

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE SUPERFUND PROGRAM
ECL §27-1301 *et seq.*

In the Matter a Remedial Program for

**ORDER ON CONSENT AND
ADMINISTRATIVE SETTLEMENT**

Index No. *A8-0859-15-07*

DEC Site Name: Study Area
DEC Site No.: Part of Site Number 851046
Hereinafter "The City Owned Stadium Property"
Site Address: 202 Cantigney St.
 Corning, NY 14830
 Steuben County

Hereinafter referred to as "Site"

by:

Corning Painted Post Area School District

Hereinafter referred to as "Respondent"

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL 3-0301, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

2. The Site is not currently listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State.

3. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

4. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Real Property

The Site subject to this Order is part of a site that has been assigned number 851046. The Site subject to this Order is approximately 6.5 acres described as follows:

Subject Property Description (Exhibit "A" is a map of the Site)

Part of Tax Map/Parcel No.: 318.05-01-068.000
202 Cantigney St.
Corning, NY 14830
Owner: City of Corning

II. Remedial Project

The remedial project covered under this Order is limited to the replacement of the artificial turf field and directly adjacent areas being completed by the Respondent. Any additional remedial activities on the Site will be conducted under a separate Consent Order. The requirement for an Environmental Easement under this Order shall address the requirement for the Environmental Easement to be placed on the entire Site.

III. Initial Work Plan

The IRM Work Plan attached as Exhibit "B" has been approved by the Department and shall be implemented in accordance with the plan and schedule.

IV. Payment of State Costs

The Department waives its rights to collect oversight costs on this site under this Order against Respondent, but reserves any and all rights it may have to collect any and all oversight costs against any other party.

V. Communications

A. All written communications required by this Consent Order shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Respondent shall be sent to:

Greg MacLean (1 hard copy (unbound for work plans) & 1 electronic copy)
Department of Environmental Conservation
Division of Environmental Remediation
6274 East Avon-Lima Road, Avon, NY 14414
greg.maclea@dec.ny.gov

Krista Anders (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
krista.anders@health.ny.gov

Ben Conlon, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, NY 12233
Benjamin.conlon@dec.ny.gov

2. Communication from the Department to Respondent shall be sent to:

Corning-Painted Post Area School District Offices
Attn: Superintendent of Schools Michael K. Ginalski
165 Charles Street
Painted Post, NY 14870
MGinalski@coppmail.com

Joseph D. Picciotti, Esq
Harris Beach PLLC
99 Garnsey Rd. Pittsford NY 14534
jpicciotti@harrisbeach.com

Haley & Aldrich of New York
Attn. Glenn M. White, CHMM
200 Town Centre Dr # 2, Rochester, NY 14623
gwhite@HaleyAldrich.com

B. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Respondent provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph I.

VI. Miscellaneous

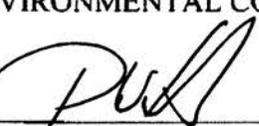
A. Appendix A - "Standard Clauses for All New York State State Superfund Orders" is attached to and hereby made a part of this Order as if set forth fully herein.

B. In the event of a conflict between the terms of this Order (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this Order shall control.

C. The effective date of this Order is the day it is signed by the Commissioner or the Commissioner's designee.

DATED: 7/1/15

JOSEPH J. MARTENS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: 

Robert W. Schick, P.E., Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Consent Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Consent Order.

Corning Painted Post Area School District

By: [Signature]

Title: Superintendent of Schools

Date: July 1, 2015

STATE OF NEW YORK)
) ss:
COUNTY OF Steuben)

On the 1st day of July in the year 2015, before me, the undersigned, personally appeared Michael A. Szustak (full name) personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Acknowledgment by a corporation, in New York State:

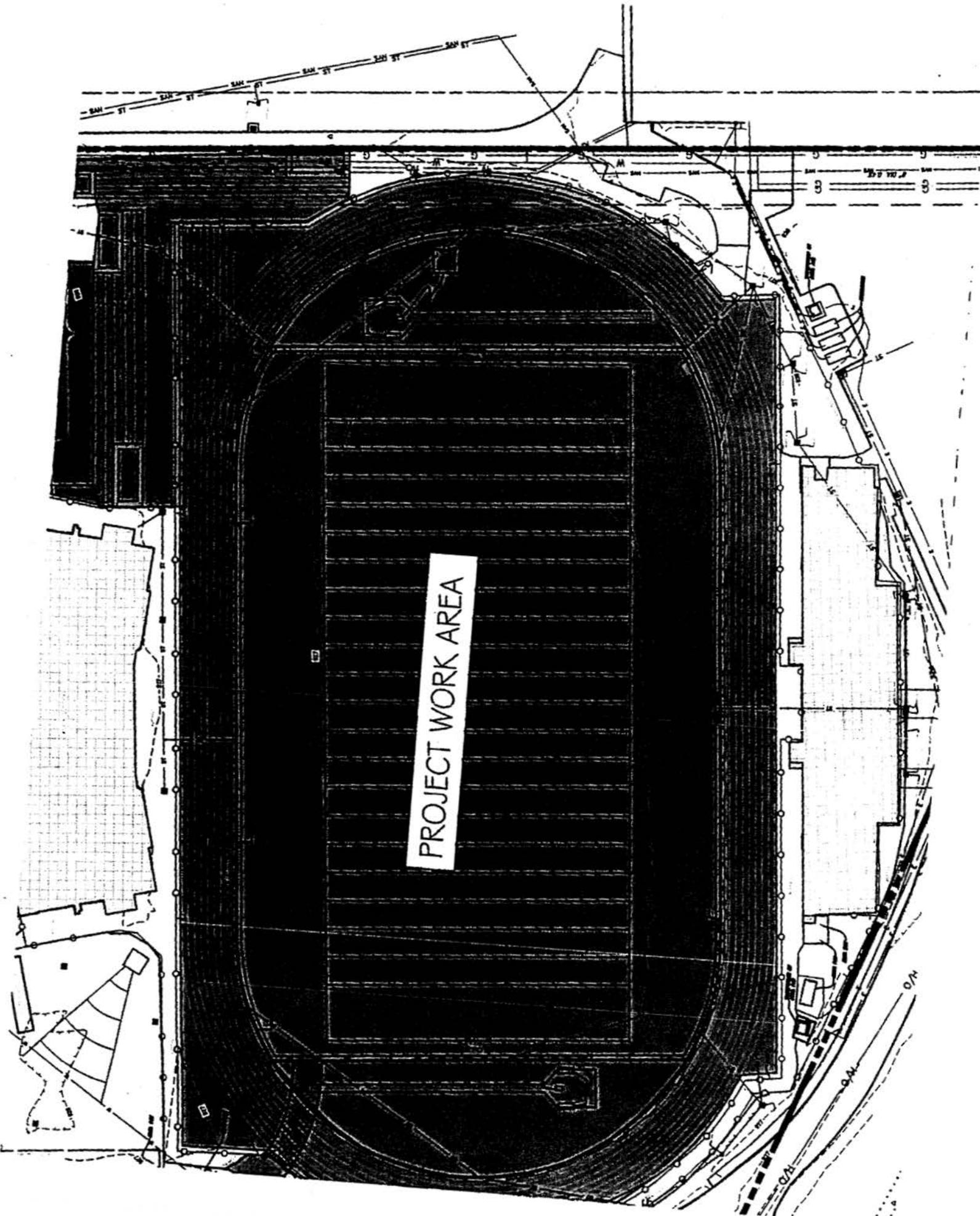
On the _____ day of _____ in the year 20____, before me, the undersigned, personally appeared _____ (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at _____ (full mailing address) and that he/she/they is (are) the _____ (president or other officer or director or attorney in fact duly appointed) of the _____ (full legal name of corporation), the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

[Signature: Karen Dutcher]
Notary Public, State of New York

KAREN R. DUTCHER
NOTARY PUBLIC, STATE OF NEW YORK
STEBEN COUNTY #01ST6012212
COMMISSION EXPIRES AUG. 24, 2008¹⁶

EXHIBIT "A"

Map



PROJECT WORK AREA

APPENDIX "A"

**STANDARD CLAUSES FOR ALL NEW YORK STATE
STATE SUPERFUND ORDERS**

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE SUPERFUND ADMINISTRATIVE ORDERS

The parties to the State Superfund Order (hereinafter "Order") agree to be bound by the following clauses which are hereby made a part of the Order. The word "Respondent" herein refers to any party to the Order, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Order, Respondent shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of ECL §27-1417 and 6 NYCRR sections 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Order.

