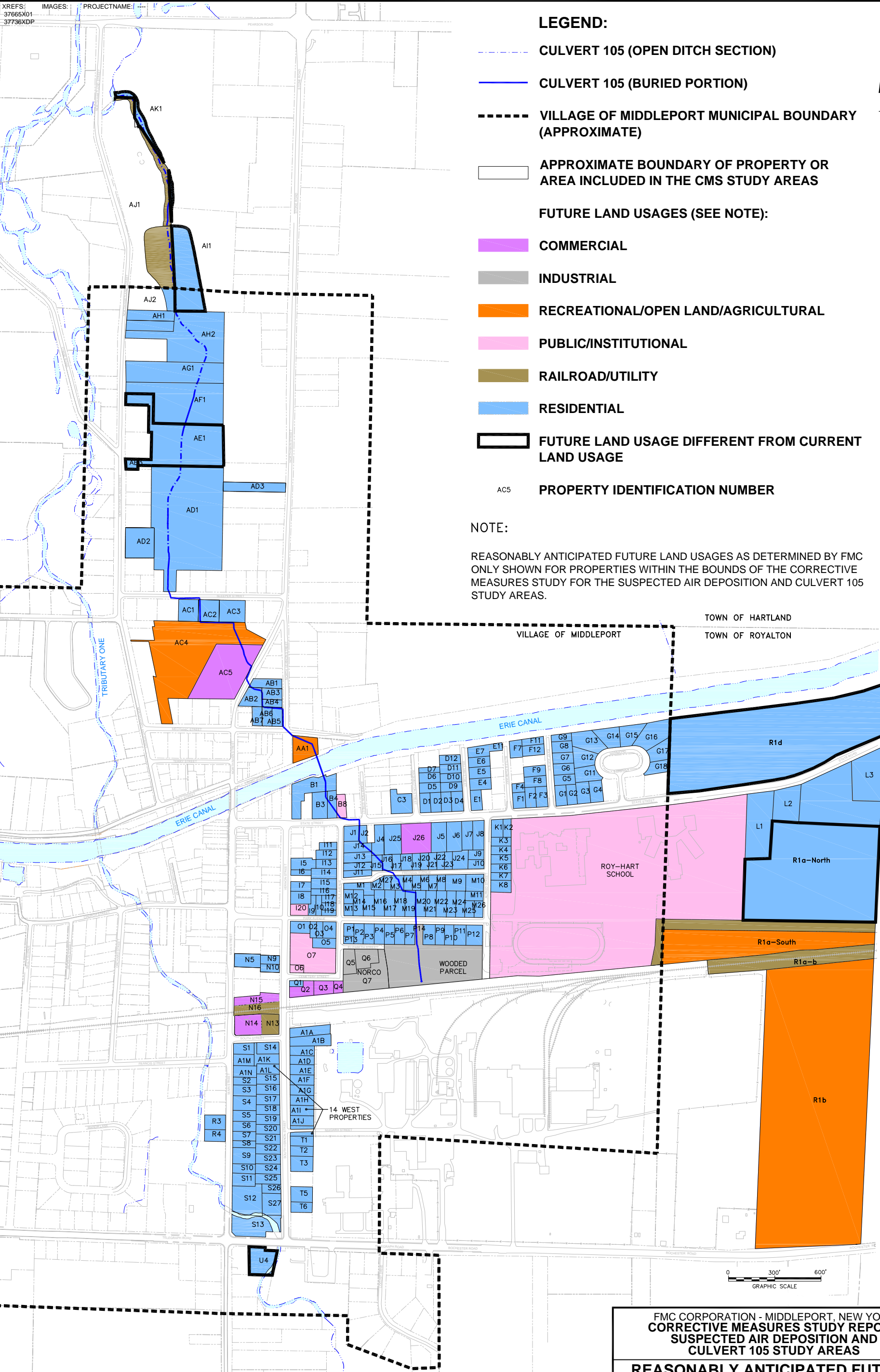
CURRENT LAND USAGES ONLY SHOWN FOR PROPERTIES WITHIN THE BOUNDS OF THE CORRECTIVE MEASURES STUDY FOR THE SUSPECTED AIR DEPOSITION AND CULVERT 105 STUDY AREAS.



TOWN OF HARTLAND
TOWN OF ROYALTON

VILLAGE OF MIDDLEPORT





FMC CORPORATION - MIDDLEPORT, NEW YORK
CORRECTIVE MEASURES STUDY REPORT
SUSPECTED AIR DEPOSITION AND
CULVERT 105 STUDY AREAS

REASONABLY ANTICIPATED FUTURE
LAND USAGES MAP
AS DETERMINED BY FMC



FIGURE

C-2

DRAFT - MAY 2011

Attachment C-1

FMC's November 6, 2009 Draft
Reasonably Anticipated Future
Land Usages Map for the CMS
Suspected Air Deposition and
Culvert 105 Study Areas and
Other Environmental Areas South
of Pearson/Stone Roads

FMC Corporation

FMC Corporation
1735 Market Street
Philadelphia PA 19103

215.299.6000 phone
215.299.6947 fax

www.fmc.com

November 6, 2009

Via E-Mail and Overnight Mail

Mr. Matt Mortefolio, P.E.
NYSDEC Project Coordinator
Bureau of Solid Waste & Corrective Action
Division of Solid and Hazardous Waste Materials
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
625 Broadway, 9th Floor
Albany, NY 12233-7255

Mr. Michael Infurna
USEPA Project Coordinator
Environmental Planning and Protection Division
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, Region II
290 Broadway – 20th Floor
New York, NY 10007-1866

Re: RCRA Section 3008(h) Administrative Order on Consent (AOC)
Docket No. II-RCRA-90-3008(h)-0209
FMC Corporation, Middleport, NY Facility
EPA I.D. No. NYD002126845
Submittal of Draft Reasonably Anticipated Future Land Usages Map
Corrective Measures Study (CMS) Suspected Air Deposition and
Culvert 105 Study Areas

Dear Messrs. Mortefolio and Infurna:

By letter dated September 14, 2009, the New York State Department of Environmental Conservation (NYSDEC) and the United States Environmental Protection Agency (USEPA) (collectively, “the Agencies”), in consultation with the New York State Department of Health (NYSDOH), approved FMC Corporation’s (FMC’s) “Corrective Measures Study Work Plan for Suspected Air Deposition and Culvert 105 Study Areas” (August 2009, AMEC Geomatrix) (CMS Work Plan). Consistent with the Agencies’ Corrective Action Objectives for Off-Site Soils and Sediments (Appendix A of the approved CMS Work Plan), the CMS Work Plan specifies that a Draft Reasonably Anticipated Future Usages Map will be prepared to identify proposed reasonably anticipated future land uses for properties within the respective CMS study areas, and that FMC will provide this draft map to the Agencies in advance of meetings and information sessions with local officials and members of the community. FMC has prepared and encloses a Draft Reasonably Anticipated Future Usages Map, together a description of the basis for identification of the reasonably anticipated future land uses shown on the map (Enclosure No. 1). Please note that along with properties in the two study areas that are the subject of the current CMS, the map includes properties within FMC’s RFI study areas south of Pearson/Stone Roads (i.e., the Suspected Air Deposition Areas north of the Canal and east of the county line, Tributary One and floodplain south of Pearson/Stone Roads, the FMC plant site, and the former FMC R&D property).



