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FMC STATEMENT OF BASIS

PUBLIC MEETING

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MIDDLEPORT FIRE HALL

28 MAIN STREET

MIDDLEPORT, NEW YORK

June 27, 2012 7 PM - 10 PM

REPORTED BY: DOREEN M. SHARICK, Court Reporter
EDITH E. FORBES COURT REPORTING SERVICE
21 Woodcrest Drive
Batavia, New York 14020

APPEARANCES:

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NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION,
Division OF Environmental Remediation.

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NEW YORK STATE DEPARTMENT OF HEALTH,
547 River Street, Room 330,
Troy, New York 12180-2216.

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2 MS. GOLLWITZER: Good evening,
3 everybody. I think we are going to get
4 started if everyone would get seated. I just
5 wanted to say a sincere thanks for everybody
6 coming out tonight especially on a nice
7 evening. Thanks for taking time out of your
8 schedule to do that. We do appreciate it very
9 much. There's an agenda at the front table.
10 What we are going to do is we are going to
11 have a couple brief presentations from our DEC
12 and DOH folks and then the most important part
13 of the meeting is to hear from you. That will
14 be the main portion of the meeting. There
15 will be some brief presentations that we will
16 start off with.

17 Just to let you know, if you would like
18 to make a comment at tonight's meeting, what
19 you can do is just fill out one of the cards
20 at the registration table and pop it in the
21 box. If you have not done that yet and you
22 decide you would like to, you can do that at
23 any point during the meeting. I'll make sure
24 that your name gets called. So please feel
25 free to come up and comment at any point.

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Just fill out a card and we can take care of that for you.

And also, I just wanted to let you know that speaking at tonight's meeting is not the only way to comment. If you prefer to write your comments, there's forms up there at the registration table that you can pick up and you can fill it out and send it. The comment period ends on the 30th of July. And we won't be interrupting you tonight during your comments.

If you have questions and you'd like to speak with somebody more in depth, there will be a public Availability Session tomorrow right here from 1:00 to 4:30. And if there's a need for another one of those, we will schedule another one as well.

I just wanted to let you know about that and I won't take any more of your time. We'll just get started. First, I would like to introduce Robert Schick. He's the Acting Director for DEC Division of Environmental Remediation and he's going to be starting the presentation tonight. Thank you, again,

1
2 everybody for coming. Thanks.

3 MR. SCHICK: Thank you, Megan. My name
4 is Bob Schick. I'm the Acting Division
5 Director for the Division of Environmental
6 Remediation. Our division has assumed the
7 responsibilities for the RCRA program starting
8 last October, October 2012. We've been
9 involved in the overall program for about the
10 last 18 months. However, our Division has
11 managed the SuperFund program for the last 25
12 years. So we are well versed in the
13 remediation of contaminated sites and part of
14 the reason that we are here tonight is the
15 Department made a decision to consolidate all
16 of the site remediation into our division.

17 Tonight, we are going to make some brief
18 presentations. Sally Dewes is the new project
19 manager for the site. She is going to walk us
20 through the site background very quickly and
21 then she's going to defer to Tom Johnson with
22 the New York State Health Department and talk
23 a little bit about arsenic and why it's a
24 health concern. It will come back to me.

25 I'll explain how we arrived at the soil

1
2 clean up number that we are using and then
3 Sally is going to walk everybody through the
4 remedy that we are proposing. We hope to get
5 through this in about 20 to 25 minutes. At
6 that point we will go into our questions and
7 answers and we are trying to do this in an
8 organized manner to make sure everybody gets
9 an opportunity to speak. Once we get through
10 a first round, we'll come back to people if
11 they'd like another opportunity. So at this
12 point I'll turn it over Sally to explain the
13 site background.

14 MS. DEWES: Good evening, everybody. As
15 Bob said, I'm just going to give a little bit
16 of a site background. I think most people
17 here are pretty familiar with FMC. If there's
18 a few people who don't, I'll just explain
19 where we are coming from.

20 It's approximately 102 acres. It's
21 located in the southwest corner of the Village
22 of Middleport. It's an industrial property
23 and there is commercial properties to the
24 south and agricultural property to the east
25 and residential and industrial properties to

1
2 the north and west and also Roy-Hart School is
3 also just north of the property.

4 Niagara Sprayer manufactured arsenic from
5 1919 to 1946. About up to 1980, FMC was used
6 for manufacturing of pesticides and herbicides
7 and many of which were arsenic based. The
8 pesticide manufacturing operation ceased at
9 the site in 1985, which time it shifted to
10 only formulating pesticides, which means
11 mixing and packaging, and that's what it
12 currently does now.

13 During the manufacturing period, the
14 plant disposed of hazardous and nonhazardous
15 wastes in an onsite landfill and in a number
16 of surface impoundments and in addition,
17 contaminants were released into the
18 environment through processment stacks in the
19 air, surface water runoff and hazardous waste
20 via past production discharge of manufacturing
21 waste to water bodies. Today we are going to
22 be talking about two areas.

23 Here's a map that shows those two areas.
24 The first one we call Air Deposition Area One.
25 That's the large square at the bottom that

1
2 sort of surrounds the FMC plant. That has
3 arsenic concentrations as high as 774 parts
4 per million and the Culvert 105 Area, that's
5 further north. That's that dog leg that goes
6 up or dove tail that goes up. And that had
7 levels of arsenic as high as 636 parts per
8 million. So at this point we are going to go
9 right into the arsenic.

10 Okay. Next, Tom is going to talk.

11 MR. JOHNSON: Good evening, I'm Tom
12 Johnson. I work for the New York State
13 Department of Health and the Bureau of Toxic
14 Substances Assessment and my job is to
15 evaluate the health risks for environmental
16 exposure to chemicals. I have been asked to
17 review with you some of the information we
18 have on arsenic and how we evaluate the health
19 risk for arsenic in soil.

20 By way of just some basic facts, as most
21 of you probably know, arsenic is a naturally
22 occurring element. It's found in rocks and
23 soils. It's found almost always combined with
24 other elements to form arsenic compounds and
25 because it's an element, it can't be destroyed

1
2 in the environment or changed to other things.
3 Primary use for arsenic made compound is as a
4 preservative in pressure treated wood mainly
5 in the form of chromated copper arsenate and
6 also in agricultural pesticides. As a wood
7 preservative, it's been phased out by industry
8 because of health concerns for picnic tables
9 and child play structures that are made with
10 arsenic containing pressure treated wood. As
11 a pesticide, lead arsenate, sodium arsenic and
12 calcium arsenate were once used in fruit and
13 apple orchards, on cotton crops, on potato
14 fields but like the use in wood preservatives,
15 that use was largely phased out. Improper use
16 or disposal of arsenic compounds can lead to
17 soil concentrations that are in excess of
18 typical background levels.

19 There's several things we consider when
20 we evaluate the health affects for arsenic.
21 And we would do this for any environmental
22 contaminate that we deal with. We consider
23 the long term cancer and noncancer health
24 affects caused by arsenic at what dose levels,
25 what exposure levels. We look at the

1
2 abilities of arsenic to cause cancer in
3 humans. We looked at how the National and
4 International Health Agency classifies arsenic
5 with respect to its ability to cause cancer.
6 We paid special attention to any information
7 that would suggest a greater risk for cancer
8 for children. And finally, we considered any
9 other pertinent specific information in this
10 case it was bioavailability factors and
11 biomonitoring and cancer incident studies that
12 had been done here in Middleport and over the
13 next few minutes, I'm going to touch on each
14 of these.

15 Exposure to high levels of arsenic can
16 cause some serious adverse health effects.
17 Specifically, long-term exposure to high
18 levels of arsenic can cause cancer at multiple
19 body organ sites in humans and can also cause
20 noncancer health affects on the skin, nervous
21 system, blood vessels and heart. I want to
22 talk about the cancer affects in more detail.

23 The link between arsenic and cancer has
24 been known since the late 1800's when it was
25 found that people who were treated with

1
2 arsenical medications, medications that
3 contain arsenic, developed skin cancer. Now,
4 for over 40 years, it's been known that
5 arsenic can cause cancer in human beings who
6 are exposed to high levels of arsenic in
7 drinking water for long periods of time and
8 not everybody gets cancer, but there's a
9 undeniable increase risk and this has been
10 demonstrated and reported in dozens of studies
11 in the Peer Review Scientific Literature.
12 It's also been demonstrated in these studies
13 that arsenic causes cancer at multiple sites
14 in the body, primary the skin, bladder, lung,
15 liver and prostate. An increased cancer risk
16 has been demonstrated in several countries
17 including Taiwan, Japan, Chile and Argentina.

18 Our confidence level in the results of
19 these studies is high for two reasons. One,
20 the results have been consistent over many
21 different investigations. And secondly, the
22 results have been demonstrated in several
23 different populations so it's unlikely that
24 this is a local isolated occurrence.