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

All activities at the Site that comprise any element of an Inactive Hazardous Waste Disposal Site Remedial Program shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") and this Order and all activities shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, as required under CERCLA, 42 U.S.C. § 9600 *et seq.* The Work Plan(s) under this Order shall address both on-Site and off-Site conditions and shall be developed and implemented in accordance with 6 NYCRR § 375-1.6(a), 375-3.6, and 375-6. Subject to Subparagraph III.E.3., all Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order. Upon approval of a Work Plan by the Department, Respondent shall implement such Work Plan in accordance with the schedule contained therein. Nothing in this Subparagraph shall mandate that any particular Work Plan be submitted.

The Work Plans shall be captioned as follows:

1. Site Characterization ("SC") Work Plan: a Work Plan which provides for the

identification of the presence of any hazardous waste disposal at the Site;

2. Remedial Investigation/Feasibility Study ("RI/FS") Work Plan: a Work Plan which provides for the investigation of the nature and extent of contamination within the boundaries of the Site and emanating from such Site and a study of remedial alternatives to address such on-site and off-site contamination;

3. Remedial Design/Remedial Action ("RD/RA") Work Plan: a Work Plan which provides for the development and implementation of final plans and specifications for implementing the remedial alternative set forth in the ROD;

4. "IRM Work Plan" if the Work Plan provides for an interim remedial measure;

5. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy; or

6. "Supplemental" if additional work plans other than those set forth in II.A.1-5 are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. Respondent may opt to propose one or more additional or supplemental Work Plans (including one or more IRM Work Plans) at any time, which the Department shall review for appropriateness and technical sufficiency.

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan.

i. The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the

objectives of the Work Plan as set forth in Subparagraph III.A or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall, subject to dispute resolution pursuant to Paragraph XV, modify the Work Plan.

ii. The Department may request, subject to dispute resolution pursuant to Paragraph XV, that Respondent submit additional or supplemental Work Plans for the Site to complete the current remedial phase within thirty (30) Days after the Department's written request.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

4. During all field activities conducted under a Department-approved Work Plan, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken in accordance with the provisions of 6 NYCRR 375-1.6(a)(3).

5. A Professional Engineer must stamp and sign all Work Plans other than SC or RI/FS Work Plans.

C. Submission of Final Reports and Periodic Reports

1. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report as provided at 6 NYCRR 375-1.6(b) and a final engineering report as provided at 6 NYCRR 375-1.6(c).

2. Any final report or final engineering report that includes construction activities shall include "as built" drawings showing any changes made to the remedial design or the IRM.

3. In the event that the final engineering report for the Site requires Site management, Respondent shall submit an initial periodic report by in accordance with the schedule in the Site Management Plan and thereafter in accordance with a schedule determined by the Department. Such periodic report shall be signed by a Professional Engineer or by such other qualified environmental professional as the Department may find acceptable and shall contain a certification as provided at 6 NYCRR 375-1.8(h)(3). Respondent may petition the Department for a determination that the institutional

and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

4. Within sixty (60) days of the Department's approval of a Final Report, Respondent shall submit such additional Work Plans as is required by the Department in its approval letter of such Final Report. Failure to submit any additional Work Plans within such period shall be a violation of this Order.

D. Review of Submittals

1. The Department shall make a good faith effort to review and respond in writing to each submittal Respondent makes pursuant to this Order within sixty (60) Days. The Department's response shall include, in accordance with 6 NYCRR 375-1.6(d), an approval, modification request, or disapproval of the submittal, in whole or in part.

i. Subject to Subparagraph III.E.3 and upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Order and shall be implemented in accordance with the schedule contained therein.

ii. If the Department modifies or requests modifications to a submittal, it shall specify the reasons for such modification(s). Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall notify the Department of its election in accordance with 6 NYCRR 375-1.6(d)(3). If Respondent elects to modify or accept the Department's modifications to the submittal, Respondent shall make a revised submittal that incorporates all of the Department's modifications to the first submittal in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(3). In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

iii. If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within fifteen (15) Days after the date

of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall notify the Department of its election in accordance with 6 NYCRR 375-1.6(d)(4). If Respondent elects to modify the submittal, Respondent shall make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(4). In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

2. Within thirty (30) Days after the Department's approval of a final report, Respondent shall submit such final report, as well as all data gathered and drawings and submittals made pursuant to such Work Plan, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

E. Department's Issuance of a ROD

1. Respondent shall cooperate with the Department and provide reasonable assistance, consistent with the Citizen Participation Plan, in soliciting public comment on the proposed remedial action plan ("PRAP"), if any. After the close of the public comment period, the Department shall select a final remedial alternative for the Site in a ROD. Nothing in this Order shall be construed to abridge any rights of Respondent, as provided by law, to judicially challenge the Department's ROD.

2. Respondent shall have 60 days from the date of the Department's issuance of the ROD to notify the Department in writing whether it will implement the remedial activities required by such ROD. If the Respondent elects not to implement the required remedial activities, then this order shall terminate in accordance with Paragraph XIV.A. Failure to make an election or failure to comply with the election is a violation of this Order.

3. Nothing in this Order, in any submittal, or in any work plan(s) submitted pursuant to this Order shall modify, expand, reduce, or otherwise change the remedial activities (including site management) required by a ROD issued by the Department.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Respondent shall submit a written certification in accordance with 6 NYCRR 375-1.8(h)(3) and 375-3.8(h)(2).

III. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4). Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order.

2. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.

B. 1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Respondent must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Respondent shall notify the Department in writing within five (5) Days of the onset of any Force Majeure Event. Failure to give such notice within such five (5) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

3. Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv)

Respondent complied with the requirements of Subparagraph IV.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force Majeure event, in accordance with 375-1.5(4).

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraph IV.B, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and Respondent's position prevails.

IV. Entry upon Site

A. Respondent hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site (or areas in the vicinity of the Site which may be under the control of Respondent) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities necessary to ensure Respondent's compliance with this Order. Upon request, Respondent shall (i) provide the Department with suitable work space at the Site, including access to a telephone, to the extent available, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Respondent is unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such sampling and scientific measurements available to Respondent.

V. Payment of State Costs

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR 375-1.5 (b)(3)(i). Failure to timely pay any invoice will be subject to late payment charge and interest at a rate of 9% from the date the payment is due until the date the payment is made.

B. Costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental
Conservation
625 Broadway
Albany, New York 12233-7012

D. The Department shall provide written notification to the Respondent of any change in the foregoing addresses.

E. If Respondent objects to any invoiced costs under this Order, the provisions of 6 NYCRR 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph VI.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph IV or the Department may commence an enforcement action for non-compliance with ECL '27-1423 and ECL 71-4003.