Messrs. Mortefolio and Infurna
November 6, 2009
Page 2

Hard copies of this letter and the enclosures will be placed in the document repository at the Middleport Library and FMC's Neighborhood House at 17 Vernon Street in Middleport, New York and made available for community review. The documents will also be available at the following website:

- <http://www.middleportny.com/library/>

Information sheets relative to the enclosures and comment forms will also be mailed or distributed in early to mid-November 2009 to 1) owners within the FMC's environmental study areas south of Pearson/Stone Roads; 2) Village of Middleport and Towns of Hartland and Royalton officials (including planning/zoning boards); and 3) Royalton-Hartland Central School District (Roy-Hart) Superintendent and School Board members.

FMC will hold the following information sessions at the times/dates below to present the information contained in Enclosure No. 1, to answer questions, and to solicit input from the community and stakeholders.

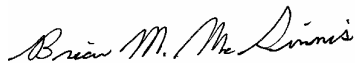
- November 12, 2009 meeting with Roy-Hart Superintendent – 1 pm at Neighborhood House, 17 Vernon Street in Middleport
- November 17, 2009 – 6:30 pm at Neighborhood House, 17 Vernon Street in Middleport
- December 3, 2009 – 6:30 pm at Neighborhood House, 17 Vernon Street in Middleport
- Early-mid December 2009 (including planning/zoning boards) with Village of Middleport and Towns of Hartland and Royalton officials and Roy-Hart Superintendent and School Board members

In addition, FMC's representatives will be attending the November 12, 2009 Middleport Community Input Group meeting to discuss and answer any questions related to the enclosed documents.

In order to meet the schedule for performance of the CMS, FMC requests that the Agencies and community members provide any comments on the enclosed documents by December 31, 2009.

If there are any questions or if additional information is needed at this time, please contact me at (215) 299-6047 or at the above address.

Sincerely,



Brian M. McGinnis
Remediation Project Manager

enclosure

Messrs. Mortefolio and Infurna

November 6, 2009

Page 3

pc: Without enclosure

W. Mugdan, USEPA, NYC
B. Finazzo, USEPA, NYC
J. Reidy, USEPA, NYC
E. Dassatti, NYSDEC, Albany
R. Phaneuf, NYSDEC, Albany
G. Litwin, NYSDOH, Troy
R. Fedigan, NYSDOH, Troy
D. David, NYSDEC, Buffalo
G. Sutton, NYSDEC, Buffalo
Senator George Maziarz, Lockport
Assemblywoman Jane Corwin, Elma
Congressman Chris Lee, Williamsville

With enclosure

J. Ridenour, NYSDOH, Troy
Mayor Julie Maedl, Village of Middleport
Daniel E. Seaman, Esq., Village of Middleport Attorney, Lockport office
Dan Watts, MRAG/MCIG Technical Advisor
Bill Arnold, Middleport Community Input Group (MCIG)
Patt Cousins, Middleport Remedial Action Group (MRAG)
M. Hinton, NYSDEC, Buffalo
N. Freeman, NYSDOH, Troy
Middleport Library/Document Repository
FMC Neighborhood House
Richard Lang, Town of Royalton Supervisor
William Annable, Town of Hartland Supervisor

Enclosure No. 1
Draft Reasonably Anticipated Future Land Usages Map for the
CMS Suspected Air Deposition and Culvert 105 Study Areas and Other
Environmental Areas South of Pearson/Stone Roads
FMC Middleport Facility
November 6, 2009

1.0 INTRODUCTION

FMC Corporation (FMC) is implementing the “Corrective Measures Study Work Plan for Suspected Air Deposition and Culvert 105 Study Areas” (August 2009, AMEC Geomatrix) (CMS Work Plan), which has been approved by the New York State Department of Environmental Conservation (NYSDEC) and the United States Environmental Protection Agency (USEPA) (collectively, “the Agencies”), in consultation with the New York State Department of Health (NYSDOH). Consistent with the Agencies’ Final Corrective Action Objectives Applicable to Off-Site Soil and Sediment (dated March 26, 2009 and contained in Appendix A of the CMS Work Plan) (“CAOs”), the CMS Work Plan states that reasonably anticipated future land uses will be identified in consultation with the community and that a Draft Reasonably Anticipated Future Land Usages Map would be developed for review and comment by the community and Agencies. Accordingly, the attached Figure 1, Draft Reasonably Anticipated Future Land Usages Map, has been prepared to identify proposed reasonably anticipated future land uses for the Middleport area. This map includes properties within FMC’s environmental study areas south of Pearson/Stone Roads (i.e., Suspected Air Deposition Areas, Culvert 105 and Flood Zone, Tributary One and Floodplain South of Pearson/Stone Roads, FMC Plant Site, Former FMC Research and Development Property) and has been prepared for use in the CMS. The sections below describe Figure 1 and the basis for identification of the reasonably anticipated future land uses identified on Figure 1.

2.0 BASIS

The CMS will develop and evaluate corrective measures alternatives (CMAs) with respect to the CAOs and the several evaluation criteria specified in the CMS Work Plan. One of the criteria to be considered is site-specific information on current and reasonably anticipated future land uses. Reasonably anticipated future land use assumptions will allow the CMS and associated risk assessments to be focused on developing practicable and cost effective corrective measures alternatives. The USEPA encourages the development of reasonably anticipated future land use assumptions with early community involvement in accordance with USEPA Memorandum on Land Use in the CERCLA Remedy Selection Process (dated May 25, 1995, OSWER Directive No. 9355.7-04) (“USEPA 1995”).