25 Several different national and

1
2 international agencies have reviewed the
3 health affects information for arsenic in
4 drawing conclusions about its ability to cause
5 cancer. In fact, they are unanimous in their
6 conclusions. The U. S. Environmental
7 Protection Agency first classified arsenic as
8 a carcinogen in the late 1980's. And since
9 that time, it's done several different
10 reviews -- or additional reviews. The most
11 recent review was done in 2010. And that
12 review concluded that arsenic causes cancer in
13 human beings and its ability to do so was
14 about 17 times higher than previously thought.

15 EPA's done classifications for cancer on
16 about 300 different chemicals and only 19 have
17 the classification of known human carcinogen.
18 In other words, the amount of evidence you
19 need to have that classification is very high
20 and arsenic is one of these chemicals.

21 The National Research Council is an
22 independent group of scientists that is part
23 of the National Academy of Science and they
24 did two separate reviews ten years ago. And
25 they also concluded that arsenic causes cancer

1
2 in humans and as a result of that review, the
3 national drinking water standard for public
4 water systems for arsenic was lower than 50
5 micrograms per liter to 10 micrograms per
6 liter. The U. S. Department of Health and
7 Human Services listed arsenic amongst
8 substances known to cause cancer in humans in
9 its 2011 Annual Report.

10 The International Agency for Research on
11 Cancer classifies arsenic as carcinogenic to
12 human beings and finally, the World Health
13 Organization concluded recently that exposure
14 to high levels of arsenic in drinking water
15 causes cancer of the skin, lung, bladder and
16 kidney.

17 Now, in addition to those early studies,
18 recent studies in the Peer Reviewed Scientific
19 Literature in animals and humans suggests that
20 the very young may be more sensitive than
21 adults to the cancer effects of arsenic. In
22 particular, one study done in Chile showed a
23 greater risk of dying from lung cancer among
24 people exposed to arsenic before birth and
25 during early childhood. In other words, these

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2 people weren't exposed for a lifetime, but for
3 a relatively short period of time. And this
4 causes concern for us because it suggests that
5 there is a small window of vulnerability where
6 children or the very young are especially
7 sensitive to the cancer effects of arsenic.

8 We did consider other information about
9 arsenic. We reviewed bioavailability studies
10 for arsenic. The idea being that when arsenic
11 is ingested in the soil, it's absorbed in the
12 body less than if it's ingested in the water.
13 There is significant uncertainties in
14 bioavailability estimates but even allowing
15 for a significant reduction in exposure due to
16 bioavailability in soil or decreased
17 bioavailability of the soil for arsenic that
18 would not reduce the exposure to the point
19 where we would have no concern about the
20 cancer risk.

21 The Department of Health and FMC's
22 consultants did biomonitoring studies that
23 looked at the level of arsenic in urine, hair
24 and toe nails in Middleport school children
25 and residents. These showed no difference in

1
2 their arsenic levels and those in control
3 populations. These studies are limited in the
4 sense that they can only give you an
5 indication of recent exposure, something that
6 occurred in 24 hours to 72 hours prior to the
7 time the samples were taken. They can't
8 really predict or tell us anything about
9 long-term exposure to arsenic.

10 Finally, the health department did a
11 cancer surveillance study in 1987 that showed
12 that the number of all cancers in Middleport
13 from 1976 to 1984 was similar to the total
14 number of cancers one would expect. That's
15 certainly encouraging, but the small size of
16 the study population actually limits the
17 confidence in these studies. An increase in
18 cancer is difficult if not impossible to
19 detect in a population of this size of
20 Middleport. So neither these types of studies
21 can be used on a practical basis for the
22 purpose of determining remedial goals. In
23 effect, we were denied for that purpose.

24 So in summary, I want to leave you with
25 three main points: One, that numerous studies

1
2 from the Peer Review Scientific Literature
3 clearly show an increase risk for cancer in
4 people who are exposed to arsenic. And recent
5 studies suggest that the very young may be
6 more sensitive than adults to the cancer
7 effects of arsenic.

8 And finally, the national and
9 international health agencies have reviewed
10 scientific information on arsenic and they are
11 unanimous in their conclusion that arsenic
12 causes cancer in humans.

13 So in short the best available science
14 that we have tells us there is a risk. I
15 can't emphasis enough the concern we have
16 about arsenic exposure in light of what the
17 science tells us and our mandate to protect
18 public health. We just don't know. I can't
19 tell you at what point arsenic exposure is
20 high enough to change a normal cell into a
21 cancer cell.

22 We need to be health protected. In fact,
23 our Legislature mandates that we be health
24 protected. We want to minimize when practical
25 environmental exposure to arsenic particularly

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2 when levels in soil are shown to significantly
3 exceed typical background concentrations.

4 MR. SCHICK: Thank you, Tom. Real
5 quickly, I'm going to explain how we got to
6 the point we are with a cleanup goal of 20
7 parts per million for arsenic.

8 Arsenic cleanup objective is, as Tom
9 indicates, for one in a million cancer risk
10 would be around 0.11 parts per million.
11 That's a number that was developed by the
12 State Health Department using the guidelines
13 set forth by the Legislature in 2003, but the
14 Legislature recognized that arsenic is an
15 element and is present and naturally occurring
16 in soils. So they also made a provision at
17 the time the law was passed to do background
18 studies. So the State of New York did a
19 background study state-wide, hundreds of
20 samples were taken from rural areas, not from
21 the cities where a higher arsenic level could
22 be present based upon the industrial or the
23 heavy use of the area, but from rural areas
24 and from that study, a soil cleanup objective
25 of 16 parts per million was set for arsenic

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2 across the State and that number is applied to
3 what we call residential, commercial and
4 industrial properties. That number is the
5 soil cleanup objective.

6 In the programs, we also look at
7 background for local. For the Middleport
8 area, a study was done in the Town of Gasport
9 that evaluated commercial, residential and
10 farmlands for arsenic levels. Using the
11 residential level, which would be the one that
12 would predominantly apply in Middleport where
13 it's mostly residential properties, the levels
14 range from single digits up to about 21 parts
15 per million. Using a 95 percent confidence
16 level, we came up with a number of 20 parts
17 per million based upon our FMC study,
18 background study, to 20. The State evaluated
19 that and agreed that 20 parts per million did
20 represent background in these areas. As you
21 can see, an average level found in Gasport was
22 about ten. So the 20 while above average was
23 a statistically significant number that could
24 be determined based upon the statistical
25 analysis. So there's where our 20 parts per

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million number came from.

In evaluating the CMS, if you look at it, a number of different alternatives were evaluated which looked at a variety of different arsenic levels. The one that FMC has indicated a preference for is CMS 3, which called for an average of 20 parts per million of arsenic and not to exceed 30 parts per million of arsenic. What that did was rather than a strict adherence to the 20 parts per million which the State would prefer, it resulted in the State would look at 181 properties, the FMC alternative would look at 159. We believe that this is not an appropriate way to do things because we are automatically screening out levels on properties that would represent background.

And we also didn't agree that CMS 2, a strict adherence to 10 parts per million, was an appropriate way to view the arsenic in the residential yards in particular. We have heard and we have seen that, you know, Middleport is a very well-developed village, a lot of trees, a lot of development on

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2 individual properties. To apply that strict
3 level would mean if it was above 20, a tree
4 would come down, some feature of a property
5 would have to be moved. We looked at this and
6 we consider that we can look at each property
7 on a case by case basis, evaluate where the
8 arsenic levels are present and make risk
9 management decisions in concert with the State
10 Health Department. Those decisions may allow
11 levels above 20 to stay on a property in areas
12 that are inaccessible due to a desire on the
13 property owner's part to maintain a tree or
14 which may be in very close proximity to a
15 foundation or some other feature of the
16 property that that property owner does not
17 want disturbed.

18 We can't guarantee in every case those
19 decisions will be made, but our intention here
20 is to allow flexibility rather than use an
21 average across the board and automatically
22 rule out 20 or more properties. We believe
23 it's appropriate to look at every property
24 with levels above 20 parts per million and
25 based upon the evaluation of that property,

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2 make risk management decisions that would
3 possibly allow greater levels of arsenic to
4 stay. We may, in circumstance, have a tree
5 with a very thick root system, six inches
6 down, arsenic is present at 32 parts per
7 million. We may make a decision that that can
8 be left, that can be managed because it's not
9 accessible, to get at the tree root would take
10 a lot of effort or those tree roots are
11 present between the sidewalk and the road,
12 again, in an area where it's unlikely the
13 resident would have much in the way of
14 excavation or if there was some excavation,
15 that there would be an exposure.