VI. Release and Covenant Not to Sue

Upon the Department's issuance of a Certificate of Completion as provided at 6 NYCRR 375-1.9 and 375-2.9, Respondent shall obtain the benefits conferred by such provisions, subject to the terms and conditions described therein.

VII. Reservation of Rights

A. Except as provided at 6 NYCRR 375-1.9 and 375-2.9, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

VIII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless as provided by 6 NYCRR 375-2.5(a)(3)(i).

IX. Public Notice

A. Within thirty (30) Days after the effective date of this Order, Respondent shall provide notice as required by 6 NYCRR 375-1.5(a). Within sixty (60) Days of such filing, Respondent shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. If Respondent proposes to transfer by sale or lease the whole or any part of Respondent's interest in the Site, or becomes aware of such transfer, Respondent shall, not fewer than forty-five (45) Days before the date of transfer, or within forty-five (45) Days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with Respondent to secure the repayment of money or the performance of a duty or obligation.

X. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in 6 NYCRR 375-2.2(a), which is proposed for the Site, in accordance with the provisions of 6 NYCRR 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

XI. Environmental Easement

A. If a Record of Decision for the Site relies upon one or more institutional and/or engineering controls, Respondent (or the owner of the Site) shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2). Upon acceptance of the Environmental Easement by the State, Respondent shall comply with the requirements of 6 NYCRR 375-1.8(h)(2).

B. If the ROD provides for no action other than implementation of one or more institutional controls, Respondent shall cause an environmental easement to be recorded under the provisions of Subparagraph XII.A.

C. If Respondent does not cause such environmental easement to be recorded in accordance with 6 NYCRR 375-1.8(h)(2), Respondent will not be entitled to the benefits conferred by 6 NYCRR

375-1.9 and 375-2.9 and the Department may file an Environmental Notice on the site.

XII. Progress Reports

Respondent shall submit a written progress report of its actions under this Order to the parties identified in Subparagraph IV.A.1 of the Order by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination date as set forth in Paragraph XIV, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Respondent in connection with this Site, whether under this Order or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XIII. Termination of Order

A. This Order will terminate upon the earlier of the following events:

1. Respondent's election in accordance with Paragraph III.E.2 not to implement the remedial activities required pursuant to the ROD. In the event of termination in accordance with this Subparagraph, this Order shall terminate effective the 5th Day after the Department's receipt of the written notification, provided, however, that if there are one or more Work Plan(s) for which a final report has not been approved at the time of Respondent's notification of its election not to implement the remedial activities in accordance with the ROD, Respondent shall complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein. Thereafter, this Order shall terminate effective the 5th Day after the Department's approval of the final report for all previously approved Work Plans; or

2. The Department's written determination that Respondent has completed all phases of the

Remedial Program (including Site Management), in which event the termination shall be effective on the 5th Day after the date of the Department's letter stating that all phases of the remedial program have been completed.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VI and IX shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4), subjecting Respondent to penalties as provided under Paragraph IV so long as such obligations accrued on or prior to the Termination Date.

C. If the Order is terminated pursuant to Subparagraph XIV.A.1, neither this Order nor its termination shall affect any liability of Respondent for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA, nor shall it affect any defenses to such liability that may be asserted by Respondent. Respondent shall also ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which existed before any activities under this Order were commenced. Further, the Department's efforts in obtaining and overseeing compliance with this Order shall constitute reasonable efforts under law to obtain a voluntary commitment from Respondent for any further activities to be undertaken as part of a Remedial Program for the Site.

XIV. Dispute Resolution

A. In the event disputes arise under this Order, Respondent may, within fifteen (15) Days after Respondent knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Order.

C. Nothing contained in this Order shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy.

XV. Miscellaneous

A. Respondent agrees to comply with and be bound by the provisions of 6 NYCRR Subparts 375-1 and 375-2; the provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Order to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Order.

B. The Department may exempt Respondent from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Order in accordance with 6 NYCRR 375-1.12(b), (c), and (d).

C. 1. Respondent shall use best efforts to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Respondent's obligations under this Order, including all Department-approved Work Plans and the schedules contained therein. If, despite Respondent's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Respondent's inability to obtain such interest.

D. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.

E. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondent concerning the implementation of the activities required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving

Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s). Respondent consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Order.

2. i. Except as set forth herein, if Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph IV.A.1.

ii. If Respondent seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph IV.A.1.

iii. Requests for a change to a time frame set forth in this Order shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Respondent promptly.

F. 1. If there are multiple parties signing this Order, the term "Respondent" shall be read in the plural, the obligations of each such party under this Order are joint and several, and the insolvency of or failure by any Respondent to implement any obligations under this Order shall not affect the obligations of the remaining Respondent(s) under this Order.

2. If Respondent is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Order are joint and several and the insolvency or failure of any general partner to implement any obligations under this Order shall not affect the obligations of the remaining partner(s) under this Order.

3. Notwithstanding the foregoing Subparagraphs XVI.F.1 and 2, if multiple parties sign this Order as Respondents but not all of the signing parties elect to implement a Work Plan, all Respondents are jointly and severally liable for each and every obligation under this Order through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Respondents electing to perform additional work shall be jointly and severally liable under this Order for the obligations and activities under such

additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Order relative to the activities set forth in such Work Plan(s). Further, only those Respondents electing to implement such additional Work Plan(s) shall be eligible to receive the release and covenant not to sue referenced in Paragraph VII.

G. Respondent shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL 27-1421(6) and 6 NYCRR 375-1.5(b)(5).

H. Any time limitations set forth in Section 113(g)(1) of CERCLA, as amended, 42 U.S.C. § 9613(g)(1), Section 1012(h)(2) of the Oil Pollution Act, as amended, 33 U.S.C. § 2712(h)(2), the Federal Water Pollution Control Act, the New York Navigation Law, the New York Environmental Conservation Law, or any other federal or state statute or regulation with respect to potential claims for natural resource damages against Respondent or any other time limitations for the filing of potential natural resource damages claims against Respondent under any other applicable state or federal law are

tolled in their entirety from the effective date of this Order until termination of this Order.

I. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

J. Respondent's obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

K. Respondent and Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent shall in no way alter Respondent's responsibilities under this Order.

L. This Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

Exhibit "B"

Work Plan



Haley & Aldrich of New York
200 Town Centre Drive
Suite 2
Rochester, NY 14623
585.359.9000

16 June 2015
File No. 37990-011

NYSDEC, Division of Environmental Remediation - Region 8
6274 East Avon-Lima Road
Avon, New York 14414

Attention: Gregory B. MacLean, P.E.

Subject: Memorial Stadium and CPP High School Athletic Field Improvements Work Plan
Corning Painted Post Area School District
Corning, New York

Dear Mr. MacLean:

This letter presents plans for renovations at the Memorial Stadium (Stadium) and the Corning Painted Post Area School District's (District) CPP High School Athletic Fields in Corning, NY, revised in response to comments received from the New York State Department of Environmental Conservation (NYSDEC) in its letter to Mr. Mike Ginalski (District Superintendent) dated June 10, 2015. The Stadium artificial turf has been deemed unsuitable for continued athletic play and the District voters authorized spending on the turf replacement project during a proposition vote last fall. Please note that in order to expedite this process to insure that the most important component of replacement project can be completed in a timely manner, we have revised and limited the work plan to eliminate any excavation on the Memorial Stadium site, limiting the work to the needed replacement of the turf (see below). As detailed in the attached letter from the District Superintendent, the Stadium allows the District to provide core curriculum requirements to District Students ranging from physical education and intermural activities for District students to extracurricular activities associated not only with sports programs, but with music and other District programs. Without the turf replacement, the Stadium cannot be used, which would significantly interfere with the District's ability to provide core curriculum requirements. Unfortunately, the time to complete the replacement project is now, as the contractors qualified to undertake the work have very limited availability, so if the work is not done now, renovations the District is legally required to undertake in order to meet its requirements under its lease and to meet its curriculum requirements will be lost and District students will suffer the consequences. Further, we note the opportunity to complete work that everyone agrees would also provide a critical component to the remedy will also be lost for a significant time period.