Figure 1 was prepared consistent with USEPA 1995 and based on the following information:

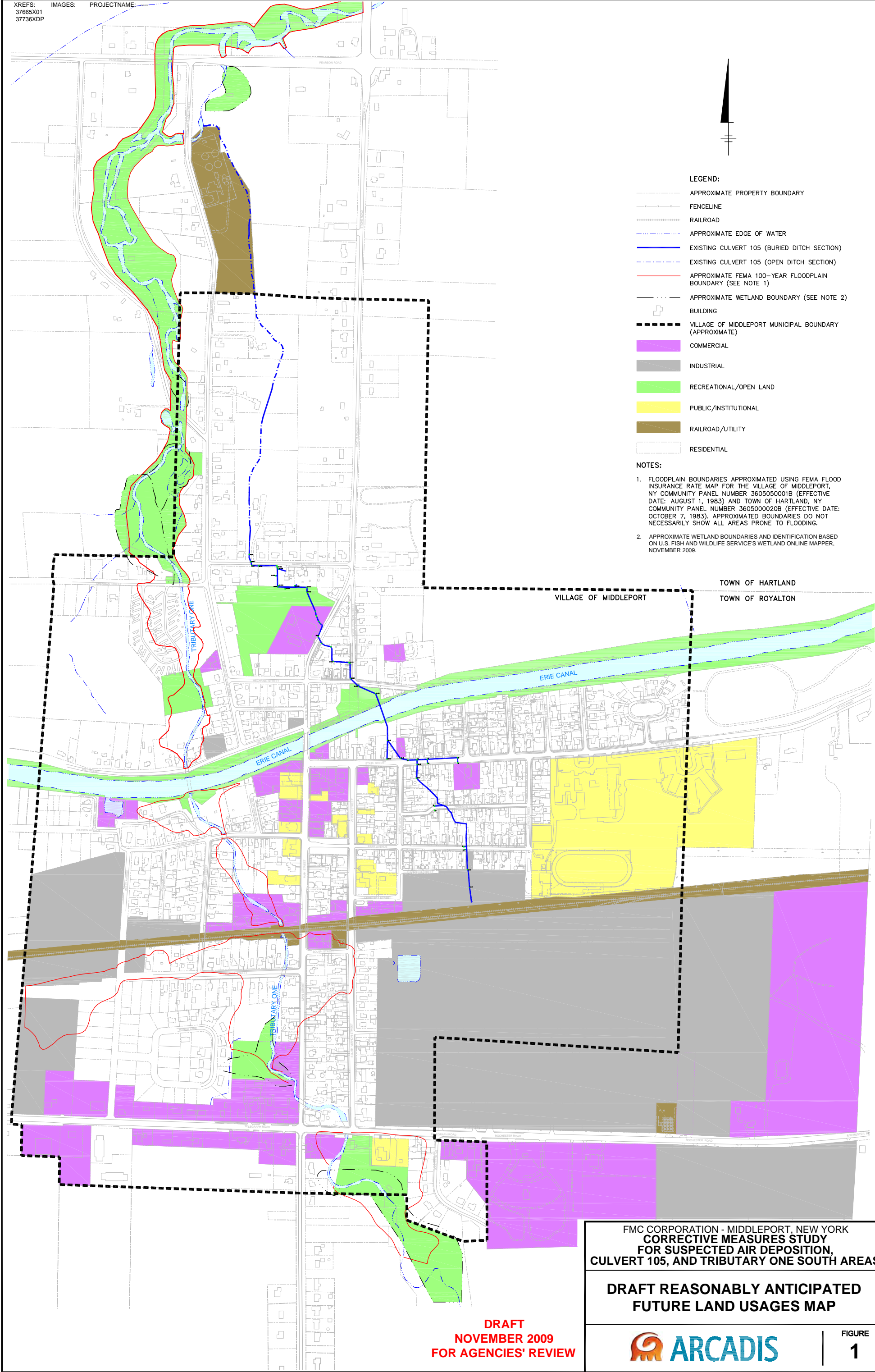
1. Final RCRA Facility Investigation Report Volume II – Suspected Air Deposition Area 1 (South of the Erie Canal and west of the Niagara/Orleans County Line) and Culvert 105 Study Area South of the Erie Canal (ARCADIS, September 2009)
2. Final RCRA Facility Investigation Report Volume IV - Culvert 105 and Flood Zone (ARCADIS, September 2009)
3. Village of Middleport Zoning Map, updated in January 2002
4. Town of Royalton Zoning Map, updated in October 2002
5. Town of Hartland Zoning Map, updated in January 2008
6. Village of Middleport Local Waterfront Revitalization Program (Adopted by Village of Middleport Trustees, August 19, 2002; Approved by New York State Secretary of State Randy A. Daniels, January 27, 2003)
7. Town of Royalton Comprehensive Plan (Final Draft, March, 24, 2009)
8. Comprehensive Plan for the Town of Hartland (Adopted August 14, 1998)
9. Applicable zoning codes for the Village of Middleport and Towns of Hartland and Royalton
10. Location of wetlands based on information from the United States Fish and Wildlife Service's Wetland Mapper, November 2009
11. Location of floodplains and flood zone based on appropriate FEMA flood insurance rate maps for the Village of Middleport and Town of Hartland
12. Location of waterways (i.e., Erie Barge Canal, Tributary One)
13. Discussions held during an initial meeting with Village of Middleport and Towns of Hartland and Royalton officials on October 15, 2009 concerning the development of Figure 1.

3.0 DESCRIPTION OF FUTURE LAND USES

Figure 1 identifies the following reasonably anticipated future land usages for the purposes of the CMS:

- **Commercial:** commercial and business uses
- **Industrial:** industrial uses
- **Recreational/Open Land:** publicly owned recreational areas (i.e., parks), open green spaces, Erie Barge Canal and Canal Trail System, wetland areas, 100-year flood plain,
- **Public/Institutional:** Schools, churches and other institutions (e.g., , post office, library, Village Hall)
- **Railroad/Utility:** Electrical transformer stations, power line and other utility right-of-ways, railroad tracks and associated right-of-ways, Village of Middleport sanitary sewage treatment facility
- **Residential:** residential uses

XREFS: IMAGES: PROJECTNAME:
37665X01
37736XDP



Attachment C-2

FMC Responses to Agencies'
December 17, 2009 Comments
Draft Reasonably Anticipated
Future Land Usages Map for the
CMS Suspected Air Deposition
and Culvert 105 Study Areas and
Other Environmental Areas
South of Pearson/Stone Roads

Attachment C-2**FMC Responses to Agencies' December 17, 2009 Comments on
FMC's November 2009 Draft Reasonably Anticipated Future Land Usages Map for the
CMS Suspected Air Deposition and Culvert 105 Study Areas and
Other Environmental Areas South of Pearson/Stone Roads**

By letter dated November 6, 2009, FMC Corporation (FMC) submitted a *Draft Reasonably Anticipated Future Land Usages Map for the CMS Suspected Air Deposition and Culvert 105 Study Areas and Other Environmental Areas South of Pearson/Stone Roads*, to the New York State Department of Environmental Conservation (NYSDEC), and the United States Environmental Protection Agency (USEPA) (the latter two entities collectively referred to herein as "the Agencies"). The Agencies, in consultation with the New York State Department of Health (NYSDOH), provided comments on the draft land use map by letter dated December 17, 2009. FMC's responses to the Agencies' comments and how they were considered in the Corrective Measures Study (CMS) for the Suspected Air Deposition and Culvert 105 Study Areas are presented below.