16 So those type of decisions were made and
17 that's how we arrived at what we are proposing
18 tonight. We will look at, we will screen
19 every property. We will be able to cleanup
20 arsenic down to 20 parts per million levels
21 where it can be easily accessed, those levels
22 can be achieved and we will make these risk
23 management decisions on other properties. We
24 may have to come back to the property owner
25 and say, you have arsenic in a place that we

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2 can't excavate without moving something or
3 taking down a tree. We want to achieve these
4 levels on your property. If you change your
5 mind and let us do this, we will be able to
6 give you the no further action letter, which a
7 number of the people -- pretty much every
8 property except for one has achieved based
9 upon the work done to date and that work was
10 done with the same concept. We were looking
11 to achieve a number. We set it. In some
12 cases, all samples but one didn't get to that
13 level. The decision was made that could be no
14 further action. So that's where we are going
15 with this remedy that Sally is now going to
16 give you some detail on. Thank you.

17 MS. DEWES: Good evening, again. I'll
18 try to talk louder. If you can't hear me,
19 please just speak up yourself and let me know.
20 As you probably recall a year ago, FMC put
21 together a Corrective Measure Study that
22 described and evaluated various alternatives
23 for cleaning up these areas, the Area One
24 Deposition and in Culvert 105. There were
25 eight alternatives in that report and the DEC

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2 and EPA public noticed that document in 2011
3 and received public comments.

4 The first alternative was alternative No.
5 1, is do nothing, but the rest of the
6 alternatives, No. 2 through 8, involved
7 excavating soil in Middleport over a given
8 concentration of arsenic. CMA 2 set soil
9 concentrations at 20 parts per million. CMA 3
10 set a goal that varied based on land use and
11 was between 20 parts per million, an average
12 concentration for arsenic and up to a maximum
13 of 80 parts per million. All these
14 alternatives except for No. 1 involved
15 restoring the property to previous site
16 conditions.

17 And all these disposal options in the CMS
18 were either trucking the material off-site or
19 placing the soil on the FMC property
20 permanently and capping it in a Corrective
21 Action Management Unit or a CAMU as we call
22 it. As the Department reviewed this document,
23 we knew that we wanted soil to be removed, but
24 we did not exactly agree with any of the
25 options that were presented in that CMS. So

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2 the Department selected the varying elements
3 that we thought were the best and the most
4 appropriate and called it Alternative No. 9.
5 I'm not going to go through this whole table,
6 but this is the various alternatives that were
7 available. No. 9 is on the bottom.

8 So now, I'm going to go through and I'll
9 try to be reasonably brief, but there is a lot
10 of explaining to do with this so bear with me.
11 Corrective Action No. 9, major element of
12 Alternative No. 9 is to excavate and remove
13 the soil with arsenic concentrations greater
14 than 20 parts per million, 20 parts per
15 million from areas contaminated around the FMC
16 site.

17 Another major element of No. 9 is to
18 recognize the right of the property owner to
19 choose whether or not to participate in this
20 cleanup. If the owner wants their property
21 cleaned to what DOH has determined is
22 protective, 20 parts per million arsenic, this
23 alternative would compel FMC to do that
24 cleanup. The State is not going to make that
25 decision for you. FMC is not going to make

1
2 that decision and your neighbor is not going
3 to make that decision for you. If your soil
4 has been effected by FMC's arsenic, you have
5 the option to get it remediated. Some people
6 have expressed that they don't want their
7 property cleaned up. That's okay. They don't
8 have to, but if you own property and you know,
9 perhaps you have children or grandchildren
10 that like to play in the yard or you like to
11 garden, you can have the choice to have your
12 property cleaned up to this 20 parts per
13 million.

14 And also, this alternative would only
15 target soils that's over 20 parts per million.
16 When you look at the sampling results in these
17 yards, you see that many yards have limited
18 amounts of contamination. Some properties
19 near the site are more contaminated, but many
20 properties have only a small portion
21 contaminated. In many places the
22 contamination is shallow, maybe three inches,
23 six inches, nine inches deep. FMC would only
24 be required to remove that contamination, not
25 dig up the entire property.

1
2 Another very important element of this
3 alternative is flexibility. Say you want your
4 property cleaned up, but you have an old
5 beautiful tree in your backyard that you want
6 to save. You can save that tree. The
7 Department's alternative would allow for a
8 homeowner to say I want my property to be
9 cleaned up, but I don't want that tree to come
10 down. Leave it there. So you know, we are
11 willing to work with homeowners to save
12 features on the property that they want to
13 save.

14 And FMC although they want to use an
15 average for the cleanup goal, cleanup goal
16 that averages soil concentration, the Agencies
17 are recommending what we call a point by point
18 cleanup with this flexibility.

19 If you were to average a higher level of
20 arsenic crops up in a yard, it might be
21 averaged away or ignored regardless of where
22 it is. If it's a higher level next to a
23 sandbox or in your garden, you know, if we
24 were using just an average, you might not be
25 getting rid of that more contaminated soil.

1
2 If we use this point by point flexibility,
3 that allows us to use the discretion on the
4 cleanup. If a higher number, like Bob was
5 saying, 30 parts per million appears in the
6 top three inches of soil in the garden, we
7 would say remove it. If a higher number
8 appears amongst the tree roots and under a
9 tree that you like and want to save and the
10 rest of the property is below 20 parts per
11 million, we would, in consultation with the
12 Department of Health, perhaps may be able to
13 make the decision that based on the risk of
14 exposure that this area does not need to be
15 dug up.

16 I wanted to say to people before anybody
17 decides whether or not to have their property
18 cleaned, they should look at the data very
19 carefully. The Department of Health, ENCON
20 and FMC will be all, you know, scrutinizing
21 the data, will be collecting more samples.
22 Each property owner would get a written
23 description of what would be required to
24 totally cleanup their property. We would
25 discuss how much material would have to be

1
2 removed and what property features would be
3 effected including trees. It would discuss if
4 the trees could be effectively cleaned around
5 or if the tree would have to be removed to get
6 to the arsenic.

7 It may be less work or less disruptive
8 than you think. So we recommend that all the
9 property owners would take a look at this
10 information and you can always come to the
11 Department or the Department of Health and
12 talk about what is going on individually on
13 your property.

14 Now, if you wanted to remediate your
15 property but save one tree with arsenic
16 underneath it, there are two possible
17 outcomes. One is that the Department of
18 Health will look at those results and
19 determine that the arsenic left behind is
20 minimal, perhaps one sample slightly over 20
21 parts per million and will decide what
22 remediation is done forever. I'm repeating
23 what Bob Schick said.

24 In the second outcome, is that the
25 arsenic left behind is not insignificant. In

1
2 that case, FMC would be required to come back
3 and remediate that at a later date should the
4 property owner change their mind and want it
5 cleaned up.

6 In this later case or in any case, there
7 will be no restrictions on the property, no
8 use restrictions, no easements, nothing of
9 that nature will be attached to anybody's
10 property. So I want to emphasize that as
11 well. None of that stuff will be attached to
12 anybody's property. And of course, another
13 part of this remediation is that FMC would be
14 required to restore the property to its
15 previous condition.

16 It's certainly worth talking about
17 property restoration. There was some work
18 done as everybody knows on Burn Street several
19 years ago and a lot of people were unhappy
20 with the way it looked. Part of what was
21 going on there was the contamination was more
22 extensive, it was deeper and it was also
23 higher. So trees had to be removed to get
24 those higher levels that were right close to
25 the plant and that was due to flooding and not

1
2 just air deposition. FMC had to remove these
3 trees and dig more deeper.

4 In the Air Deposition Areas we are
5 looking at now, most of that contamination is
6 shallower and certainly, you know, there is a
7 better chance we won't be destroying trees or
8 have to destroy features and also, the
9 Department is very cognizant that people are
10 very concerned about the way their property
11 looks. They are very concerned about their
12 trees. And you know, we are going to make
13 sure that we compel FMC to restore the
14 property so it really looks like it did
15 before.

16 We have done a number of cleanups like
17 this all over the state. A lot of cleanups
18 like this all over the state and we have been
19 successful in restoring properties. It's,
20 certainly, one of our major goals to make sure
21 that people are happy with the way that the
22 property looks after this is done.

23 Another feature of this proposed
24 alternative is allowing nonresidential
25 property owners to choose to reduce the

1
2 arsenic concentrations by tilling or blending
3 the soil on properties. As I said before,
4 most of the contamination is shallow. For a
5 nonresidential property, it may be possible
6 instead of hauling all that soil away, to mix
7 and blend what's there to dilute the
8 contamination down to below 20 parts per
9 million. This option is not available for
10 residential properties.

11 Another part of this proposed element
12 involves how to dispose of the excavated
13 material. As I stated before, two options
14 were weighed in the feasibility study or
15 Corrective Measure Study. One is trucking
16 material to an offsite landfill to be buried
17 there or as a daily cover if the contaminant
18 levels are not too high and the other option
19 is to dispose of the material on the FMC site.

20 The Department is proposing that the
21 material be disposed of on the site in a
22 Corrective Action Management Unit or CAMU, but
23 this would only be acceptable to the
24 Department if technical legal scheduling and
25 administrative requirements can be met. There

1
2 is an awful lot of things that would have to
3 fall into place to make this happen.