The renovations to the recently constructed natural turf athletic fields on the District's CPP High School campus include installation of high netting on the north side of the football practice field and enhanced backstop fencing on the baseball field. The renovations at the Stadium consist of turf replacement only, which must begin no later than June 22, 2015 in order to complete the project commensurate with the

start of the 2015-2016 school year. Fill materials beneath the turf and its associated engineered material will not be disturbed.

The Stadium is owned by the City of Corning (City) and utilized and maintained by the District for student activities as mentioned above. The Stadium as well as the CPP High School campus are located within the NYSDEC "Study Area" NYSDEC No. 851046 currently being characterized by Corning Incorporated (Corning) under an agreement with the NYSDEC. The District has coordinated, and attended multiple meetings with the NYSDEC, New York State Department of Health (NYSDOH), City, School Board, and Corning since fall 2014 on the topic of replacing the Stadium turf because of the likelihood that fill materials (i.e., glass, brick, ash) exist beneath the Stadium that could require management, if encountered, during the turf replacement project.

For project planning purposes, the District has assumed presence of fill materials beneath the Stadium, and in that regard has maintained that the current turf (and future replacement turf) and underlying engineered materials prevent human contact with the fill materials beneath it. This position has been maintained by the District based on available data, current and foreseeable future site use by the District, and the characteristic integrity of the construction materials which prevent contact with the fill materials. The current turf system consists of a 1.5 inch "turf" which is comprised of a synthetic yarn through fabric with granular infill (the replacement turf will be of 2.25 inches), a 2 inch elastic layer (e-layer) pad made of rubber granulate with polyurethane binder, 6 inch stone base with drainage lines, and a geotextile fabric, and graded compacted engineered base.

Dermal contact, ingestion, and inhalation of dust associated with the fill materials are the only potential exposure pathways by which impacts from such material may result. Based on the information available, the turf and underlying engineered materials prevent contact with the fill material beneath it and the replacement of the turf in place now will continue to do so. Further, as the NYSDEC has noted, contact will be prevented in the future if controls are put in place to restrict excavation of that material and a plan is implemented to properly monitor and maintain the cover as part of site management; which the applicable regulations and guidance, including DER-10 note should be completed as part of the final steps of a remedial action (we note DER-10 Section 6.2 (a) a site specific SMP developed in accordance with this subdivision is required at all sites upon completion of the final remedial action unless the site remedy requires no restrictions'). It should also be noted that DER-10 indicates that artificial surface fields are acceptable cover for commercial site use which is the appropriate category for college academic and administrative facilities. Although the Memorial Stadium field is apparently not considered a commercial site, there is no material difference in the use of artificial surface fields between a high school and a college campus with regards to potential for exposure to subsurface fill. Other recreational areas of the Memorial Stadium (such as shotput) are not part of the work scope associated with the turf replacement.

As planning for the turf replacement project progressed, it was determined that only the synthetic turf material play surface (approx. 1.5 inches) requires replacement, and not the underlying drainage and engineered materials in addition to the turf. This circumstance will not cause any disturbance of the fill materials beneath the engineered material, and therefore will eliminate potential exposure pathways during the renovations.

As discussed, recently, Corning's environmental consultant, Weston Solutions, Inc. (Weston) conducted soil borings on the stadium property as required by the NYSDEC and provided the results to the City. The City provided the results to the District on June 1, 2015. The results indicate that the nature and analytical quality of the fill materials beneath the stadium are consistent with the fill materials encountered and managed on the CPP High School campus, as assumed.

High netting and fence post installations are planned at the CPP High School athletic fields to happen concurrently with the turf replacement project at the Stadium. It has been assumed that this work will encounter fill materials that will require management consistent with previous renovations at CPP High School.

Scope of Work

The turf replacement project as revised will not require any excavations. Only the turf play surface will be replaced and replacement of the turf only will not disturb any fill materials beneath the associated engineered material layers.

The following list includes planned work activities that will require management of excavated fill materials on the CPP High School campus, and the estimated quantities.

CPP High School Football Practice and Baseball Fields

- Four (4) sleeves will be installed to support high safety netting. Each sleeve excavation will be 30 inches in diameter and 96 inches deep. Approximately 12 tons of fill material will be removed and properly disposed.
- Two (2) sleeves will be installed for additional backstop fencing. Each sleeve excavation will be 24 inches in diameter and 72 inches deep. Approximately 3 tons of fill material will be removed and properly disposed.

Fill Material Management and Monitoring

All excavated materials will be containerized in DOT approved hazardous waste roll-off containers which will facilitate transport to a hazardous waste disposal facility in the event the material is hazardous. Although, it is not anticipated that all of the roll-off containers will contain hazardous fill material. A composite sample from each container will be collected for laboratory analysis, for waste profiling purposes. Samples will be analyzed for total 8 RCRA metals, PCB's and TCLP 8 RCRA metals in accordance with Chemung County Landfill analytical requirements. Roll-off containers will be covered and secured onsite pending analytical results. If at any point excavated material is not immediately containerized, it will be staged on plastic sheeting, covered, and access to the soil will be restricted to prevent exposure. Materials identified as hazardous would be disposed at Horizon Environmental in Quebec, Canada consistent with previous hazardous fill material from the CPP High School campus.

As it has in the past, the District will conduct continuous dust control using water as needed, and dust monitoring will be performed during all excavation activities. Dust monitoring stations will be placed

upwind and downwind of the stadium and athletic fields when excavations are in progress. Dust monitoring stations will be equipped with continuously running DustTrak monitors programed with an action level of 150 $\mu\text{g}/\text{m}^3$. There should be no visible dust during ground intrusive activities in addition to the action level of 150 $\mu\text{g}/\text{m}^3$. Exceedances of the action levels will be reported to the NYSDEC/NYSDOH as soon as possible. Appropriate actions will take place prior to resuming construction activities, if the action level or visible dust is noted. Haley & Aldrich field staff will also monitor for volatile organic vapors in the work zone using a handheld photoionization detector.

Following completion of the proposed work, a Construction Completion report certified by a NYSPE will be issued to the NYSDEC that will summarize activities completed in conformance with this work plan, analytical received, as well as final waste disposition.

Schedule

The above described work is scheduled to begin on June 22nd.

Please do not hesitate to contact the undersigned with any questions.

Sincerely yours,
HALEY & ALDRICH OF NEW YORK



Glenn M. White, CHMM
Senior Project Manager

c: Michael Ginalski, Superintendent



**CORNING-PAINTED POST
AREA SCHOOL DISTRICT**

Students are the center of all we do.

Michael K. Ginalski
Superintendent of Schools

June 16, 2015

Via E-Mail and First Class Mail

Gregory B. MacLean, P.E., Project Manager
New York State Department of Environmental Conservation
Division of Environmental Remediation, Region 8
6274 East Avon-Lima Road
Avon, New York 14414

*Re: Memorial Stadium and East High School Athletic Field Improvements Work Plan
And the letter of Gregory MacLean dated June 10, 2015*

Dear Mr. MacLean:

This will acknowledge receipt of your letter which was received later in the evening on June 10, 2015 by e-mail (the "June 10, 2015 Letter"). This letter will respond to each of the points made in your letter, as well as enclosing a revised work plan per the suggestions made in the June 10, 2015 Letter.

