

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel
625 Broadway, 14th Floor, Albany, New York 12233-1500
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www.dec.ny.gov

December 4, 2017

**SENT VIA FIRST CLASS MAIL AND BY
ELECTRONIC MAIL**

Ms. Karen L. Douglas, Esq.
Corning Incorporated – Law Dept.
One Riverfront Plaza
Corning, NY 14831
douglaskl@corning.com

**Re: Order on Consent and Administrative Settlement
Index No.: CO 8-20171204-140
Site Name: Study Area
Site No.: 851046**

Dear Ms. Douglas:

Enclosed for your files is the fully executed Order on Consent and Administrative Settlement referencing the Study Area site located at Corning Boulevard, Corning, Steuben County and Corning Incorporated.

If you have any further questions or concerns relating to this matter, please contact attorney Benjamin Conlon at 518-402-9538.

Sincerely



Maria Mastroianni
Remediation Bureau
Office of General Counsel

Enclosure

cc: B. Conlon, Esq., NYSDEC
M. Cruden, NYSDEC
K. Cloyd, NYSDEC



Department of
Environmental
Conservation

ec/cc: Amy Reichhart, Esq.
Nixon Peabody, LLP
1300 Clinton Square
Rochester, NY 14604-1792
areichhart@nixonpeabody.com

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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. *CO 8-2017/204-140*

DEC Name: Study Area

DEC No.: 851046

Site Address: Corning Boulevard
Corning, NY 14830
Steuben County
Hereinafter referred to as "Study Area"

by:

Corning Incorporated
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 Study Area is not currently listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State.

3. Respondent has entered into this Order without (i) any 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) any acknowledgment that there has been a release or threatened release of hazardous waste at or from the Study Area; and/or (iii) any acknowledgment that a release or threatened release of hazardous waste at or from the Study Area constitutes a significant threat to the public health or environment.

4. Solely with regard to the matters set forth in this Order, Respondent hereby waives any right to a hearing as may be provided by law, consents to enter into 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.

5. This order supersedes and terminates the Study Area Characterization Order bearing Index No. B8 XXXXX which the Department deems to have been fulfilled by Respondent, except that Respondent shall be required, upon completion of Addendum #4, to submit to the Department a complete report detailing the results of the investigations of the Study Area done by Respondent. To the extent that activities pursuant to the Department-approved Addendum #4 to the Study Area Characterization Work Plan have not concluded as of the effective date of this Order, Addendum #4 shall then become an approved work plan pursuant to this Order and work thereunder shall continue without interruption.

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

I. Study Area

The Study Area subject to this Order has been assigned number 851046, consists of approximately 201 acres, and it has been separated into 5 Operable Units ("OUs"). **Exhibit A** contains the legal description, including metes and bounds, for the area defined as the Study Area in the Characterization Order as OU1, OU2, OU3 and OU4, which has been expanded to include the area characterized by the Department as the Expansion Area (OU5) (collectively, the "Study Area") along with an approximate map of the Study Area with the OUs delineated. The Study Area includes public roadways and sidewalks within the defined area, but excludes Interstate 86, and any berm or embankment along Interstate 86, and Centerway. The Parties to this Order acknowledge that, except for five residential properties in OU2, Respondent does not currently own or have control over the Study Area.

Absent consent by Respondent, the only real property that is or will be subject to this Order is the Study Area, and the Study Area shall not be further expanded by any action of the Department, including but not limited to any (a) requirement or request that Respondent undertake investigation or remediation beyond the boundaries of the Study Area under the terms of this Order, (b) amendment of this Order, or (c) Department enforcement action. Nor will the Study Area be joined with any other property in the event all or any part of the Study Area, or any other property, is proposed for listing or is listed as a New York State Inactive Hazardous Waste Disposal Site.