Agencies' Comment 1: Affected Properties

FMC's draft map depicts future uses of properties that are not part of the CMS for Air Deposition Area 1 and Culvert 105. Inclusion of properties not relevant to the CMS on this CMS figure creates unnecessary confusion. Figures 9.1 & 8.1 in Volumes II & IV of FMC's RFI Report depict the properties involved in this CMS. These figures should be used to differentiate the properties outside of the CMS area on FMC's Future Land Use Map. FMC's map should be revised to "white-out" these non-CMS properties, or provide some other illustration to differentiate CMS from non-CMS properties.

FMC Response to Agencies' Comment 1:

The CMS Report includes maps that identify current and reasonably anticipated future land usages only for properties that are included in the Suspected Air Deposition and Culvert 105 CMS study areas. Figure 1-1 of the CMS Report identifies properties within the CMS Study Areas. Land uses for properties outside of the CMS Study Areas are not identified.

Agencies' General Comment 2: Commercial Properties (Purple Colored)

CMS Properties B5, J26, N12, N14, Q2 & U4 on Figure 9.1 in RFI Report Volume II and CMS Property "NO ID" on Figure 8.1 in RFI Report Volume IV, are all depicted as Commercial properties on FMC's Draft Future Land Use Map. These properties are currently zoned as "business", or "light industrial" in the case of the "NO ID" property (according to Figure I2.5 in RFI Report Volume I). However, the Agencies do not consider that current zoning in and of itself, would preclude alternate future property usages. Furthermore, the June 2001 USEPA Memorandum¹ mentioned in the cover letter states on page 4 that property uses in neighboring areas and the character of the neighborhood (e.g., residential, etc.), should be considered in

determining the reasonably anticipated future use of the subject properties. The above listed properties are all located in areas that are predominantly residential in nature, and some are currently surrounded by residential properties. In addition, some of these properties are currently occupied by residential type dwellings (e.g., J26) that could be converted to residential occupancy without substantial, if any modification. Therefore, the Agencies consider that a reasonably anticipated future land use of the above listed properties should be residential, and the FMC map should be revised accordingly.

CMS Property R1b on Figure 9.1 in RFI Report Volume II is depicted as Commercial property on FMC's Draft Future Land Use Map. Although this property is currently zoned as "business" (according to Figure I2.5 in RFI Report Volume I), its actual current character is more closely indicative of vacant land and agricultural use, and is not perceptively different from agricultural Property R1a to the north. The reasonably anticipated future use of Property R1a is indicated on FMC's draft map as residential, based presumably on the trend for agricultural properties to become residential. Therefore, since there is little, if any, observable difference between the character of Property R1a and R1b, the Agencies consider that a reasonably anticipated future land use of Property R1b should be residential, and the FMC map should be revised accordingly.

FMC Response to Agencies' Comment 2:

Figure C-1 identifies current land usages of the CMS Study Area properties and Figure C-2 identifies the reasonably anticipated future land usages determined by FMC. Consistent with the June 2001 USEPA Memorandum concerning reuse assessment, the reasonably anticipated future land usages were identified based on realistic assumptions and community input. Current zoning is only one factor in developing or determining reasonable anticipated future land uses under the USEPA guidance. The current and FMC's reasonably anticipated future uses for the properties identified in the Agencies' comment are as follows:

Property ID	Current Use	Reasonably Anticipated Future Use Determined by FMC	FMC's Rationale for Reasonably Anticipated Future Use
B5	Not in CMS Study Area; usages not shown on the maps. See Property B8 below.		
B8 (next to B5)	Public/ Institutional	Public/Institutional	Property is owned by a religious organization and is used for church-affiliated purposes and is within the Village of Middleport business district. Based on community input, current zoning as a business, proposed future land uses contained on Map 8 of the document "Village of Middleport Local Waterfront Revitalization Program (Adopted by Village of Middleport Trustees, August 19, 2002; Approved by New York State Secretary of State Randy A. Daniels, January 27, 2003) ("LWRP") and on the physical characteristic of the property (e.g., building configuration as a retail business, extent of paved area), it is not likely that the property will be used for residential purposes.

Property ID	Current Use	Reasonably Anticipated Future Use Determined by FMC	FMC's Rationale for Reasonably Anticipated Future Use
J26	Commercial	Commercial	Property is owned by and used as a funeral home and is within the Village of Middleport business district. Based on community input, current zoning, proposed future land uses contained on Map 8 of the LWRP, and on the physical characteristic of the property (e.g., building configuration, extent of paved area), it is not likely that the property will be used for residential purposes in the future.
N12	Not in CMS Study Area; usages not shown on the map. See Property N15 below.		
N15 (next to N12)	Commercial	Commercial	N15 was used as a parking lot for the restaurant/bar business that occupied property N12. It is also situated along an active railroad. Based on community input, current zoning, proposed future land uses contained on Map 8 of the LWRP, and the configuration and location of property N15, it is not likely that it will be used for residential purposes in the future.
N14	Commercial	Commercial	N14 is largely currently occupied by an auto service/sale business and by a residential home. It is also situated along an active railroad. Based on community input, current zoning, proposed future land uses contained on Map 8 of the LWRP, and the configuration and location of property N14, it is likely that its current use will remain the same. The use of this property for both residential and commercial purposes will be considered during the Corrective Measures Implementation (CMI) phase and the application of the final remediation goal.
Q2	Commercial	Commercial	Q2 is occupied by a building currently used for storage. It is also situated along an active railroad. Based on community input, current zoning, proposed future land uses contained on Map 8 of the LWRP, and the configuration and location of property Q2, it is not likely that it will be used for residential purposes in the future.
U4	Open Land	Residential	U4 is currently a vacant lot and is zoned for business usages. Since the property is vacant, it is reasonable to assume that property U4 may be used for residential purposes in the future.

Property ID	Current Use	Reasonably Anticipated Future Use Determined by FMC	FMC's Rationale for Reasonably Anticipated Future Use
R1b	Agricultural/ open land	Agricultural/open land	R1b is currently vacant open land occupied by wooded areas and farm land. The property is zoned for business in the Town of Royalton. Based on input from the property owner, current zoning, the Town of Royalton Comprehensive Plan (Final Draft, March, 24, 2009), which identifies the property to be a "Farmland of Statewide Importance" (Map 4), it is reasonable to assume that future usages on property R1b will continue to be agricultural and open land.
R1a-north R1a-south	Residential, and/or Agricultural/ open land	R1a-north: Residential, R1a-south: Agricultural/open land	R1a was divided into 2 separate areas for the purposes of the CMS. R1a-north is the portion of the parcel situated north of the power line corridor and R1a-south is the portion of the parcel that is south of the power line corridor. R1a-north is currently used for residential and agricultural purposes. R1a is currently zoned for agricultural purposes, except for the area that is within 300 feet setback from State Road, which zoned for residential usages. Based on the current zoning and configuration of the land, the reasonably anticipated future use of R1a-north is residential. The reasonably anticipated future use of R1a-south will continue to be agricultural and open land due to the current zoning of the parcel, input from the property owner and the configuration/location of the area (e.g., bound by an active railroad and power line corridor).