Please note that in addition to responding to the comments made in the June 10, 2015 Letter, that in order to keep this vital project on track and not lose critical facilities for next year, the enclosed revised work plan also removes any excavation previously proposed for the Memorial Stadium site associated with the replacement of the goal posts and replacement of netting. We have removed those components of the project in order to streamline the process and to eliminate any potential concern associated with excavation associated with those areas. That being said, we are reviewing the financial ramifications to the District of performing the goal post and netting replacement in a separate phase, and the District retains the right to place those components back into the work plan to include the turf replacement, not only based on the financial ramifications of undertaking such work separately (and the impact to the schedule of work), but also because no showing has been made that indicates any negative impact to the environment or public health from such work.

- A. The District Remains Willing to Work with New York Department of Environmental Conservation and New York Department of Health Representatives To Address Reasonable Concerns, but the District Is Obligated to Replace the Turf Now**

Preliminarily, I want to reiterate per my previous offers during telephone conversations that the Corning-Painted Post Area School District (the "District"), as well as each of its consultants ("Haley & Aldrich" or "H&A"), contractors and sub-contractors, are ready, willing and able to meet with representatives of the New York State Department of Environmental Conservation ("DEC") and/or the New York State Department of Health ("DOH") at any time that works for the parties in the next week either at the Memorial Stadium or at the District offices concerning the project referenced above, and specifically the turf replacement project on the Memorial Stadium athletic surface (the "Turf Project"). The District has every intention of addressing DEC's and/or DOH's reasonable concerns regarding the Turf Project, but as set forth in more detail in this letter, the District has no control over third parties and therefore cannot require same to file and sign agreements etc.; and in any event, the District remains legally obligated to replace the Memorial Stadium Turf in a timely manner under its lease and because of its obligations under New York Education Law.

Based upon the June 10, 2015 Letter and the enclosures to this letter, including the amended work plan, the District contends that it has addressed any legitimate concerns relating to the Turf Project. Further, as detailed herein, the District does not believe that drafting and implementation of institutional controls is or should be required under the circumstances as a pre-condition for the Turf Project moving forward now, particularly given that the contractors and sub-contractors who have been scheduled to do the work have limited availability and it is unknown when the work could be completed in the future.



Further, because the District cannot mandate third parties sign the documents referenced in the June 10, 2015 Letter including a consent order (as the District is a lessee it would not be able to sign a consent order without the property owner, the City of Corning also having to sign on), or an interim remedial plan (as we understand it, Corning Inc. would need to execute such a document). In any event, given the limited nature of what the District proposes for the Turf Project (including removing as referenced above any excavation associated with the replacement of the goal posts or replacing netting) it does not believe any such 'program document' is required for the work proposed, particularly given that turf replacement is required to be performed by the District without regard to any remedial goals it will further at the site.

B. Respectfully, the District Contends the Turf Replacement Work Proposed Does Not Violate Any Applicable Regulations and No Institutional Controls Need Be In Place As a Condition to such Work Being Implemented

Further, while do not consider ourselves experts of the DEC regulations, we have reviewed them in detail and with some care, and note mere replacement of the turf as proposed does not appear in any way to violate any of the regulations cited in the June 10, 2015 Letter. In pertinent part, the District reviewed 6 N.Y.C.R.R. Part 375-1.1(b)(2)(i) and cannot understand how the Turf Project (as limited by the enclosed amended work plan) would in any way, shape or form prevent or interfere with any proposed remedial program associated with the Study Area, including the Memorial Stadium site, let alone constitute significant interference with same, or how such work, if conducted as the District proposes would result in any adverse effect to the environment or human health. In sum, the District is required under its lease (as well as other requirements as set forth herein), to replace the turf because it is needed to maintain the field, and for the District to provide core curriculum programs to District students, and the manner in which it proposes to do so as detailed in the enclosed work plan would not violate applicable regulations.

When the independent reasons for the Turf Project to be undertaken now are combined with the fact that such replacement would be component of an overall remedy for the Memorial Stadium area, we don't understand how proceeding with this work would violate applicable regulations (i.e. interfere, let alone significantly interfere, with any work to be done as part of a remedy). Similarly, because the District proposes as part of the work plan to properly handle and dispose of any hazardous materials in accordance with regulations and requirements (in the same manner as it has handled and disposed of such material on District property), we don't understand how completing the work would harm the environment or public health, again particularly given the DEC's finding that such work will further the remedy at the Memorial Stadium site. Indeed, given the limitations as proposed in the District's amended plan, any potential for any issues whatsoever arising from hazardous waste have been all but eliminated.

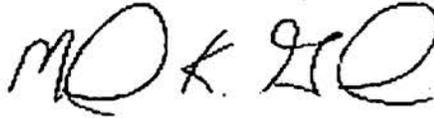
In addition, as discussed, the District would be more than willing to provide any information to the DEC which it might seek regarding Memorial Stadium and the work to be performed by the District to replace the turf. Recently, it was suggested that the District provide information located on the environmental easement checklist, and the District is willing to provide any information it has at its disposal to DEC under the circumstances. Further, the District is willing to undertake any other reasonable effort the DEC might identify within the District's control to the extent it allows the District to complete the Turf Project in a timely manner (to begin mobilization on June 22, 2015 and start construction work thereafter). To the extent that that the June 10, 2015 Letter references the implementation of institutional controls, as we have indicated, the District is ready, willing and able to provide any and all information that is available to it to aide in that effort. The District cannot however require third parties beyond its control, including Corning Inc. and the City of Corning to make commitments or sign documents. In response to DEC's apparent desire for institutional controls be in place before turf replacement can be undertaken, there are two (2) reasons that this will not work for the District under the circumstances and would not be appropriate in any event. First, as indicated, the District has a limited opportunity to complete turf replacement and there are limited firms available to do this work, and if it is not done now, it is not known when that work can be completed. If this work is not undertaken now, there is no question that the Turf Project will not be able to be completed in time for next year, meaning that the District students will suffer for at least a year before they will be able to enjoy sufficient athletic and other facilities.

Further, we note from review of DEC's regulations including its DER guidance, that the kinds of activities referenced, including management activities, are to be completed at the end of a remedial process. We submit the Turf Replacement is but one of several steps in any remedial process DEC has identified and could be completed prior to drafting or finalizing any institutional controls, including an environmental easement and site management plan.

Thus, we urge the DEC to review those regulations as well as the District's circumstances, and understand that the District needs to move forward now with turf replacement, again with whatever suggestions DEC might make.

As indicated, the District is under legal obligations to replace the turf, and as such has every intention of doing so beginning on Monday, June 22, 2015 with mobilization at the site. In the meantime, we reiterate the District's offer to make our consultants and contractors available to meet with DEC representatives and/ or those from DOH to move the project forward and address any reasonable concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "MKG 2015". The signature is stylized and somewhat cursive.