II. Initial Work Plan

A. OU1, OU2 and OU5

- a. On March 15, 2017, Respondent submitted for Department review and approval a Draft Study Area Pre-Design Investigation (PDI) Work Plan. On April 6, 2017, the Department conditionally accepted the PDI Work Plan. Within seven days after execution of this Order Respondent shall submit a revised Draft PDI Work Plan addressing the conditions in the Department's April 6, 2017 conditional approval and subsequent discussions with the Department. Within thirty days after the Department's review and approval of the revised Draft PDI Work Plan, Respondent shall commence implementing the PDI Work Plan.
- b. On March 23, 2017, Respondent submitted a Focused Feasibility Study / Alternatives Analysis ("FFS/AA") to the Department, which is attached hereto as **Exhibit B**, and which the Department has accepted.
- c. On March 9, 2017, the Department issued a Proposed Decision Document for OU1, OU2 and OU5 which is attached hereto as **Exhibit C** and established April 24, 2017, as the deadline for the close of the public comment period.
- d. On July 12, 2017, the Department issued a Final Decision Document which is attached hereto as **Exhibit D**. Commencing upon the effective date of this Order, Respondent will implement the remedial activities required by such Final Decision Document with the exception of any investigation and/or remedial activities required to be conducted in the interior of any structures within the Study Area, including but not limited to structures used for residential purposes. All investigation and remediation activities required by the Final Decision Document in the interior of structures within the Study Area shall be conducted by the Department and shall be deemed State Costs. However, Respondent shall be required to survey the applicable properties, pursuant to the approved Remedial Action Work Plan; and notify the Department of any properties where basements are identified as having a dirt floor, which the Department will evaluate for consistency with the Final Decision Document.
- e. Respondent shall submit a Remedial Design/Remedial Action Work Plan ("RAWP") to the Department within thirty (30) days after the effective date of this Order based upon the Department's Final Decision Document for OU1, OU2 and OU5. The RAWP shall generally describe the means and methods for determining the extent of remediation and for implementing the remediation within OU1, OU2 and OU5

consistent with the outline in **Exhibit E**. Following the evaluation of the validated results of the PDI Work, and after the Department's approval of the RAWP and in accordance with the schedule in the DEC-approved RAWP, Respondent shall prepare for each individual residential property that is to be remediated hereunder a set of property-specific figures setting forth the proposed extent of excavation and areas to be subject to restoration for the Department's review and approval, and for subsequent discussion with individual property owners.

- f. Respondent will implement the remedy pursuant to the Final Decision Document and Department-approved RAWP at the exterior of any residential property within OU1, OU2 and OU5 at which Residential Soil Cleanup Objectives (RSCO's) or alternative Department-approved area-specific cleanup criteria have been exceeded and the Department determines remediation is necessary, provided that each property owner has consented in writing to access. In the event any property owner fails to consent to access for purposes of investigation or remediation pursuant to the conditions and time frames set forth in the Final Decision Document, Respondent shall have no further obligation under this Order with respect to such property or properties.
- g. Prior to execution of this Order, Respondent submitted to the Department for review and approval a draft Interim Site Management Plan ("ISMP") for OU1, OU2 and OU5 (**Exhibit F**). The ISMP for OU1, OU2 and OU5 shall, upon Department approval, be in effect until completion of the Remedial Action Work for each operable unit and implementation of a final Site Management Plan for OU1, OU2 and OU5.
- h. Upon completion of the Remedial Action Work for each of the OU1, OU2 and OU5 properties to which Respondent was provided access prior to the fifth anniversary of the execution of this Order, Respondent shall submit to the Department (i) a property-specific Construction Completion Report ("CCR") certifying that remedial requirements were met at each property; (ii) as-built diagrams for each individual property to show the extent of excavation and extent of known remaining residuals; and (iii) documentation of appropriate institutional controls ("ICs") being in place.
- i. Upon receipt of acceptable documentation under subparagraph II.A.h. for any residential property, the Department will follow its procedures to issue a "no further action" letter to each owner of any remediated property, with a copy being provided to Respondent.

- j. Upon completion of the Remedial Action Work for all properties to which access has been granted prior to the fifth anniversary of the execution of the Order within each operable unit, Respondent will submit to the Department a Final Engineering Report (“FER”) and the Site Management Plan (“SMP”) for the operable unit. Upon receipt of acceptable documentation under this subsection, the Department shall follow its procedures to issue a Certificate of Completion (“COC”) in a form to be determined by the Department for the operable unit to Respondent. The COC shall provide for all the rights and benefits set forth in 6 NYCRR 375-1.9 and 6 NYCRR 375-2.9. It is acknowledged and understood that such COC will be subject to the Respondent’s on-going obligations set forth in the SMP provisions of the Final Decision Document, including Respondent’s obligation to remediate properties where access is subsequently provided by current or new owners or new conditions are discovered.