Agencies' General Comment 3: Recreational / Open Land Properties

CMS Property AC4 on Figure 8.1 in RFI Report Volume IV, is depicted as a Recreational / Open Land property on FMC's Draft Future Land Use Map. This property is currently zoned as "residential" (according to Figure I2.5 in RFI Report Volume I), so no zoning changes would appear to be necessary for future residential use. Also, this property is located in an area that is residential in nature, and is currently surrounded by residential properties. Therefore, the Agencies consider that a reasonably anticipated future land use of this property should be residential, and the FMC map should be revised accordingly.

FMC's Draft Future Land Use Map depicts portions of properties within the flood plain of Tributary One as Recreational / Open Land. Tributary One is not part of the CMS that is currently underway and should not

be characterized as such on this map, as explained in Comment 1 above. However, since it is likely that a similar map will be a part of a future Tributary One CMS, the Agencies are providing this comment on the Recreational / Open Land properties along Tributary One. Almost all of these properties are currently zoned as “residential” (according to Figure I2.5 in RFI Report Volume I). Although the fact that the portions of these properties along Tributary One may preclude building construction within the flood plain, it does not preclude residential use of the land within the flood plain. A homeowner could remove some trees and create a lawned yard within the flood plain for residential use (e.g., family play area, gardens, etc.). In fact, residential Property BJ7 currently has a lawn and play area within the flood plain up to the banks of the tributary. Therefore, the Agencies consider that a reasonably anticipated future land use of these properties within the Tributary One flood plain should be residential.

FMC Response to Agencies’ Comment 3:

Property AC4 (see Figure 1-1 of the CMS Report) is owned by the Village of Middleport and is currently an open vacant field that is routinely mowed/maintained by the Village. The Middleport LWRP identifies the future use to be open space and recreational, and states that property AC4 “should be developed as parkland for active recreation.” Therefore, FMC concluded that it is reasonable to assume that the future use of the property will be recreational/open land and not residential.

FMC will consider the Agencies’ comments concerning the reasonably anticipated future usages of properties along Tributary One during performance of the CMS for Tributary One and Floodplain South of Pearson/Stone Roads and/or in the CMS Work Plan for Tributary One and Floodplain South of Pearson/Stone Roads (to be submitted in 2011).

Agencies’ General Comment 4: Public / Institutional Properties

CMS Properties I20, O7 and the Royalton-Hartland (R-H) School property on Figure 9.1 in RFI Report Volume II, are depicted as Public / Institutional properties on FMC’s Draft Future Land Use Map. These properties are currently zoned as “residential” (according to Figure I2.5 in RFI Report Volume I), so no zoning changes would appear to be necessary for future residential use. Furthermore, as mentioned above, the June 2001 USEPA Memorandum¹ states that property uses in neighboring areas and the character of the neighborhood (e.g., residential, etc.), should be considered in determining the reasonably anticipated future use of the subject properties. The above listed properties are all located in areas that are predominantly residential in nature, and are mainly surrounded by residential properties.

Also, as indicated in the previously mentioned USEPA Memorandum¹, input from local officials and stakeholders (e.g., property owners) is critically important in determining a property’s reasonably anticipated future use. With respect to the R-H School property, School officials at the December 9, 2009 meeting indicated that residential usage should be considered as a reasonably anticipated future use of the school property, and as such, FMC should consider these School official comments in the development of the map.

Therefore, based on the reasons stated above, the Agencies consider that the reasonably anticipated future land use of the above listed properties should be residential, and the FMC map should be revised accordingly.

FMC Response to Agencies' Comment 4:

Properties I20 (church hall) and O7 (church) (see Figure 1-1 of the CMS Report) are owned by a religious organization and are currently used for church-affiliated purposes. Based on information contained in the Middleport LWRP, which identifies proposed land uses of these two properties to be institutional and on the physical characteristic of the property (e.g., building configuration, extent of paved and parking area), it is not likely that the properties will be used for residential purposes. Therefore, FMC concluded that it is reasonable to assume that the future use of properties I20 and O7 will continue to be institutional.

With respect to the Royaltown-Hartland (Roy-Hart) Central School District property, see also FMC's Response to Community Comment 12 in Attachment C-3.

The Roy-Hart Central School District property in Middleport is currently used for high school and middle school students and houses the school district offices and maintenance facilities. Based on information obtained from the Roy-Hart Central School District, 1,642 students were enrolled in the Roy-Hart Central School District during the 2009-2010 school year, of which 1,005 were high school and middle school students and 637 were elementary school students. The 2009-2010 enrollment increased from previous years and/or projections, as documented in published reports (e.g., *Empire Center for New York State Policy 2010-2011 School Budget Spotlight* – dated May 4, 2010; *New York State District Report Card; Accountability and Overview Report 2008-09 for the Roy-Hart Central School District* – dated January, 2010; and *Niagara Communities Comprehensive Plan 2030* – dated July 2009). Based on information obtained from the Roy-Hart Central School District, the Roy-Hart Central School District projects future enrollment to be consistent with recent enrollment trends. While declining over the last 10 years, these enrollment trends show a recent increase in the elementary school population as evidenced by the larger enrollment at the district's elementary school level.

Based on information obtained from Roy-Hart Central School District personnel, the Middleport campus (including both high school and middle school buildings) currently has 204,650 sq. ft. of available space with 90 classrooms in use with a number of unused classrooms in the high school building. The Gasport school, with the completed addition, will be 88,810 sq. ft of available space and a total of 52 classrooms.

For the purposes of the CMS, FMC identified the reasonably anticipated future land use of the Middleport campus to continue to be institutional (school) based on the following:

- Based on the assumption that projected future student enrollments for the Roy-Hart school district will be consistent with trends observed in 2009-2010, and the current classroom capacities of the buildings at the Gasport and Middleport campuses, FMC concluded that it is likely that both the Middleport and Gasport campuses will continue to be needed.