4 The technical requirements will be such
5 items as soil could not leach arsenic or other
6 hazardous compounds. The soil would not be
7 hazardous waste and the height could not
8 exceed 28 feet. Some other requirements would
9 be an investigation of the immediate area
10 around the CAMU would have to be completed.
11 The Town of Royalton Zoning must be abided by
12 which is very important. FMC must submit a
13 CAMU application for approval. That would
14 have to be public noticed. And the CAMU must
15 be ready to receive waste in 24 months. In
16 other words, we don't want this creation of
17 the CAMU to delay the remedy. If the CAMU is
18 not ready to receive waste when the
19 excavations begin, the soil would have to be
20 disposed of onsite.

21 There is soil from previous
22 inter-remedial measures onsite in an area
23 called the Eastern Surface Impoundment. This
24 material would have to be handled similarly.
25 The Department will allow it to be permanently

1
2 entered at the site if those previously
3 mentioned technical and legal requirements
4 were met.

5 So that is probably not too easy to see.
6 I apologize. I can, certainly, pull up a
7 document at tomorrow's Availability Session
8 and show people this photo of what the CAMU
9 would look like from -- yeah, that is from the
10 school yard. And this is from Telegraph.

11 Another part of this Alternative No. 9 is
12 that several inter-remedial measures were done
13 over the years. The first being done in 1996
14 at the Roy-Hart School property and the most
15 recent in 2011, on the corner of Sleeper and
16 North Hartland Streets.

17 This alternative called for finalizing
18 the remedies, basically, closing the book on
19 them. And one thing that we talked to some
20 people about today is that there is some
21 concern that there is some problems with the
22 properties, when the ICM's were done, they
23 were not really restored properly. So if you
24 think that's the case, you're, certainly, more
25 than welcome to make it one of your comments

1
2 that there is a restoration issue and we can
3 address that. Actually, this is a map that
4 shows where the ICM areas are.

5 So this Alternative No. 9 would include
6 181 properties including the Roy-Hart School.
7 We'd like to see it completed within 60
8 months. The 181, that would be about 30
9 properties, 40 properties a year. We have
10 seen other remediations around the state
11 proceed at that rate. We are working on one
12 right now in Downstate where 70 properties are
13 going to be completed in two years. There's
14 no other use restrictions. There would be no
15 deed or use restrictions on any of the
16 property except for the wooded parcel, which
17 is an ICM area, which already has a use
18 restriction on it. And based on FMC's costs,
19 it's expected that this will cost about \$70
20 million.

21 I guess the final take away points here
22 are, the remedial goal is 20 parts per
23 million, but we are going to be flexible on
24 that. If the property requests cleanup to be
25 done, it will be done. The homeowner may

1
2 refuse access if they want to or they may only
3 allow partial access.

4 And then finally, at the completion of
5 each property, if your property is fully
6 remediated, you will receive a no further
7 action letter from the Agencies saying it's
8 cleaned up. If the property is not cleaned,
9 the owner will not receive a no further action
10 letter. And if the property is not cleaned,
11 FMC would be required to periodically,
12 annually, offer the owner the option to
13 complete that remediation.

14 And once again, this is the public
15 comments period. You can send those comments
16 to me. And now, we're going to open this up
17 for comments.

18 MR. SCHICK: Thank you, Sally. Coming in
19 to tonight, we expected possibly a very large
20 crowd. We set up a public comment structure
21 where we ask people to register up front so
22 that we can call them to make sure everyone
23 received an opportunity to speak. We received
24 only a limited number of requests to speak.
25 Once we give those first few people the

1
2 opportunity, we will open it up to public
3 comment by anybody who may have heard
4 something tonight they like to go on the
5 record for.

6 As we indicated at the beginning of the
7 presentation, tonight is the meeting to
8 formally to receive public comment. Tomorrow,
9 there's an Availability Session where a number
10 of the DEC and DOH staff will be available.
11 We'll have posters such as you see here and be
12 able to meet with residents one-on-one or in
13 small groups, explain exactly what may be
14 required looking at their property or property
15 surrounding them and go into a greater level
16 of detail to, hopefully, bring a greater level
17 of understanding to the folks that are going
18 to be impacted by this work.

19 With us tonight, we have a couple of
20 elected officials and some representatives.
21 State Senator Maziarz is here. He's asked to
22 speak and he will get up here at some point.
23 Town Supervisor Jen Bieber is also here and
24 she's asked to speak. We will go to her next.
25 And also, we have an aid from Assemblywoman

1
2 Corwin's office as well as an aid representing
3 Congresswoman Hochel.

4 At this point, we will shuffle the cards
5 and give Jen Bieber the opportunity to lead us
6 off here tonight. Just say your name so the
7 stenographer gets it clear.

8 MS. BIEBER: Yes. And I have a copy to
9 leave with you. My name is Jennifer Bieber.
10 I'm the Supervisor of the Town of Royalton. I
11 have a few points I'd like to make.

12 I will state that after the last Public
13 Session held almost exactly a year ago, on
14 June 14th in 2011, I got up and read the
15 Resolution passed unanimously by the Town
16 Board of the Town of Royalton opposing the
17 CAMU. I thought I was speaking clearly and I
18 thought I was pretty basic, but I just want to
19 make it clear that the Town Board does not
20 want a CAMU in the Town of Royalton. You
21 cannot find enough hours in the day to explain
22 away that soil is not safe in someone's yard
23 and it's safe in an area in the Town behind a
24 school yard. Perception is reality.

25 You have noted to see Appendix B, that if

1
2 constructed, that this could not violate local
3 zoning laws because the Town Board Resolution
4 is not defined, may violate, regarding
5 compliance with local zoning. It is unclear
6 if FMC would have to request and obtain a
7 zoning ordinance or some other approval from
8 the Town government for an onsite CAMU at the
9 proposed location.

10 I'm going on the record to say a CAMU
11 would absolutely have to come before our Town
12 Zoning Board of Appeals. This is not a
13 permitted use in our Town Zoning Laws.

14 The proposal by the Agencies state that
15 Option 9 would take about five years. I'm
16 sorry, but based on the last remediation in
17 the Village and based on the time frame to do
18 vacant lots without having to worry about a
19 house, sewer, water or any other outbuildings,
20 my calculations, using that as a guideline, I
21 estimate no less than 13 years to finish this
22 Option 9 and if the cleanup could be done the
23 full 52 weeks for all of those years. Also,
24 in the past ten years, only 23 properties have
25 been remediated.

1
2 So I'm hoping that the spot remediation
3 will be discussed further, but nowhere in that
4 information does it explain that clearly
5 enough to make us think that this could ever
6 be done in five years.

7 MR. SCHICK: Thank you very much. Now,
8 I'd like to ask Elizabeth Storch if she'd like
9 to comment.

10 MS. STORCH: Okay. My name is Elizabeth
11 Storch. I moved to Middleport in 1972. My
12 statements are made carefully after much study
13 and thought. My comments are the result of at
14 least 50 Middleport Committee Input Group
15 meetings over the span of four years as well
16 as other meetings by FMC and the Agencies. By
17 the Agencies, I mean the EPA at the Federal
18 level and the DOH, Department of Health, and
19 the DEC, Department of Environmental
20 Conservation, at the state level. I have
21 almost no confidence in the Agencies.

22 The science is just not there to support
23 the conclusions for widespread soil
24 remediation on 181 properties in the Air
25 Deposition Area. I checked the citations the

1
2 Agencies give to support their statements.
3 Sometimes when I check the citations, the
4 source is irrelevant to Middleport. In some
5 cases, the Agencies have not even given
6 citations so that it is impossible to find
7 reasons for their conclusions.

8 The first document to examine is from the
9 New York State Department of Health titled the
10 FMC - Middleport, New York, Arsenic Soil
11 Contamination Frequently Asked Questions,
12 February, 2012. Questions one and two deal
13 with the arsenic in the soil and arsenic in
14 the drinking water and this two page document
15 was on the table back there tonight.

16 The science supports the fact that if
17 people drink arsenic laden water, that that is
18 a real health danger. However, sources given
19 by the DOH are based upon studies mainly by
20 two people named Maynard and Zhao. These men
21 have done their research mostly in Bangladesh
22 and other very underdeveloped areas of
23 Southeast Asia.

24 The DOH is saying we need soil
25 remediation in the Air Deposition Areas

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2 because we are in the same danger as people
3 cited by Maynard and Zhao, who live halfway
4 around the world from us in very
5 underdeveloped areas with no water standards
6 at all.

7 First, I would direct one to an official
8 document from the Village of Middleport Annual
9 Spring Newsletter, May 2012, that is basically
10 the same information as found in the Town of
11 Royalton Town Topics dated Spring 2012. It is
12 an official quote unquote water report based
13 upon Federal and state mandates for water
14 safety. Inorganic arsenic is at the top of
15 the list. No is cited in the column meaning
16 drinking water and water used for bathing,
17 cleaning and cleaning your house and hosed
18 water for swimming pools and watering gardens
19 has no inorganic arsenic. This report is also
20 available online at the Village web site. I
21 have a copy of it tonight. And I gave Bill
22 Arnold a copy. He is the leader of the CIG.