B. OU3 (Corning Christian Academy (“CCA”) Property, City of Corning Memorial Stadium (“Stadium”) Property, Corning-Painted Post School District (“CPPSD”) Property)

- a. On November 10, 2016, IRM Work Plans were proposed by Respondent pursuant to the June 2014 Study Area Characterization Order, and subsequently were published by the Department for public comment for each of the properties within OU3 with the intention that the IRMs, once implemented, would become the final remedy for each property, and collectively for OU3. On January 26, 2017, the IRM Work Plans were conditionally approved by the Department for each property, and Respondent commenced and shall continue to fully implement the IRM workplan for that property in coordination with each property owner as to access and timing.
- b. On March 23, 2017, Respondent submitted to the Department a draft FFS/AA for OU3 and a proposed ISMP (**Exhibit G**) for OU3. The ISMP for OU3 shall, upon Department approval, be in effect until completion of the IRM Work for each property and implementation of a final Site Management Plan.
- c. Based on the FFS/AA submission, on March 9, 2017, the Department issued the Proposed Decision Document for the final remedy for OU3, subject to public comment, which is attached hereto as **Exhibit H**. The public comment period on the Proposed Decision Document concluded on April 24, 2017. On July 11, 2017, the Department issued the Final Decision Document selecting a final remedy for OU3, which is attached hereto as **Exhibit I**.
- d. After completion of the Department-approved IRM work at any property, Respondent shall submit to the Department (i) a proposed SMP once it is in a

form that is consistent with the Final Decision Document and is acceptable to Respondent, the Department and the property owner for each property, (ii) a CCR, (iii) an FER for the work completed and (iv) documentation of appropriate institutional controls (“ICs”) being in place. Respondent will coordinate with the owner of each property to implement the final SMP.

- e. Upon receipt of acceptable documentation under subparagraph 11.B.d., the Department will follow its procedures to issue, a Certificate of Completion (“COC”) in a form to be determined by the Department for the operable unit to Respondent. The COC shall provide for all the rights and benefits set forth in 6 NYCRR 375-1.9 and 6 NYCRR 375-2.9. It is acknowledged and understood that such COC will be subject to the Respondent’s on-going obligations set forth in the SMP provisions of the Final Decision Document, including Respondent’s obligation to remediate properties where access is subsequently provided by current or new owners or new conditions are discovered.

C. OU4 Flood Control Area

- a. Respondent shall submit to the Department for approval a Characterization Work Plan for OU4 (flood control area) within sixty (60) days of the execution of this Order, which Work Plan shall propose commencement of investigatory work in accordance with the schedule in the Department-approved Work Plan.
- b. Upon completion of the Characterization Work Plan work for OU4, Respondent shall submit to the Department a report.
- c. Upon the Department’s review of the report, the Department shall determine whether any additional investigation or remediation is warranted within portions of OU4 that are between the adjacent OUI property lines and the buffer area of the flood control dike. In no event shall Respondent be required under this Order to conduct subsurface investigation or remedial activities within the footprint of the constructed earthen flood control berms or in the buffer area. **Exhibit J** depicts the approximate area of the constructed earthen flood control berms. The buffer exclusion area will be computed for any given location along the berm based on the depth of the proposed investigative work relative to the slope of the berm at the toe using a 2.5-foot (horizontal) to 1-foot (vertical) slope down and outward from the toe of the berm at ground surface.
- d. If additional investigations are required, or if remediation is proposed in a Proposed Decision Document for OU4, Respondent shall have 30 days from the date of the Department’s request for investigation or issuance of such Final Decision Document, to notify the Department in writing whether it will

implement the required or proposed investigative or remedial activities. To the extent Respondent agrees to perform such work, it will be pursuant to the terms of this Order. If Respondent elects not to implement required investigative or remedial activities, then Respondent's obligations with respect to performance of such further work, or payment of the Department costs with respect to such work at OU4 pursuant to this Order, shall terminate, and both the Department and Respondent shall be left with any and all actions and defenses that they may have had with respect to OU4 prior to Respondent's signing of this Order.