- The Middleport campus, which supports both the High school and Middle school buildings, can support a greater number of students and has significantly more educational and athletic facilities (e.g., sports, science, technical, music) than the Gasport campus. At present, the Middleport campus uses a total of 90 classrooms, and has additional unused classroom space in the high school building. The District's administrative offices and support services such as the special education, curriculum planning and development as well as the maintenance department offices are also located at the Middleport campus. The Middleport campus has 1 regulation football field and stadium, an 8-lane track, 1 swimming pool, 2 softball/baseball diamonds, 2 field hockey fields, and 3 tennis courts all of which are used in addition to Gasport's 3 athletic fields and tennis courts during a school year. The Gasport campus has a total of 52 classrooms available for use with the completion of the new wing in the fall of 2010. There is no additional land or space for the district's girls and boys sporting events at the Gasport campus. Therefore, FMC concluded that it is not realistic or reasonable to assume that the Middleport campus will be closed due to any potential consolidation of the two school campuses.
- Given the financial constraints of the school district, local community, and the State of New York, FMC concluded that it is not realistic or reasonable to assume that a new school will be constructed to replace the Middleport campus and associated athletic fields/areas. Further, based on discussions with local officials and community members, the physical characteristics of the Middleport campus (e.g., buildings, athletic fields, etc), and review of existing closed schools (e.g., Lockport City School District), FMC concluded that it is not realistic or reasonable to assume that the Middleport campus will be converted to residential usages sometime in the future.
- The Middleport LWRP identifies the proposed future use of the Middleport campus to be institutional.
- Local Village of Middleport officials and other community members (other than the 2009-2010 Roy-Hart School Board) have commented that it is unlikely that the Middleport schools will be closed or relocated.

Attachment C-3

FMC Responses to Community
Comments Draft Reasonably
Anticipated Future Land Usages
Map for the CMS Suspected Air
Deposition and Culvert 105
Study Areas and Other
Environmental Areas South of
Pearson/Stone Roads

Attachment C-3**FMC Responses to Community Comments on
FMC's November 2009 Draft Reasonably Anticipated Future Land Usages Map for the
CMS Suspected Air Deposition and Culvert 105 Study Areas and
Other Environmental Areas South of Pearson/Stone Roads**

By letter dated November 6, 2009, FMC Corporation (FMC) submitted a *Draft Reasonably Anticipated Future Land Usages Map for the CMS Suspected Air Deposition and Culvert 105 Study Areas and Other Environmental Areas South of Pearson/Stone Roads*, to the New York State Department of Environmental Conservation (NYSDEC), and the United States Environmental Protection Agency (USEPA) (the latter two entities collectively referred to herein as “the Agencies”). FMC held information sessions and/or meetings on October 15, 2009, November 12 and 17, 2009, and December 3 and 9, 2009 to provide information and/or solicit early input on FMC's draft future land use map. The community comments specifically concerning the November 2009 draft future land use map are repeated and/or paraphrased below (similar comments have been grouped together) along with FMC's responses, including how the comment(s) were considered in the Corrective Measures Study (CMS) for the Suspected Air Deposition and Culvert 105 Study Areas.

Community Comment 1:

- *The land east of the plant site colored as commercial will have a future land use of agricultural. I have a problem categorizing agricultural land the same as residential. For residential there may be children playing sometimes in dirt. This is not the case for agricultural land. Adults may till soil during spring planting but after that the soil is typically not disturbed and there is usually no children playing in fields.*
- Email (dated December 31, 2009) from Resident William Arnold to Agencies with reference to the Agencies' December 17, 2009 letter transmitting comments to FMC on the FMC's draft Reasonably Anticipated Future Land Usages Map

“Gentlemen: This letter is in regard to your comment to Mr. McGinnis in the referenced letter concerning the reasonable future use of a tract of land referred to on FMC's Draft Reasonably Anticipated Future Land Use Map as the CMS property R1b which, on the FMC map, is colored as commercial, its currently zoned status in the Town of Royalton. Your comment that this tract is similar to nearby land such as tract R1a and should be labeled residential is not, to me, a reasonable conclusion.

There are several aspects of this tract of land which make it very doubtful it will ever be used as residential land. They are:

1. *It is situated directly next to the FMC property, the ESI and possibly a CAMU.*
2. *It is a deep but relatively narrow tract with limited road frontage.*
3. *Its only road frontage is nearly across from a large salvage yard which creates excessive noise, dust and truck traffic.*
4. *There are no other residential properties bordering the tract except for a building across the road which was there before the establishment of the salvage yard and is now an apartment house.*

5. *There have been no residential developments adjacent to this tract for the last several decades.*
6. *The tract is populated with a number of FMC test wells, randomly placed.*

Since the purpose of the map is to establish a reasonable assessment of the future land use for the CMS, the tract labeled R1b should be regarded for this purpose as either:

1. *Business, its currently zoned status*
2. *Agricultural, its current use for part of the tract*
3. *Wooded/Open land, its current character for much of the tract*

To refer to this tract of land as possibly residential does not seem to be a reasonable assumption for its future use.

Please note that I write this letter as the property owner and not to represent any organization.”

FMC Response to Community Comment 1:

Property R1b is currently vacant open land occupied by wooded areas and farm land. The property is zoned for business in the Town of Royalton. Based on input from the property owner, current zoning, and the Town of Royalton Comprehensive Plan (Final Draft, March, 24, 2009), which identifies the property to be a “Farmland of Statewide Importance” (Map 4), FMC identified the reasonably anticipated future usages on property R1b to be agricultural and open land.

Community Comment 2:

“The map appears to be consistent with current land uses and zoning classifications. 27 State St. is zoned business but is owned/operated as a church affiliated use. Label this as “public/institutional”.

FMC Response to Community Comment 2:

As suggested by the comment, FMC revised the reasonably anticipated future usage of this property to be public/institutional in the Draft CMS Report (see Figure C-2 of Appendix C).

Community Comment 3:

“Being that the canal is potential host to contaminant and just the sheer fact of proximity, I feel that the study should go as far west as Carmen Road. The study does further North/South, than it does East/West. I strongly believe that the study should really give equal research to both areas - it is only fair!”

FMC Response to Community Comment 3:

The Erie Canal is not within the FMC study areas being evaluated under the current Corrective Measures Study. However, a portion of the canal property is a part of a separate FMC Study Area which is currently under investigation.

Community Comment 4:

“The property west of North Hartland in Tributary #1 (Jeddo Creek) is outside of the Village of Middleport. Lots of old willow trees, etc. They have lots of old branches and limbs broken and rotten. The children have paths for 3 & 4 wheelers and they climb the trees. Lots of animal life, rodents, waterfowl and migrating birds. Some hunting in the area.”

FMC Response to Community Comment 4:

FMC will incorporate the comment into the CMS for Tributary One and Floodplain South of Pearson/Stone Roads and/or the CMS Work Plan for Tributary One and Floodplain South of Pearson/Stone Roads (to be submitted in 2011).

Community Comment 5:

“Development in the area of Culvert 105 is slow. The village of Middleport sewage treatment plant may need more storage for future expansion?”

FMC Response to Community Comment 5:

FMC acknowledges the comment.

Community Comment 6:

(Paraphrased oral comments received during the information sessions/meetings.)

- Were there any major deviations from the LWRP and the Reasonably Anticipated Future Land Use Map?