Michael K. Ginalski
Superintendent of Schools

cc: Benjamin Conlon, Esq. w/encl. via e-mail
Bryan Maggs, Esq. w/enc. via e-mail
Mark L. Ryckman w/enc. via e-mail
Glenn White wo/enc. via e-mail
Dr. Dale Wexell w/o enc. via e-mail

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Remediation, Region 8
6274 East Avon-Lima Road, Avon, NY 14414-9516
P: (585) 226-5353 | F: (585) 226-8139
www.dec.ny.gov

June 10, 2015

Mr. Michael K. Ginalski
Superintendent of Schools
Corning-Painted Post Area School District
165 Charles Street
Painted Post, NY 14870

RE: Memorial Stadium and East High School Athletic Field Improvements Work Plan
Study Area Project No. 851046
Corning (C), Steuben (Co)

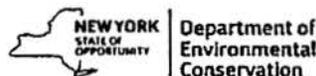
Dear Mr. Ginalski,

The New York State Department of Environmental Conservation (NYSDEC), in consultation with the New York State Department of Health (NYSDOH), has reviewed the *Memorial Stadium and East High School Athletic Field Improvements Work Plan* prepared by Haley and Aldrich of New York dated June 8, 2015 as well as your related letter dated June 9, 2015.

The work plan proposes an in-kind replacement of the existing turf surface over fill material containing ash, brick and glass. This fill has been characterized as part of the Study Area project as containing concentrations of certain metals and polycyclic aromatic hydrocarbons that exceed NYSDEC's Part 375 Soil Cleanup Objectives for Restricted Residential use and/or regulatory criteria for hazardous waste. However, the work plan does not include a proposal to place institutional controls on the property to prevent potential exposure if the turf surface cover is disturbed. The work plan also lacks reference to a site management plan which would provide guidance on how the turf surface cover will be properly monitored and maintained. These measures are needed to ensure the proposed actions remain protective of public health in the future.

As we have explained, NYSDEC will not approve a work plan to move forward with the turf replacement at the Corning Memorial Stadium property in the absence of the following:

- 1) A written commitment from the property owner (City of Corning) to impose an institutional control in the form of an environmental easement for the controlled property which requires compliance with a NYSDEC-approved Site Management Plan; and



- 2) Agreement as to the legal mechanism to be utilized for this work to be completed at a listed Potential Inactive Hazardous Waste Disposal Site (existing order on consent with Corning Incorporated or a new order on consent with the District and/or the City of Corning).

Please be aware that in the absence of the above, future remedial work, such as removal of contaminated soil, may be required beneath the turf field or at other portions of the Memorial Stadium property. Should the District move forward with the proposed turf replacement outside of an approved program, it may also be subject to penalties in violation of 6 NYCRR Part 375-1.11(b)(2)(i):

It is a violation to engage in any activity that will, or that is reasonably:
(i) anticipated to, prevent or interfere significantly with any proposed, ongoing, or completed remedial program at any site; or
(ii) foreseeable to, expose the public health or the environment to a significantly increased threat of harm or damage at any site.

In addition, soil areas outside of the turf field will need to have a suitable two foot cover consisting of soils which meet the soil cleanup objectives for cover material as set forth in 6 NYCRR Part 375-6.7 (d) for restricted residential use.

Once the necessary commitments and agreements are in place as outlined above, the following additional comments regarding the submitted Work Plan will need to be addressed prior to approval:

1. Page 2, paragraph 2 states that "dermal contact, ingestion, and inhalation of dust associated with the fill materials have been identified by the NYSDOH as the only potential exposure pathways by which impacts from such material may result." This statement should be removed from the work plan as it is incorrect and not appropriate given the context in which it is used in the work plan.
2. Page 2, paragraph 2: the second sentence should be revised to indicate "... the turf and underlying engineered materials provide sufficient cover to prevent contact with the fill material beneath it if controls are put in place to restrict excavation of that material and a plan is implemented to properly monitor and maintain the cover."
3. Page 2, paragraph 2 references that artificial surface fields are acceptable cover for commercial site use according to DER-10. However, the site is not zoned for commercial use; therefore the comparison is inappropriate. In addition, there are other active recreational areas (shot put) on the property that would not be considered a commercial-site use.

Mr. Michael K. Ginalski
June 10, 2015
Page 3

4. Page 3, Fill Material Management and Monitoring section: If at any point excavated material is not immediately containerized, it should be staged on plastic sheeting, covered, and access to the soil should be restricted to prevent exposure.
5. Page 3, Fill Material Management and Monitoring section: There should be no visible dust during ground intrusive activities, in addition to the action level of 150 ug/m³. In addition, exceedances of any action levels should be reported to NYSDEC/NYSDOH as soon as possible. Appropriate actions should be taken to resume construction activities, if this situation is to occur.
6. Following completion of the proposed work, a Construction Completion Report will be required in substantial conformance with Section 5.8 of DER-10.

If you have any questions or need further clarification, please don't hesitate to contact me by phone at (585) 226-5356 or email at greg.macleam@dec.ny.gov.

Sincerely,



Gregory B. MacLean, P.E.
Project Manager
Division of Environmental Remediation

ec: R. Schick, NYSDEC
M. Ryan, NYSDEC
B. Conlon, NYSDEC
M. Cruden, NYSDEC
F. Ricotta, NYSDEC
B. Putzig, NYSDEC
M. Doroski, NYSDOH
C. Thurnau, NYSED
R. Negri, City of Corning Mayor
M. Ryckman, City of Corning Manager
M. Ford, Corning Incorporated
G. White, Haley and Aldrich



Haley & Aldrich of New York
200 Town Centre Drive
Suite 2
Rochester, NY 14623
585.359.9000

8 June 2015
File No. 37990-011

NYSDEC, Division of Environmental Remediation - Region 8
6274 East Avon-Lima Road
Avon, New York 14414

Attention: Gregory B. MacLean, P.E.

Subject: Memorial Stadium and East High School Athletic Field Improvements Work Plan
Corning Painted Post Area School District
Corning, New York

Dear Mr. MacLean:

This letter presents plans for renovations at the Memorial Stadium (Stadium) and the Corning Painted Post Area School District's (District) East High School Athletic Fields in Corning, NY. The Stadium artificial turf has been deemed unsuitable for continued athletic play and the District voters authorized spending on the turf replacement project during a proposition vote last fall. The renovations to the recently constructed natural turf athletic fields on the District's East High School campus include installation of high netting on the north side of the football practice field and enhanced backstop fencing on the baseball field. The renovations at the Stadium are scheduled to begin on June 15, 2015 and need to begin no later than June 20, 2015 in order to complete the project commensurate with the start of the 2015-2016 school year. The renovations are needed to provide core curriculum requirements for this upcoming academic year, including physical education as well as for intermural and extracurricular activities.

The Stadium is owned by the City of Corning (City) and utilized and maintained by the District for student activities as mentioned above. The Stadium as well as the entire East High School campus are within the New York State Department of Environmental Conservation (NYSDEC) "Study Area" NYSDEC No. 851046 currently being characterized by Corning Incorporated (Corning) under an agreement with the NYSDEC. The District has coordinated, and attended multiple meetings with the NYSDEC, New York State Department of Health (NYSDOH), City, School Board, and Corning since fall 2014 on the topic of replacing the Stadium turf because of the likelihood that fill materials (i.e., glass, brick, ash) exist beneath the Stadium that could require management, if encountered, during the turf replacement project.

For project planning purposes, the District has always assumed presence of fill materials beneath the Stadium, and in that regard has maintained that the current turf (and future replacement turf) and underlying engineered materials prevent human contact with the fill materials beneath it. This position

has been maintained by the District based on available data, current and foreseeable future site use by the District, and the characteristic integrity of the construction materials which prevent contact with the fill materials. The current turf system consists of a 1.5 inch "turf" which is comprised of a synthetic yarn through fabric with granular infill (the replacement turf will be of 2.25 inches), a 2 inch elastic layer (e-layer) pad made of rubber granulate with polyurethane binder, 6 inch stone base with drainage lines, and a geotextile fabric, and graded compacted engineered base.