23 Next, what the Agencies are trying to do
24 is link this false drinking water problem in
25 Middleport to residents ingesting inorganic

1
2 arsenic from fruits and vegetables grown on
3 their properties.

4 Both Andrew A. Maynard and -- he's from
5 China this Jay Zhao, have recently published
6 books that are on Amazon.com. They are doing
7 research in places like Bangladesh where
8 people eat a lot of rice that is grown in
9 paddies of water near chemical plants and
10 dumps. To my knowledge, there are no rice
11 paddies in Middleport or anything remotely
12 resembling rice paddies. Middleport people
13 grow vegetables in dirt. Watering of any
14 plants come either from rain water or
15 Middleport Village water runs through hoses.
16 To equate Middleport gardens to rice paddies
17 in Bangladesh, a relationship I do not accept.

18 A reason scientific study that supports
19 my position of the safety of vegetable gardens
20 in Middleport occurred over the course of two
21 years in my front yard. FMC implemented a two
22 year scientific program of phytoremediation on
23 my property. And I have documents from that
24 and research findings I'd say about 200 pages
25 long related to that that I have with me

1
2 tonight that I can show individuals after the
3 meeting. FMC went to great effort and expense
4 to test it and test it with the latest
5 development in brake ferns would grow in my
6 front yard and uptake any arsenic in the soil.
7 The Agencies to their credit got behind this
8 project and even extended it a year longer
9 than FMC wanted to do.

10 The scientists behind this project
11 included among others Professor Harmon at
12 Cornell University in Ithaca, New York. FMC
13 sought out the latest research on what plants
14 had scientifically shown the greatest
15 potential for uptake of arsenic in the soil.
16 FMC periodically sent representatives to my
17 house to make assessments. I watered the
18 plants using my garden hose and have
19 documented proof of that from the Village.
20 Deb Overcamp from the FMC paid a bill for
21 10,000 gallons of water over a two year
22 period.

23 Two other properties in Middleport also
24 attempted phytoremediation at the same time.
25 None of the phytoremediation on any of the

1
2 three properties had a significant uptake in
3 the inorganic arsenic that is in the soil.
4 The arsenic in the soil is not transferring to
5 the plants in any scientifically appreciable
6 degree.

7 Another scientific citation I would like
8 to submit is from the ATSDR. I'll explain
9 that in a second as soon as I turn the page.
10 That is the Agency for Toxic Substances and
11 Disease Registry based in Atlanta, Georgia.
12 I'm taking this right from the web site, is a
13 federal public health agency of the U. S.
14 Department of Health and Human Services.
15 ATSDR serves the public by using the best
16 science, taking responsive public health
17 actions and providing trusted health
18 information to prevent harmful exposures and
19 diseases related to toxic substances. It is
20 linked to the CDC, the Federal Center for
21 Disease Control and I have the web site if
22 anybody needs that after the meeting. In the
23 search bar type arsenic toxicity, what are the
24 rules for exposure on arsenic. Go down the
25 left side column until you reach arsenic from

1
2 waste in soil. Continue reading and you will
3 find that the CDC report says arsenic uptake
4 in plants does not appear to reach levels
5 dangerous to human health.

6 In conclusion, I do not accept the
7 declarations of the Agencies that they find
8 Middleport soil unsafe in the area of the Air
9 Deposition properties, at least not my
10 property. And I believe the highest level on
11 my property is 46 parts per million. At the
12 opening, I think Sally mentions there's some
13 properties that are 700 and something. If I'm
14 at 700 and something parts per million, I
15 probably would want it cleaned up.

16 If I had time, I would speak a lot more
17 here tonight, but I was limited on how much I
18 could say.

19 I have raised scientific questions at
20 forums like these before and I have been
21 completely ignored, but not by better
22 scientific findings, just by human beings in
23 positions of authority that I believe have not
24 done their homework. I and other people in
25 Middleport can say and write all sorts of

1
2 scientifically based comments to the Agencies,
3 but those in authority have repeatedly turned
4 a deaf ear. Thank you.

5 MR. SCHICK: Thank you, Mrs. Storch. I'd
6 like to call Henry Ferachi.

7 MR. FERACHI: When the EPA took the
8 samples of the soil, did they have core
9 samples done? That's what my question is.

10 MR. SCHICK: Okay.

11 MR. FERACHI: Because when you take a
12 core sample, you can go down two, three feet
13 and usually, it's tested every one or two
14 inches.

15 MR. SCHICK: The samples appear to be
16 taken in three inch intervals in order to
17 characterize the different soil horizons.

18 MR. FERACHI: All right.

19 MR. SCHICK: Next is Robert Forbes.

20 MR. FORBES: Good evening. My name is
21 Bob Forbes. I'm the Director of the
22 Environment Health and Safety for Remediation
23 and Governance at FMC Corporation and I
24 oversee the corrective action project at the
25 FMC facility in Middleport.

1
2 Along with our predecessor companies, FMC
3 has been an active contributor to the
4 economic, educational and cultural life of the
5 Middleport community for the past 108 years.

6 They are an Agricultural Products Group
7 facility, which focuses on mixing and
8 packaging products, employs 60 people and
9 contributes more than \$6 million annually to
10 the local economy. We see ourselves as a
11 proud member of this community and its future.

12 Over the past 20 years, FMC has worked
13 diligently with the regulatory Agencies,
14 elected public officials and local residents
15 to protect human health and safety through the
16 identification and implementation of
17 appropriate environmental remedial measures.

18 This work has included numerous studies
19 and interim corrective measures. For example,
20 FMC has cleaned up the Royalton-Hartland
21 school yard, residential properties and other
22 areas near the plant.

23 FMC is currently evaluating the Draft
24 Statement of Basis. We will submit specific
25 comments by the end of the public comment

1
2 period.

3 With this meeting, however, FMC wants to
4 make the following three points: First, FMC
5 is willing to promptly begin and appropriately
6 finish remedial work at the Air Deposition and
7 Culvert 105 study areas. FMC has communicated
8 this to the Agencies several times.

9 Second, we believe the remedy recommended
10 by the Agencies is inconsistent with the
11 Corrective Action Objectives for this project.
12 The remedy FMC proposed, CMA No. 3, meets
13 those objectives, meets the community's needs,
14 protects public health and satisfies all legal
15 requirements.

16 Third, as a part of the Draft CMS, FMC
17 has hired an expert to prepare a risk
18 assessment and the conclusion is that all the
19 corrective measures alternatives, including
20 the no further action alternative, result in
21 conditions within the acceptable range for
22 human health risks for arsenic in soil. The
23 risk assessment also demonstrates that there
24 is no meaningful difference in terms of
25 exposure and risk reduction among the various

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alternatives.

Finally, and most importantly to you all here, I want to remind the community that this is the last opportunity to voice an opinion on the proposed remedy.

Please provide your comments at this meeting and through the end of the public comment period to both the Agencies and your elected officials. You can call or write letters or emails to voice your concerns and opinions.

You're also welcome to discuss the remediation project with FMC at our information office at 15 Main Street. Please check the website for open dates and times or call 735-9769. I'll repeat that again, 735-9769 to setup an appointment. Thank you very much.

MR. SCHICK: I call Bill Arnold to the podium.

MR. ARNOLD: Good evening. As there are so many new personnel managing the many levels of the Agencies, I would like to review the background on the Middleport Community Input

1
2 Group which I'm chairman of. The group was
3 organized in 2006 by Mayor Julie Madel to
4 represent the residents and property owners of
5 the community who are impacted by the EPA, or
6 the EPA at the time, proposed arsenic cleanup
7 under the Federal Resource, Conservation and
8 Recovery Act. The group consists of residents
9 who are concerned about their property and the
10 well being of the community they live in.

11 We currently have 38 members with 55
12 people total on the e-mail distribution list.
13 We have received a number of communications
14 over the past six years from other homeowners
15 who have expressed their support and made it
16 known their concerns.

17 In February of 2008, the group
18 re-organized to better serve the community and
19 to become more independent. The members
20 elected me as their chairman and stipulated
21 that I be their spokesperson. I have a
22 Bachelor's Degree in Electrical Engineering
23 from RIT and a Master's Degree in Engineering
24 from Syracuse University. I have spent nearly
25 30 years working at IBM as an engineer and

1
2 manager and retired at a level of Advisory
3 Engineer.

4 The members of the group consist of
5 teachers, business owners, manufacturers, law
6 enforcement officers, engineers, some of whom
7 work for or with environmental agencies and
8 other companies. We are well-educated and
9 many of us have advanced degrees. The group
10 was recognized by the EPA in 2009 with the EPA
11 Environmental Quality Award in recognition of
12 the group's work in the community to improve
13 the environment.

14 The group has a technical advisor, Dr.
15 Daniel Watts, retired from the New Jersey
16 Institute of Technology, who was the Executive
17 Director of the Otto H. York Center of
18 Environmental Engineering and Science at the
19 Institute. Dan remains active in numerous
20 environmental projects in addition to
21 Middleport.