III. Payment of State Costs

Invoices for future State Costs as set forth in Appendix A for the Study Area shall be sent to the Respondent at the following address:

Corning Incorporated
Law Department
Attn: Karen L. Douglas, Division Counsel
One Riverfront Plaza
Corning, NY 14831
dougaskl@corning.com

In addition to the requirement to pay future State Costs as set forth in Appendix A, within forty-five (45) Days after the effective date of this Order, Respondent shall pay to the Department the sum set forth on **Exhibit K**, which shall represent reimbursement for past State Costs incurred prior to the effective date of this Consent Order for the Study Area. Respondent acknowledges that not all past State Costs have been itemized on the cost summary and that additional charges may be billed at a later date for State Costs incurred prior to the effective date of this Consent Order.

IV. 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:

Kelly Cloyd (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
kelly.cloyd@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
kma06@health.state.ny.us

Ben Conlon, Esq. (correspondence only)
New York State Department of Environmental Conservation
●ffice 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 Incorporated
Law Department
Attn: Karen L. Douglas, Division Counsel
One Riverfront Plaza (MP-HQ-E2-10)
Corning, NY 14831

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.

V. Miscellaneous

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

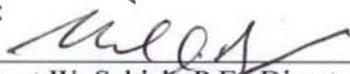
B. In the event of a conflict between the terms of this Order (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this Order shall control.

C. The effective date of this Order is the 10th day after it is signed by the Commissioner or the Commissioner's designee.

DATED: 12/4/17

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:


~~Robert W. Schiek, P.E., Director~~
Division of Environmental Remediation

Michael Ryan,
Asst. Director

EXHIBIT A

Metes and Bounds Legal Description of OU1, OU2, OU3 and OU4 and Approximate Map of Entire Study Area

[ATTACHED]

Description of OU5

OU5 consists of the residential tax parcels located immediately north and west of OU1. OU5 is bounded on its north-east side by the northernmost extent of the tax parcels located therein as extended by a straight line at the easternmost tip due south to meet the northern boundary of OU1. OU5 is bounded on the south side by the northern boundary of OU1 and Tax Parcel No. 318.05-02-002.000 (130 Centerway Coming, New York 14830). OU5 is bounded on its west side by the westernmost extent of the tax parcels located therein. OU5 includes the City rights-of-way contained within the boundaries.

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 Incorporated

By: [Signature]

Title: DIRECTOR - CORPORATE ENVIRONMENTAL CONTROLS AND CAPITAL PROJECT MGT.

Date: OCTOBER 18, 2017

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 18th day of October in the year 2017, before me, the undersigned, personally appeared John F. Navotny (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 18th day of October in the year 2017, before me, the undersigned, personally appeared John F. Navotny (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at HP-ME03 Museum Way Corning, NY 14831 (full mailing address) and that he/she/they is (are) the Director, Corp. Environmental Control + Project Capital (president or other officer or director or attorney in fact duly appointed) of the management Corning Incorporated (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]
Notary Public, State of New York

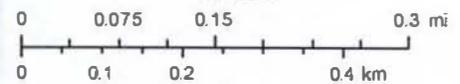
BRENDA J. RIBBLE
NOTARY PUBLIC, STATE OF NEW YORK
NO. 4999318
QUALIFIED IN STEUBEN COUNTY
OMMISSION EXPIRES JULY 20, 2018

Study Area Operable Units



Department of
Environmental
Conservation

1:9,028



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

EXHIBIT B

**FOCUSED FEASIBILITY STUDY / ALTERNATIVES ANALYSIS
FOR RESIDENTIAL AREAS (OU1, OU2 and OU5)**



**FOCUSED FEASIBILITY STUDY/ALTERNATIVES ANALYSIS
Residential Areas (OU1, OU2, and OU5)**

**Study Area
Corning, NY
NYSDEC Project ID 851046**

March 23, 2017

Prepared for:

**Corning Incorporated
Corning, New York**

Prepared by:

**WESTON SOLUTIONS, INC.
West Chester, Pennsylvania 19380**

W.O. No. 02005.056.002