Dermal contact, ingestion, and inhalation of dust associated with the fill materials have been identified by the NYSDOH as the only potential exposure pathways by which impacts from such material may result. Based on the information available, the turf and underlying engineered materials provide sufficient or more than sufficient cover to prevent contact with the fill material and therefore prevent contact. It should also be noted that DER-10 indicates that artificial surface fields are acceptable cover for commercial site use which is the appropriate category for college academic and administrative facilities. There is no material difference in the use of artificial surface fields between a high school and a college campus.

As planning for the turf replacement project progressed, it was determined that only the synthetic turf material play surface (approx. 1.5 inches) requires replacement, and not the underlying drainage and engineered materials in addition to the turf. This circumstance will not cause any disturbance of the fill materials beneath the engineered material, and therefore will eliminate potential exposure pathways during the renovations.

As discussed, recently, Corning's environmental consultant, Weston Solutions, Inc. (Weston) conducted soil borings on the stadium property as required by the NYSDEC and provided the results to the City. The City provided the results to the District on June 1, 2015. The results indicate that the nature and analytical quality of the fill materials beneath the stadium are consistent with the fill materials encountered and managed on the East High School campus, as assumed.

Stadium renovations will also include installation of netting, fence posts, and new goal posts, and these installations will require many small-scale excavations through the engineered materials and proper management of the excavated fill materials. The management activities are described in more detail in the next section, and are consistent with the management of materials during the renovations to the East High School campus over the last three years.

High netting and fence post installations are planned at the East High School athletic fields to happen concurrently with the turf replacement project and other renovations mentioned above at the Stadium. These activities will encounter fill materials that will require management consistent with previous renovations at East High School.

This submittal provides the NYSDEC with details of the work activities and fills management activities planned at the Stadium and East High School.

Scope of Work

The following list includes planned work activities that will require management of excavated fill materials, and the estimated quantities.

Stadium

- Forty-four (44) sleeves will be installed (22 in each end zone) to support safety netting during lacrosse games. Each sleeve excavation will be 24 inch diameter and 72 inches deep. Approximately 60 tons of fill material and soil will be removed and properly disposed.
- The goal posts will be removed and replaced. Replacement will require two 48"x48"x72" excavations. Approximately 11 tons of fill material and native soil will be removed and properly disposed.
- Minor fence enhancements at the entry gate will be completed. Approximately 1 ton of fill material may require removal and proper disposal.

East High School Football Practice and Baseball Fields

- Four (4) sleeves will be installed to support high safety netting. Each sleeve excavation will be 30 inches in diameter and 96 inches deep. Approximately 12 tons of fill material will be removed and properly disposed.
- Two (2) sleeves will be installed for additional backstop fencing. Each sleeve excavation will be 24 inches in diameter and 72 inches deep. Approximately 3 tons of fill material will be removed and properly disposed.

Drawings showing the proposed construction locations and details are attached.

Fill Material Management and Monitoring

All excavated materials will be containerized in DOT approved hazardous waste roll-off containers which will facilitate transport to a hazardous waste disposal facility in the event the material is hazardous. Although, it is not anticipated that all of the roll-off containers will contain hazardous fill material. A composite sample from each container will be collected for laboratory analysis, for waste profiling purposes. Samples will be analyzed for total 8 RCRA metals, PCB's and TCLP 8 RCRA metals in accordance with Chemung County Landfill analytical requirements. Roll-off containers will be covered and secured onsite pending analytical results. Materials identified as hazardous would be disposed at Horizon Environmental in Quebec, Canada consistent with previous hazardous fill material from the East High School campus.

As it has in the past, the District will conduct continuous dust control using water as needed, and dust monitoring will be performed during all excavation activities. Dust monitoring stations will be placed upwind and downwind of the stadium and athletic fields when excavations are in progress. Dust monitoring stations will be equipped with continuously running DustTrak monitors programed with an action level of 150 µg/m³. Haley & Aldrich field staff will monitor volatile organic vapors in the work zone using a handheld photoionization detector.

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Haley& Aldrich will summarize activities completed, analytical received, as well as final waste disposition in a brief letter report to the NYSDEC.

Schedule

The above described work is scheduled to begin on June 15.

Please do not hesitate to contact the undersigned with any questions.