FMC Response to Community Comment 6:

The document entitled “Village of Middleport Local Waterfront Revitalization Program (Adopted by Village of Middleport Trustees, August 19, 2002; Approved by New York State Secretary of State Randy A. Daniels, January 27, 2003) (“LWRP”), was used by FMC as a basis for identifying reasonably anticipated future land uses for the CMS Study Areas. Map 8 – Proposed Land and Water Uses for the Village of Middleport of the LWRP was compared to the map on Reasonably Anticipated Future Land Usages Determined by FMC

(Figure C-2) in the Draft CMS Report. The following are the differences in the property uses for the CMS properties only (see Figure 1-1 of the Draft CMS Report):

Property ID	Land Use on LWRP Map 8	Land Use on Draft CMS Report Figure C-2	Notes
B8	Commercial	Public/Institutional	Property B8 is owned by a religious organization and is used for church-affiliated purposes
J25	Commercial	Residential	Property J25 is currently used for residential purposes.
J26	Residential	Commercial	Property J26 is currently used for a commercial business (funeral home). See FMC Response to Agencies' Comment 2 in Attachment C-2 (FMC Responses to Agencies' December 17, 2009 Comments).
P14	Industrial	Industrial	P14 is part of the Wooded Parcel, which is an industrial use property and subject to deed restrictions established as part of the 2007 Early Actions performed in the Wooded Parcel.
N13	Institutional	Railroad/Utility	An electrical transformer station is situated on property N13.
N16	Proposed use not identified	Railroad/Utility	Property N16 is part of the mainline railroad.
A1A	Recreational & Open Space	Residential	Property A1A is currently used for residential purposes and is within the residential zone of the Village.
U4	Commercial	Residential	Property U4 is currently a vacant, open land. See FMC Response to Agencies' Comment 2 in Attachment C-2 (FMC Responses to Agencies' December 17, 2009 Comments).

Community Comment 7:

(Paraphrased oral comments received during the information sessions/meetings.)

- A resident requested a map comparing the current zoning with the Draft Reasonably Anticipated Future Land Use map.

FMC Response to Community Comment 7:

The CMS Report includes a map that identifies currently land usages for properties within the CMS Study Areas. The land use categories are more specific than the respective zoning codes for the Village of Middleport and Towns of Royalton and Hartland. Current zoning maps are identified in the Agencies-approved RFI Report Volumes I, II and IV, and were identified only for the purposes of the CMS (e.g., performance of risk assessments and selection and evaluation of corrective measures). It should be noted that reasonably anticipated future usages are being identified only for the purposes of the CMS, and not for zoning purposes. Identified future land usages may differ from the actual zoning classification of a property.

Community Comment 8:

(Paraphrased oral comments received during the information sessions/meetings.)

- Why should people be concerned about other properties, other than their own, when reviewing this map?
- A school board member asked why is FMC having this meeting now? Why are we here?
- A school board member asked if the future use of the school should be re-evaluated.

FMC Response to Community Comment 8:

As specified in the Agencies-approved CMS work Plan, FMC prepared a draft future land use map for review and comment by the community, local officials and stakeholders. The reasonably anticipated future usages of the CMS Area properties will be considered in the CMS when making remedy decisions. This includes the risk assessments and the development and evaluation of the corrective measure alternatives (CMAs). For example, the Draft CMS Report includes five CMAs (CMA 3, CMA 6A, CMA 6B, CMA 7A and CMA 7B) that include land use specific soil arsenic clean-up goals. The reasonably anticipated future land usages were used to identify property-specific soil arsenic clean-up goals for individual CMS properties for these 5 CMAs. Applicable USEPA guidance for developing reasonably anticipated future land use assumptions recommend discussions about potential future land uses with local government officials, property owners and community members.

It should also be noted, that reasonably anticipated future usages are being identified only for the purposes of the CMS, and not for zoning purposes. Identified future land usages may differ from the actual zoning classification of a property.

With respect to the Royalton-Hartland (Roy-Hart) Central School District property in Middleport, see FMC Response to Community Comment 10.

Community Comment 9:

(Paraphrased oral comments received during the information sessions/meetings.)

- A school board member stated she would like to see the school be “tested” as a residential site.

FMC Response to Community Comment 9:

Soil sampling and analyses of the Roy-Hart school property has been completed for the purposes of FMC’s RCRA Facility Investigation, as documented in the Agencies-approved *RCRA Facility Investigation Report Volume II – Suspected Air Deposition Study Area 1 (South of the Erie Canal and West of the Niagara/Orleans County Line) and Culvert 105 Study Area South of the Erie Canal*), dated September 2009 (ARCADIS 2009). The soil sampling and analysis programs conducted in the CMS Study Areas, including on the school property, were designed define the nature and extent of FMC-related constituents objectively and were not designed based on any specific land use. The data collected are then evaluated based on a number of criteria and factors, including property-specific current and reasonably anticipated future land use.

Community Comment 10:

(Paraphrased oral comments received during the information sessions/meetings.)

- A school board member stated that all athletic practices, etc. go on outside the remediated area.

FMC Response to Community Comment 10:

In an October 14, 2005, letter to David J. Seeger, the USEPA, New York State Department of Health (NYSDOH), and NYSDEC state:

...the Royalton-Hartland school yard has been the subject of several investigations from the mid-1980s to the present. Based on the results of these investigations, the Agencies required that FMC remove soil from approximately 8.5 acres of the school yard and athletic fields. Upon completion of this removal project, post-remedial confirmatory sampling was done and the excavated areas were backfilled with clean fill. The results of this sampling and a post-remedial risk assessment indicated that “the entire school yard is suitable for both athletic and non-athletic uses by all school children in terms of their exposure to known school yard soil arsenic levels.”

FMC developed Corrective Measures Alternatives (CMAs) that addressed the portion of the Roy-Hart School property that was not previously remediated during the 1999 Interim Corrective Measure (ICM). Remedial options considered for the non-ICM area of the Roy-Hart School property included no further action (CMAs 1, 4, and 5); institutional controls (CMAs 3, 6A, and 7A), which would consist of further evaluation/action of the non-ICM area if the use of the Roy-Hart

School property changes to residential; and remediation to meet the CMA-specific post-remediation soil arsenic goals (CMAs 2, 6B, 7B, and 8).