22 Our Facilitator, Ann Howard, provides
23 advisement and organizes our meetings. She's
24 Senior Associate Dean of the College of
25 Liberal Arts at Rochester Institute of

1
2 Technology. She has been working in the field
3 of community sustainability for more than 20
4 years and among other activities, established
5 and oversees the University and Community
6 Partnerships Program. She had recently
7 received the American College Personnel
8 Association's Champion of Sustainability
9 Award.

10 Throughout the last six years, we have
11 reviewed numerous documents associated with
12 the project and researched the issues and
13 technical literature. Our members have spent
14 countless volunteer hours to be well-informed.
15 Our comments and positions on the issues
16 surrounding the RCRA, and that's the Resource
17 Conservation and Recovery Act program, are
18 developed through thoughtful deliberation and
19 consensus.

20 The Agencies should make no mistake, the
21 MCIG is independent from other companies,
22 organizations and governments. We are
23 residents of this community concerned with the
24 health and well-being and the future of the
25 community in which we live in.

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2 The MCIG restates their support for CMA 3
3 as described in the CMS as an acceptable
4 alternative. It calls for an average post
5 remedial level of 20 parts per million for
6 each residential property instead of a maximum
7 of 20 parts per million. The average approach
8 has precedence in other cleanup projects. For
9 example, last year's decision in Tacoma,
10 Washington.

11 The MCIG accepts and understands there
12 areas in Middleport that need to be remediated
13 where high levels of arsenic exist. However,
14 we believe the Agencies' proposed remedy CMA 9
15 is impractical and will likely result in a
16 major change to the character of the Village
17 with damage to properties and infrastructure.
18 It does not appear the Agencies have
19 considered the dramatic negative impact this
20 proposed cleanup alternative will have on our
21 community lasting many years into the
22 future.

23 Areas in Gasport have been sampled with a
24 result that showed levels of arsenic in soil
25 are elevated there as well. As explained by

1
2 the Agencies in their CMS Responsiveness
3 Summary, it appeared to them to be okay. How
4 many other areas exist where levels are
5 elevated in New York State because people,
6 including farmers, used the accepted practice
7 of the time to protect their crops and
8 landscape from pests. How are the people in
9 those areas safer than those people in
10 Middleport?

11 Many residential properties that have
12 been developed in historical agricultural
13 areas could have elevated levels of arsenic
14 along with pesticide residue. If it is so
15 important to cleanup Middleport to pristine
16 levels, then why not other areas known to have
17 elevated levels of arsenic? Unless, of
18 course, Middleport is under the gun simply
19 because FMC is here to pay for the cleanup.

20 The MCIG has reviewed the Preliminary
21 Statement of Basis, the Agency supplied Fact
22 Sheet on Arsenic Soil Contamination FAQ's for
23 Middleport, New York, and the CMS
24 Responsiveness Summary. The MCIG does not
25 accept the Agencies' proposed cleanup

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2 alternative as outlined in the Statement of
3 Basis and has issues with other documents.

4 Some comments from the PSOB. We are
5 concerned with the height and the footprint of
6 the CAMU as defined in the PSOB be final for
7 all projects and remediation activities or
8 will those dimensions only apply to the soil
9 remediated from the operable units covered by
10 this PSOB? The CMS states that the level can
11 be higher to accommodate other remedial
12 activities.

13 As stated in the PSOB on page 24, the
14 Department obligation is to minimize both
15 current and potential exposure to the extent
16 practical. During the remedy, exposure would
17 be current due to the uncovered soil and dust.
18 Long-term exposure would be overminimized and
19 further, the remedy appears to be impractical.

20 Although, we realize we do not have a
21 direct part in making the decision to
22 remediate the non ICM portion of the school
23 yard, the MCIG would recommend that that part
24 of project be delayed until such time that the
25 school property does become subject to an

1
2 alternative usage. This would decrease the
3 possible activity in the community at this
4 time. As stated previously, the Agencies
5 consider the school property safe for its
6 current use as a school with the athletic
7 fields. Also FMC will be responsible for
8 remediation at any future date that the
9 property becomes something other than a
10 school.

11 It is not certain from the explanations
12 in the PSOB if property owners will receive
13 clear letters or no further action needed, and
14 that may have been explained by Sally, the
15 status if one or more areas of the property
16 that was not fully remediated to save a
17 landscape feature. They may not get a clear
18 letter. Based on the precedent of one
19 resident involved in the 2007 Culvert 105
20 Area, who did not allow remediation under a
21 tree, no clear letter was provided to him. To
22 remediate most but not all of the property and
23 not get a clear letter would not be acceptable
24 to many residents and provides little
25 initiative to remediate the property.

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2 It appears the Agencies did not consider
3 the effect of large truck traffic on village
4 streets and the number of years such traffic
5 would exist during the massive project. This
6 traffic would result in an emotional nightmare
7 for many village residents as well as affect
8 commercial activity and do damage to street
9 surfaces. In addition, during periods of bad
10 weather, partially excavated properties
11 without complete land backfilled could sit for
12 days causing many problems for the residents.

13 To avoid any conflicts of interest, the
14 arborist that will perform the tree analysis
15 should be different from the arborist who will
16 remove trees from that property.

17 This is from the Responsiveness Summary.
18 Throughout the summary, the Agencies were too
19 dismissive of residents' concerns over the
20 logistics of such a massive project. It does
21 not appear residents' comments were considered
22 at all.

23 In Comment 24, the MCIG agreed with FMC
24 regarding their comment submitted during the
25 CMS comment period that the 98th percentile

1
2 should have been used to calculate Middleport
3 background as that would have technically been
4 in line with the New York State Soil Cleanup
5 Objectives. Using the 95th percentile
6 indicates the Agencies had their answer before
7 formulating the technology used to calculate
8 the answer. Other explanations by the
9 Agencies such as the percentage of areas that
10 are historic orchards also supports this
11 belief. All right.

12 MR. KOMOROSKE: I don't think there's
13 that many more speakers. I think the last
14 speaker that wanted to speak is Senator
15 Maziarz, but after he's done, you're welcome
16 to back up and we will stay here as long as
17 you want. So Senator Maziarz.

18 MR. MAZIARZ: Thank you very much. I
19 asked to be last because I wanted to give the
20 residents of the Village and Royalton a chance
21 to speak.

22 Oh, I'm sorry. George Maziarz, New York
23 State Senator, 52nd. We're in the Village of
24 Middleport like U. S. News and World Report.
25 Trying for many years to prevent some people

1
2 from destroying the Village of Middleport. I
3 just want to associate my comments with
4 Supervisor Bieber and Bill Arnold, Chairman of
5 the Middleport Community Input Group and just
6 thank Bill and also comments of Elizabeth
7 Storch. Jim Ward from my office has attended
8 just about every meeting of the MCIG and has
9 reported back to me. And it's just very clear
10 and I guess I'm perplexed as to why these
11 Agencies don't see what the local people could
12 see and that is that the CMA No. is just way,
13 way, way over the top for this Village.
14 Again, I'm not going to repeat what Bill said.
15 I do want to just say I'm joined in my
16 comments by Assemblywoman Jane Corwin, that,
17 you know, again, I don't want to repeat, but I
18 think it's worth emphasizing that the truck
19 traffic, that Bill pointed out, would be just
20 so destructive to this Village. In one
21 cleanup alone, over 700 trucks were used. The
22 infrastructure and I think the mayor and
23 certainly, the Village Board knows, the
24 infrastructure of this Village cannot take
25 that type of wear and tear. That's

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2 destructive to the roads, the sewer lines,
3 water lines within this village. The amount
4 of time that CMA No. 9 will take, you know, we
5 are talking years, not months. We are talking
6 ten plus years. Is just way too, too long of
7 a time to do a proper clean up. This what
8 you're proposing today with CMA 9 is a
9 solution in search of a problem. CMA No. 3 is
10 what this Village needs, what this Village
11 wants and I would strongly urge you to
12 reconsider your decision making process.

13 I would, also, strongly urge the
14 residents of the Village who are not here
15 tonight, who will read about this in the
16 newspaper or see it on television, to make
17 their comments known. The public comment
18 period ends when?

19 MS. DEWES: July 30.

20 MR. MAZIARZ: July 30th. It is very
21 important, very important that the residents
22 who live here or live in the Village, live in
23 the Town of Royalton, make their positions
24 known to these Agencies. That's really what I
25 wanted to say is just to emphasis that CMA No.

1
2 3 is fine for this Village. It's what the
3 Village wants, local officials, elected
4 officials. We think an overwhelming majority
5 of this Village, certainly, the citizens
6 committee very ably headed by Bill Arnold. I
7 think Elizabeth, your comments were excellent
8 here tonight. And I hope that you're
9 listening. Thank you.