Sincerely yours,
HALEY & ALDRICH OF NEW YORK

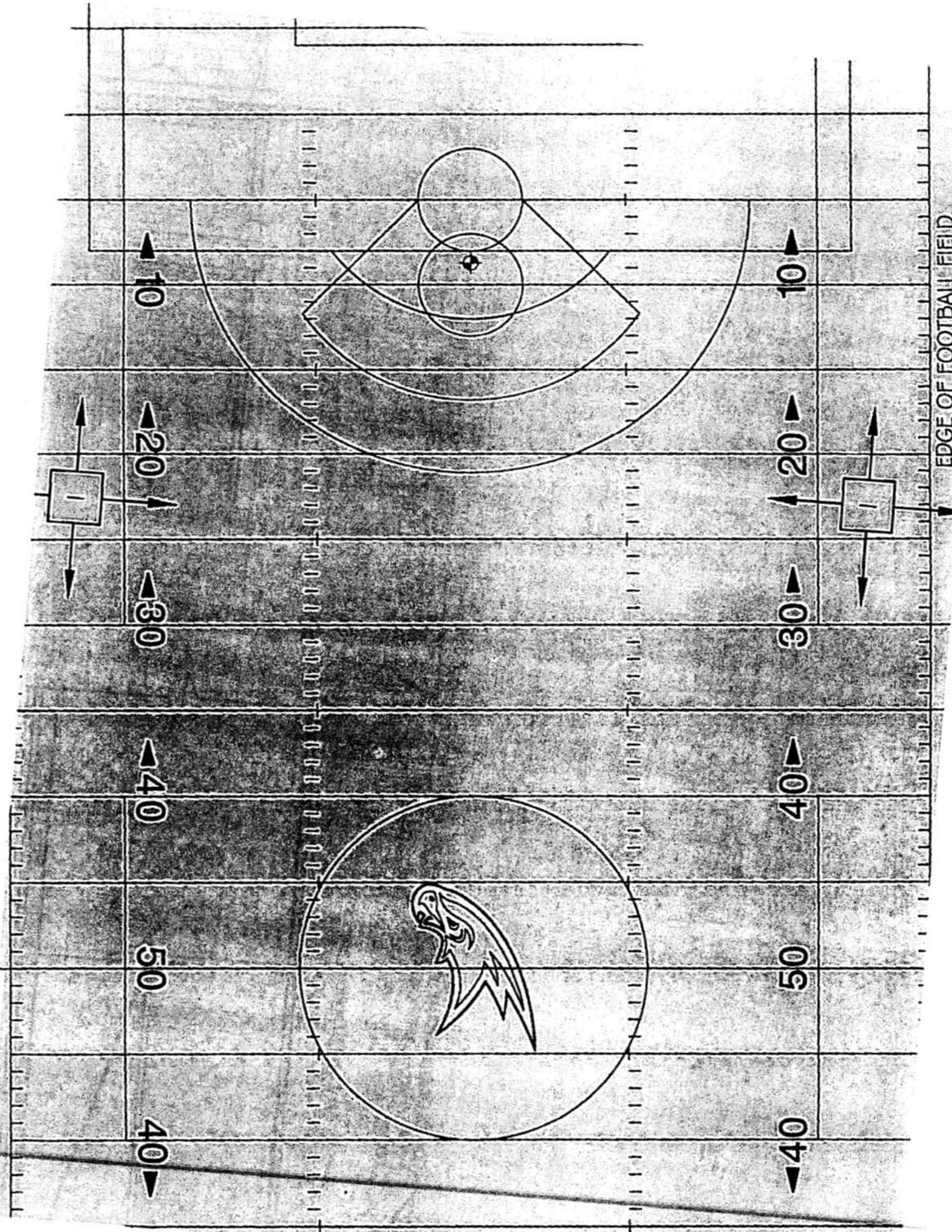


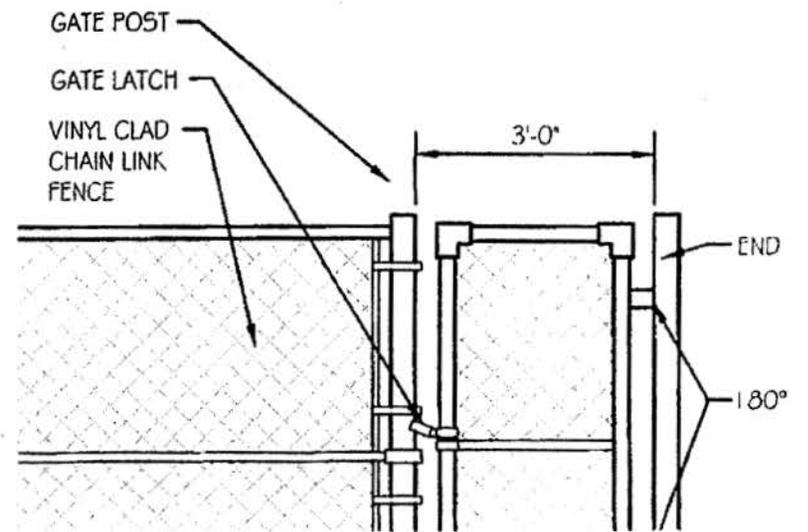
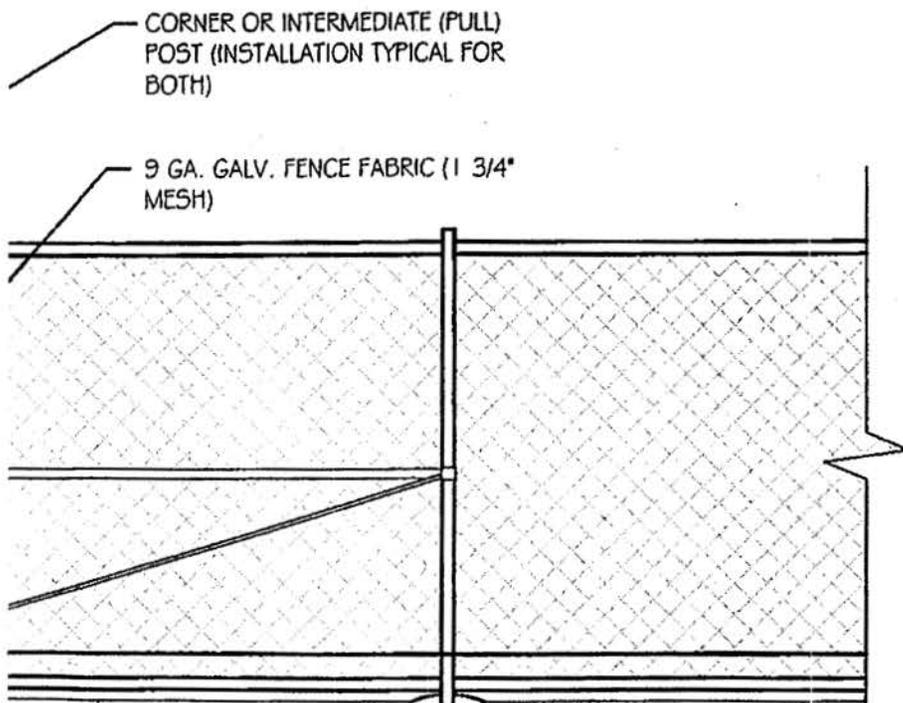
Glenn M. White, CHMM
Senior Project Manager

Attachments: Figure CA-L49.2 – Stadium Improvement Plan
Figure CA-L49.3 – Stadium Details

c: Michael Ginalski, Superintendent

EDGE OF FOOTBALL FIELD
EDGE OF LACROSSE FIELD





Michael K. Ginalski
Superintendent of Schools



Via E-mail and First Class Mail

June 9, 2015

NYSDEC Division of Environmental Remediation-Region 8
6274 East Avon-Lima Road
Avon, New York 14414

Attention: Gregory B. MacLean, P.E.

Re: Memorial Stadium and East High School Athletic Field Improvements Work
Plan Corning Painted Post School District
Corning, New York

Dear Mr. MacLean:

As a follow up to the submission by Haley & Aldrich on behalf of the Corning Painted Post School District ("the District") yesterday of the proposed work plan for the turf replacement project, I wanted to provide some additional detail as to the schedule for such project in light of the NYSDEC Correspondence dated June 5, 2015 from Mr. Conlon ("the DEC's June 5 Letter").

As background, the District has met with the multiple parties that have an interest in the Memorial Stadium regarding the plans for the scheduled turf replacement beginning during the fall of 2014. The District has determined based on available information and input from its consultant that impacted fill material exists in the subsurface which is similar in nature to fill materials observed during work conducted on the East High School campus over the past three years. The scope of the activity planned as part of the turf replacement project, including small-scale excavations, is proposed to be conducted in the same manner as the work completed by the District at East High School by its contractors and is appropriately protective as well as compliant with applicable regulation. The District is informed that the turf replacement as it will be undertaken by its contractors will not disturb the sublayers of engineered materials under the turf fabric. As discussed, the work plan for the activities was prepared and distributed to the NYSDEC, the City of Corning, and Corning Incorporated on June 8, 2015 (an extra copy is enclosed of that submission).

In its extensive previous discussions and correspondence on this issue, the District has maintained, based on consultation with Haley & Aldrich, available information, guidance and other criteria that the turf material (in place now and to be replaced as proposed) and its sublayers constitute a protective barrier from contact with impacted fill materials beneath it, and since contact has been the only manner identified by which impacts from the fill material at issue may take place, the District maintains that the turf replacement will provide sufficient or more than sufficient cover. The DEC's June 5 Letter indicates the Department consulted with the NYSDOH, and reached the conclusion that the turf replacement is a suitable, in-kind remedy and provides a sufficient cover under the circumstances without waste removal or additional cover being added. The DEC's June 5 Letter states DEC has also determined that appropriate regulatory measures consisting of an environmental

easement to presumably incorporate a Site Management Plan be prepared as part of a final remedy and has offered regulatory options as to how to implement same. Consistent with the DEC's June 5 Letter's plain language and the applicable regulations and guidance which provide that the filing of any site management plan as part an environmental easement be completed after the remedy is constructed, the District plans to move forward as scheduled with the stadium turf replacement project with mobilization to take place on June 15, 2015. The District will assist, as appropriate, each of the parties referenced with the development of either of the documents referenced in DEC's correspondence, if requested to do so.

Please call me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "MOK GIN". The letters are stylized and connected.

Michael K. Ginalski

Superintendent of Schools

cc. Benjamin Conlon, Esq. w/encl. via e-mail
Bryan Maggs, Esq. w/encl. via e-mail
Mark L. Ryckman w/encl. via e-mail
Glenn White wo/encl. via e-mail
Dr. Dale Wexell w/o encl. via e-mail