The Draft CMS Report includes a Human Health Risk Assessment (HHRA) that was performed by experts retained by FMC (principally, Integral Consulting Inc. and Dr. Rosalind Schoof of ENVIRON International Corporation). This HHRA considered soil data collected from the entire Roy-Hart School property in Middleport, including both remediated and unremediated areas. The HHRA calculated cancer risks for a child attending the Roy-Hart School, Middleport Campus, under post-remediation conditions corresponding to the different CMAs. This assessment focused on exposures during middle and high school years. FMC's risk assessment consultants and experts determined that the human health risks to school age children at the Roy-Hart School Middleport Campus are within EPA's acceptable risk range and are generally similar under all the CMAs, including those that do not include further remediation at the school and would not significantly decrease with further remediation. Based on this finding, the results of the Agencies' risk assessment conducted in the late 1990s, and the Agencies' conclusions stated above that the entire school yard is suitable for its intended use, it is FMC's conclusion that further remediation of the school property is not supported on the grounds of risk reduction to human health.

Community Comment 11:

(Paraphrased oral comments received during the information sessions/meetings.)

- A school board member asked if the contaminate levels can be different for the different categories. Do residential properties have stricter requirements?
- One school board member feels that the soil concentrations on the school yard should be less than 20 ppm (based on his knowledge/recollection of the levels acceptable for pressure treated wood, believed it was 10 ppm of arsenic in the soil).

FMC Response to Community Comment 11:

The CMS includes performance of risk assessments and the development and evaluation of corrective measures alternatives, including no further action for all CMS properties. FMC developed several Corrective Measures Alternatives (CMA 3, CMA 6A, CMA 6B, CMA 7A and CMA 7B) with different soil arsenic remediation goals for various land usages. The other Corrective Measures Alternatives (CMA 2, CMA 4, CMA 5, CMA 8) evaluated in the CMS have soil arsenic remediation goals that would be applied regardless of the land use. The soil arsenic remediation goals for the CMS Study Area will be established with the selection the final Corrective Measures by the Agencies.

Community Comment 12:

(Paraphrased oral comments received during the information sessions/meetings.)

- One school board member stated that the high school is 100 years old and it would be unrealistic to believe that it would still be a school 25-50 years down the line and stated that Niagara County typically turns old schools into condos and senior living. She also stated that it would be short sighted to consider the school anything other than the kids' backyard.
- A school board member asked why the school is considered institutional and not residential.
- Royalton-Hartland Central School District Letter dated January 15, 2010 to FMC:

"The Royalton-Hartland Board of Education formally adopted a resolution (copy enclosed) at their January 14, 2010 meeting in support of the school yard being zoned "residential" for the purpose of FMC's reasonably anticipated future land use. As the property is currently zoned residential, it would appear no zoning changes would be necessary for the future land use.

The Board of Education is in full support of the Agencies comments submitted in the letter dated December 17, 2009, as a result of the December 9, 2009 public input session, stating that, "reasonably anticipated future land use of the above listed properties (Royalton-Hartland School property) should be residential, and the FMC map should be revised accordingly".

Thank you for your attention in this matter, and we look forward to working with you to protect the students of the Royalton-Hartland Central School District and members of our community."

FMC Response to Community Comment 12:

As previously stated, the reasonably anticipated future usages are being identified only for the purposes of the CMS, and not for zoning purposes. Identified future land usages may differ from the actual zoning classification of a property.

FMC identified the reasonably anticipated future land use of the Royalton-Hartland (Roy-Hart) Central School District property in Middleport ("Middleport Campus") to continue to be institutional (school) as discussed in FMC's Response to Agencies' Comment 4 in Attachment C-2 (FMC Responses to Agencies' December 17, 2009 Comments), and repeated below.

The Roy-Hart Central School District property in Middleport is currently used for high school and middle school students and houses the school district offices and maintenance facilities. Based on information obtained from the Roy-Hart Central School District, 1,642 students were enrolled in the Roy-Hart Central School District during the 2009-2010 school year, of which 1,005 were high school and middle school students and 637 were elementary school students. The 2009-2010 enrollment increased from previous years and/or projections, as documented in published reports (e.g., *Empire Center for New York State Policy 2010-2011 School Budget Spotlight* – dated May 4, 2010; *New York State District Report Card; Accountability and Overview Report 2008-09 for the Roy-Hart Central School District* – dated January, 2010;

and *Niagara Communities Comprehensive Plan 2030* – dated July 2009). Based on information obtained from the Roy-Hart Central School District, the Roy-Hart Central School District projects future enrollment to be consistent with recent enrollment trends. While declining over the last 10 years, these enrollment trends show a recent increase in the elementary school population as evidenced by the larger enrollment at the district's elementary school level.

Based on information obtained from Roy-Hart Central School District personnel, the Middleport campus (including both high school and middle school buildings) currently has 204,650 sq. ft. of available space with 90 classrooms in use with a number of unused classrooms in the high school building. The Gasport school, with the completed addition, will be 88,810 sq. ft of available space and a total of 52 classrooms.

For the purposes of the CMS, FMC identified the reasonably anticipated future land use of the Middleport Campus to continue to be institutional (school) based on the following:

- Based on the assumption that projected future student enrollments for the Roy-Hart school district will be consistent with trends observed in 2009-2010, and the current classroom capacities of the buildings at the Gasport and Middleport campuses, FMC concluded that it is likely that both the Middleport and Gasport campuses will continue to be needed.
- The Middleport campus, which supports both the High school and Middle school buildings, can support a greater number of students and has significantly more educational and athletic facilities (e.g., sports, science, technical, music) than the Gasport campus. At present, the Middleport campus uses a total of 90 classrooms, and has additional unused classroom space in the high school building. The District's administrative offices and support services such as the special education, curriculum planning and development as well as the maintenance department offices are also located at the Middleport campus. The Middleport campus has 1 regulation football field and stadium, an 8-lane track, 1 swimming pool, 2 softball/baseball diamonds, 2 field hockey fields, and 3 tennis courts all of which are used in addition to Gasport's 3 athletic fields and tennis courts during a school year. The Gasport campus has a total of 52 classrooms available for use with the completion of the new wing in the fall of 2010. There is no additional land or space for the district's girls and boys sporting events at the Gasport campus. Therefore, FMC concluded that it is not realistic or reasonable to assume that the Middleport campus will be closed due to any potential consolidation of the two school campuses.
- Given the financial constraints of the school district, local community, and the State of New York, FMC concluded that it is not realistic or reasonable to assume that a new school will be constructed to replace the Middleport campus and associated athletic fields/areas. Further, based on discussions with local officials and community members, the physical characteristics of the Middleport campus (e.g., buildings, athletic fields, etc), and review of existing closed schools (e.g., Lockport City School District), FMC concluded that it is not realistic or reasonable to assume that the Middleport campus will be converted to residential usages sometime in the future.

- The Middleport LWRP identifies the proposed future use of the Middleport Campus to be institutional.
- Local Village of Middleport officials and other community members (other than the 2009-2010 Roy-Hart School Board) have commented that it is unlikely that the Middleport schools will be closed or relocated.

It should be noted that Corrective Measure Alternatives (CMAs) 2, 6B, 7B, and 8 evaluate remediation of the Middleport Campus using the same arsenic cleanup goals as residential property.