10 MR. KOMOROSKE: I should introduce
11 myself. I'm Mike Komoroske, Sally's immediate
12 supervisor. That's Senator Maziarz obviously.
13 Is there an aid from Assemblywoman Corwin?
14 Did you want to speak?

15 UNIDENTIFIED SPEAKER: Not at this time.
16 I have a couple questions for you or for
17 someone.

18 MR. KOMOROSKE: Well, we are trying to
19 do sort of a hearing/take comment. And as I
20 think as Bob said earlier, there will be an
21 Availability Session tomorrow from 1:00 to
22 4:30 right here. We will all be here. We can
23 sit down one on one and try to answer your
24 questions. Is there Congresswoman Hochel's
25 office? Did you want to speak?

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UNIDENTIFIED SPEAKER: Not at this time.

MR. KOMOROSKE: I think we heard from Jennifer.

MS. BIEBER: Right.

MR. KOMOROSKE: Is there anyone that hasn't spoken that would like to make a comment? If you want to come up?

MS. LUTZ: I've been through this before. My name is Christa Lutz and I'm a village resident. I swore as I walked down here this evening I was not going to speak again because I have been here numerous times and it has been a frustrating experience. I do live in the Air Deposition Area. And my property is cleared so I'll be up front with that.

I don't know where to go with this any more. Frustration isn't the word for it. I care about Middleport. I wasn't born here, but I've chosen to live here. We raised our child here. And it has been a good community for us. I'm not a champion for FMC. I think FMC needs to do what they need to do to

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2 cleanup areas that are in danger, but I also
3 think that the Department of Health and all
4 these Agencies have gone way, way overboard.

5 Your comment that you had a mandate to be
6 health protective for our community back in
7 '87 is absolutely right because guess what I
8 have here? My folder from 1987. As a
9 teacher, you know, that's my strong suit. I
10 keep folders. I have notes here from a
11 meeting I went to on December 7th, 1988, with
12 Dr. Hawley from the Department of Health; Dan
13 Rothman from URS Corporation. FMC was there
14 with Jack Pietrie. Names you probably don't
15 know any more because they've come and gone as
16 have so many other people. This issue has
17 gone on and on and on and the time has come to
18 put it to rest.

19 I was disappointed to hear the comment
20 made that the study that was made on the
21 children back then was really not that
22 important because they didn't ingest the
23 arsenic within 24 hours or whatever. I'm
24 sorry to hear that because here's the letter
25 that I got back from my son who had the

1
2 testing done. At the time we were told this
3 was extremely important. And suddenly now,
4 it's just given this -- well, it wasn't -- it
5 wasn't valid, is not the word you used. I was
6 disappointed to hear the response on that.

7 My big concern right now is what's going
8 to happen when this truck traffic starts in
9 our community again. I live on State Street
10 at the end of Alfred Street. And when they
11 remediated Park Avenue, my home had some
12 sizeable cracks that appeared in the front of
13 my home. Out of the clear blue sky, we just
14 happen to notice the hallway, the bedroom, all
15 in the front of the house.

16 We did approach FMC and an architectural
17 engineer came in and investigated and it was
18 determined that it was the jake brakes, is
19 that correct? I'm not into trucking, but I
20 believe that's what we were told at the time.

21 I think you need to consider seven, 800
22 trucks going through these streets. As our
23 mayor's concern was what was going to happen
24 to the roads. You need to be concerned about
25 what's going to happen to your home because

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2 there can be internal damage. Many of us live
3 in older homes. It's difficult. I think
4 there's a lot that needs to be considered
5 here, but I think that it's time to put this
6 to rest.

7 MR. SCHICK: Thank you. Another
8 gentleman over there, please.

9 MR. FIERCH: Like other people, I came
10 here -- my name is Fred Fierch. I'm a life
11 long resident of the Village of Middleport. I
12 worked at FMC 17 years. I'm probably one of
13 the few people you'll see who actually packed
14 lead arsenated FMC. I'm in perfect health.
15 I'm on no medication. They used to test us
16 once a week to make sure that we didn't have
17 elevated levels.

18 My only comment here is I'm in the Air
19 Deposition Area. You state that you want to
20 use 20 as a baseline for remediation because
21 you're sure that that will insure the health
22 of the residents. Can you give me a number
23 that will insure danger to the residents?
24 Because the highest level I have on my
25 property is 38.5, but I went through the

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2 numbers of the sampling and you would have to
3 remediate about 85 percent of my two acres
4 which I'm not real happy about. So I want to
5 know what the danger level is, not what the
6 absolute nondanger level is. Don't tell me
7 I'm going to be clean and not worry about
8 anything. You're not telling me what I'm
9 subject to suffer from if I'm under 40. I
10 don't know. So I guess I'm asking that.
11 That's my only comment. Thank you.

12 MR. SCHICK: Thank you. Would anybody
13 else like the opportunity? Come forward.

14 MR. OWEN: My name is Dick Owen. I'm a
15 Middleport resident. I wasn't going to open
16 my mouth tonight. I've got myself in a little
17 trouble at the last meeting I guess. Shaken
18 up the cart. Tonight, beginning of the
19 meeting when the gentleman from the Department
20 of Health was bringing down the dangers of
21 arsenic, it seemed like he was talking mostly
22 about water arsenic. He touched upon the
23 arsenic that isn't taking up the arsenic in
24 the soil. And he even admitted that the
25 studies on it, admitted that it's not as

1
2 dangerous, but the studies are vague and they
3 don't have a clear cut answer, but you're all
4 too willing to come in here and rip up a whole
5 town on something that you can't even put a
6 basis of where the dangers are. If there was
7 a danger here, we'd be all up in arms. Let's
8 get it cleared away. It's gone on and on and
9 on and you people have run a muck and that's
10 all I've got to say.

11 MR. SCHICK: Ma'am, would you like the
12 opportunity?

13 MS. BUSCH: My name is Ann Busch. I did
14 miss most of the meeting I'm sorry to say. I
15 guess one of the main concerns for me in
16 addition to having the town ripped up, unless
17 it's really absolutely necessary and
18 absolutely a health benefit to us, which seems
19 questionable, it just seems that -- and the
20 CAMU, the giant mound of earth that would be
21 stored here, I have to agree with the person
22 who spoke for the Town of Royalton, that just
23 seems odd that if it's dangerous enough to be
24 removed from our yard, shouldn't it be too
25 dangerous to store as an eternal monument in

1
2 Middleport that would stigmatize the Town for
3 all eternity? I just don't think that is
4 right. And I don't know if it's just that
5 they think people in a small village aren't
6 too bright or I just don't get that. So
7 that's my comment. And I will have to be more
8 diligent to be here on time and get more of
9 the information up front.

10 MR. SCHICK: Anybody else? I know
11 several people come back. Sure.

12 MR. ARNOLD: Okay. I have a few more
13 statements. Comments from the Responsiveness
14 Summary. These are all comments that were
15 reviewed by the MCIG, the Middleport Community
16 Input Group, and we agreed on them and so we
17 want to read these into the record. Response
18 38 in the Responsiveness Summary had a vague
19 explanation of what CMA 9 would be. Some
20 owners may not consider remediation because
21 they won't know what they are getting into.
22 This is where we are talking about
23 flexibility. We don't know what flexibility
24 is. How do you get your hands around
25 something and understand what you're going to

1
2 get into when they say they are going to have
3 limited flexibility in what they will do to
4 your yard. That tells me that they are just
5 going to go and do 20 parts per million.

6 Response 55 states that high arsenic
7 samples taken in Gasport was from an orchard
8 which would not result in routine human
9 exposure. So they determined it was all
10 right. If this orchard is used to harvest
11 saleable fruit, however, and if the Agencies
12 are correct in their theory, which I think
13 they are, of arsenic uptake in plants, it
14 would seem that the public would be exposed.

15 And in contrast, another response in the
16 Responsiveness Summary states that a hay field
17 used to grow winter horse feed needs to be
18 remediated because it could cause an effect to
19 humans. This could only happen if the horse
20 feed were sold to people that preferred that
21 over beef.

22 The MCIG disagrees and these are from the
23 frequently asked questions which are -- I
24 think I guess are available in the back there.
25 The MCIG disagrees that the infrequently asked

1
2 question No. 3, if FMC began using arsenic and
3 this was something about there wasn't enough
4 time to make an evaluation, if FMC began using
5 arsenic in their formulation around 1920,
6 that's 92 years. Should be enough time to
7 determine the effects.

8 Also was stated by the DOH personnel such
9 as Dr. Hollie Howe, and Hollie Howe is the
10 doctor who did the analysis that was spoken to
11 about the analysis where they looked at cancer
12 incidences in people in Middleport and
13 compared them to like communities and found no
14 statistical difference. But in Dr. Hollie
15 Howe's report, she contributed environmental
16 factors as a cause of cancer is less than five
17 percent when compared to other factors such as
18 smoking and diet. So what we are going after
19 here is a five percent risk versus 30 percent
20 for smoking and 30 percent for diet.

21 The answer in FAQ 7 complained that there
22 was not enough time elapsed to have a
23 meaningful study for the comparison of cancer
24 incidences in Middleport residents and those
25 of a comparable community. That is Dr. Hollie

1
2 Howe's report. However, it is explained in
3 response it takes ten to 40 years for most
4 types of cancer to develop and that's the DOHs
5 analysis. It takes ten to 40 years of
6 exposure to determine that there is an effect
7 on people from the arsenic.

8 In 1987, when this report was done, the
9 study -- it was 67 years since FMC began using
10 arsenic in their formulations. Clearly,
11 there's been enough time elapsed to make this
12 study valuable.

13 The MCIG does not agree with the
14 explanation in FAQ 2. It stated the Agencies
15 consider the absorption of arsenic from soil
16 to be the same as that from water. Arsenic in
17 water is in a dissolved state and more readily
18 absorbed by the body. Arsenic in soil has
19 changed and combined with other minerals in
20 soil such as iron and copper. Mr. Johnson
21 explained that. So he backs me up on this I
22 guess.

23 The body needs to break these bonds down
24 before arsenic can be absorbed. That is
25 called bioavailability. It has been shown in

1
2 laboratory studies that the bioavailability of
3 arsenic in Middleport soils is around 45
4 percent. In fact, the reference is made to
5 the EPA on a line document in response to
6 comment number 42, which outlines EPA Region 8
7 analysis of bioavailability in soil. The EPA
8 Region 8 found that the bioavailability of
9 arsenic in soil was between eight and 61
10 percent. Way far away from a hundred percent.
11 With a mean of 34 percent. Five of the 26
12 samples exceeded 50 percent. Based on this
13 and other cited studies, the EPA Region 8
14 concluded that a relative bioavailability of
15 50 percent can be considered a generally
16 conservative default value for arsenic in
17 soil. Also people tend to drink a lot more
18 water than they do eat soil.

19 The Agencies will say that even if they
20 use a bioavailability of 50 percent, which
21 cuts the intake into half from that of
22 drinking water, that we still have exposure
23 risks way below background.

24 Bob Forbes talked about the studies that
25 they did where they found that all of the

1
2 CMA's, 1 through 8, showed that they were in
3 the risk level. I don't want to start a fight
4 here, but it would seem to us in the MCIG that
5 that's probably a little on the far side. It
6 was a surprise to us to see that no action
7 necessary would lead us to a risk level that
8 was acceptable.

9 However, we are looking at the Agencies
10 and they are way over on this side. I don't
11 believe that their analysis is valid because
12 it's too conservative. I believe there is
13 something in the middle which pertains to
14 Middleport that we can live with and that will
15 be within the risk level that's acceptable by
16 the guidelines.

17 Now, a little about myself. I own
18 property east of the school and east of FMC.
19 My western borderline is the same as FMC's.
20 My grandfather bought that farm in 1939. He
21 farmed it with less than modern tools because
22 he didn't have the money to buy good
23 equipment. He died of old age at 92. My
24 mother, who's eaten vegetables out of the
25 garden on that farm since 1939, is currently

1
2 92. And I've been working it and eating off
3 that garden for most of my life. And I don't
4 have any health problems. I'm as healthy as
5 Fred Fierch. So you can't tell me -- and I'm
6 in that garden and working around there
7 constantly and you can't tell me that that
8 arsenic, what level it is, is bothering me in
9 any way.

10 Now, I have values especially along the
11 FMC line that goes up over 200 parts per
12 million. I have no problem having that
13 cleaned up. I have levels that's up to 70
14 that is close to the school yard. Because
15 it's close to the school yard, I don't have
16 any problems cleaning that up. But I'm not
17 too fond about the idea of cleaning up the
18 whole farm that's mostly in the 30's to 40's.
19 It's a farm. It grows horse feed. A lot of
20 it was historic orchard. When they look at
21 the distribution of arsenic on the property,
22 you can see where the historic orchard was.
23 If you go to any historic orchard, it's going
24 to have elevated arsenic.

25 If you built a house on farmland outside

1
2 the Air Deposition Area on old farmland,
3 you're likely to have elevated levels of
4 arsenic in your yard just as much as the
5 people here in Middleport. Nobody's going
6 after that. Nobody's going after that orchard
7 in Gasport that was tested up to 122 parts per
8 million. It just grows apples. It doesn't
9 hurt anybody. It doesn't make any sense at
10 all.

11 And we have been going through this for a
12 good number of years and we have had a whole
13 new crew come in here tonight that says
14 everything is going to be different. To me, I
15 haven't heard a darn thing that is different.
16 I'm sorry.

17 I think we really need to look at this as
18 a village and exercise our right to refuse
19 remediation. Because if we remediate, it's
20 going to be hell and that five years he's
21 going on is bull. It's not going to happen in
22 five years. There's too many contingencies.
23 If we get hit with bad weather, they can't
24 work. Your yard is going to be left open or
25 wherever it was at that state and if you got

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2 pets or kids or anything else, you're going to
3 be cleaning up a lot of mud in your house and
4 maybe contaminated mud because somebody took
5 the grass off the top of it. So don't get
6 fooled.

7 MR. SCHICK: Thank you, Mr. Arnold. At
8 this point unless there is others that would
9 like to speak, we will close the -- yes.

10 MS. HINKSON: My name Rebecca Hinkson,
11 long time village resident and Village
12 Trustee. Thank you everyone for coming
13 tonight and I pretty much thank you for the
14 MCIG group and the Village Trustees Board.
15 I'm a little bit nervous.

16 My sentiments are everything everybody
17 said. I just kind of want to go on one of the
18 things, Bill as far as -- I was kind of
19 surprised to hear about all the arsenic and of
20 course, you pressed on the cancer causing and
21 everything, but the thing that really stuck
22 out in my head even with Fred Fierch saying
23 it, you have to be tested within a 24 hour
24 period to know of exposure. I don't -- how do
25 you estimate that? The point I was going to

1
2 bring it up, you are talking about your
3 parents. My parents were apart of the Vernon
4 Street cleanup. If you were to do research,
5 the majority of people lived there for years
6 because when you bought your house, you stayed
7 there until you died, in their nineties.

8 Now, living on their own, one did pass
9 away because he was 99, died of old age. I,
10 as a child, grew up there. We played at FMC
11 in the swamps, in the wet and there was no
12 fences. There was no anything. And even as a
13 child, my mother did not put us out and eat
14 dirt because she watched us. So I don't
15 remember eating any dirt. I'm 51. So I don't
16 know if my exposure is supposed to take effect
17 or if I had it or not.

18 And another thing, when they did come to
19 remediate Vernon Street, my parents asked them
20 if this is dangerous to us and you're digging
21 it up because if you know, they dug it right
22 down. Dust, dirt, everything flying all over.
23 They had asked the workers why aren't you
24 protected, why don't you have clothing,
25 certain clothing on, why don't you have your

1
2 faces protected. They were told that because
3 it's not dangerous. So I'm a little confused
4 about that, also.

5 One other thing, the government let us as
6 a society ingest everyday cigarettes, alcohol,
7 soda drinks, foods with preservatives and the
8 new buzz word, the red slime, and don't forget
9 all this does have traces of arsenic. What's
10 an acceptable level? What we're talking about
11 here, I don't understand, that it's okay for
12 the government and this is a government agency
13 to put all this in our food. We are taking it
14 in us, the arsenic, unless you've been
15 exposed, but I guess through ingestion and I
16 know it's not in our water because it's been
17 tested. So right now, basically, even any of
18 us to be tested for arsenic levels doesn't
19 really matter, I don't understand. Sorry.
20 I'm just really nervous.

21 I guess what I want to say, I do support
22 the feelings, you know, we are an intelligent
23 group of people here in Middleport. We
24 understand some cleanup needs to be done of
25 the high levels of arsenic but not to destroy

1
2 a whole town. And we need to come to some,
3 you know, meaning that we all can proceed so
4 it's satisfactory for all of us and I guess
5 that's all I have to say. Thank you.

6 MR. SCHICK: Thank you. Again, if
7 there's no one else that's interested in
8 speaking, we will close tonight's meeting. I
9 remind you that there is an Availability
10 Session from 1:00 to 4:30 here tomorrow. We
11 will be able to carry on the conversation and
12 I had several people that inquired as to
13 whether the slides used tonight would be
14 available and they will be. We will provide
15 them on the DEC web site and also share them
16 with MCIG to put on them on their web site if
17 they'd like to.

18 Again, thank you for all coming out and
19 we look forward to hearing further comments
20 during the comment period or seeing you
21 tomorrow at the Availability Session. Thank
22 you.

23 (Proceedings concluded.)
24
25

C E R T I F I C A T E

I, DOREEN M. SHARICK, do hereby certify that I have reported in stenotype shorthand the Public Meeting regarding the Draft Statement of Basis, at the Middleport Fire Hall, 28 Main Street, Middleport, New York, on Wednesday, June 27, 2012.

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

Doreen M. Sharick,

Notary Public.