

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. R8-20220411-18**

**DEC Site Name: Corning Refractories
Plant**

DEC Site No.: 851048
Site Address: 1 Front Way
Corning, NY 14830

Hereinafter referred to as
“Corning Refractories Plant”

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, subject to Paragraph 3, resolves any alleged liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

2. The Real Property (as defined below) 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 Real Property; and/or (iii) any acknowledgment that a release or threatened release of hazardous waste at or from the Real Property 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 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.

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

I. Real Property

The real property subject to this Order, which has been assigned number 851048, consists of the surveyed boundaries of the following tax parcels: 317.08-01-057.000 and 317.08-01-053.200 (the "Real Property"). The Real Property is depicted on the Map which is attached as Exhibit "A". The Parties to this Order acknowledge that Respondent does not currently own the Real Property. Absent written agreement by the Respondent, the Department will not expand the Real Property subject to this Order. Nor will the Department join the Real Property subject to this Order with any other property proposed for listing or listed in the Registry of Inactive Hazardous Waste Disposal Sites, while this Order is effective.

II. Initial Work

A. Respondent has only consented to implementation of the Department-approved The Corning Refractories Plant Characterization Work Plan (which Work Plan and approval letter are attached as Exhibit "B") to identify potential environmental conditions at the Real Property. The Corning Refractories Plant Characterization Work shall be commenced within thirty (30) days after the effective date of this Order and in accordance with the schedule set forth in the approved The Corning Refractories Plant Characterization Work Plan. For purposes of this Initial Work, and submission of the Corning Refractories Plant Characterization Report, the Department accepts Respondent's consultant, Integral Consulting, as an approved Environmental Professional.

B. Thirty (30) days after the effective date of this Order, Respondent shall submit to the Department a Records Search Report pursuant to attached Exhibit "C". Respondent is not required to disclose attorney-client communications or materials prepared pursuant to privilege.

C. Respondent shall implement the Department-approved Citizen Participation Plan which is attached hereto as Exhibit "D".

D. Respondent shall be required to use best efforts to obtain all access necessary to perform Respondent's obligations under this Order. If, despite

D. Respondent shall be required to use best efforts to obtain all access necessary to perform Respondent's obligations under this Order. If, despite Respondent's best efforts, any access cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. Respondent shall not be deemed in violation of this Order or applicable law based solely on its inability to obtain access to the Real Property despite best efforts, and the Department may, as it deems appropriate and within its authority, assist Respondent. In such event, the Department reserves all of its rights to take additional action outside the terms of the Order to obtain access to the Real Property.

E. This Order shall terminate upon the Department's acceptance of the Respondent's Corning Refractories Plant Characterization Report. Notwithstanding the foregoing, during or at the conclusion of the Initial Work Respondent may propose an Interim Remedial Measure Work Plan. If Respondent elects to conduct work under an Interim Remedial Measure Work Plan and it is ongoing when the Corning Refractories Plant Characterization Report is accepted as complete, this Order shall not terminate until completion of such interim remedial measure.

III. Payment of State Costs

Invoices shall be sent to Respondent at the following address:

Corning Incorporated
Attn: Karen L. Douglas
Sr. Managing Counsel II, Litigation, Environmental
One Riverfront Plaza (MP-HQ-E2-10)
Corning, NY 14831

In addition to the requirement to pay future state costs as set forth in Paragraph VIII within forty-five (45) Days after the effective date of this Consent Order, Respondent shall pay to the Department reimbursement for past State Costs incurred on or after December 1, 2013 (which is acknowledged to be prior to the effective date of this Consent Order) provided that the Department has provided an invoice substantiating its State Costs within fifteen (15) Days after 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:

(1 hard copy (unbound for work plans) & 1 electronic copy)
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233
Attn: Samantha Salotto
samantha.salotto@dec.ny.gov

Christine Vooris (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, New York 12237
christine.vooris@dec.ny.gov

Dudley D. Loew, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
6274 East Avon Lima Road
Avon, New York 14414
dudley.loew@dec.ny.gov

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

Corning Incorporated
Attn: Karen L. Douglas
Sr. Managing Counsel II, Litigation, Environmental
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.

V. 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. For

purposes of this Order, the term “Site” as used in Appendix A shall be deemed to mean “Real Property” as defined in Paragraph I above.

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.

D. The terms of this Order, including its attachments, 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.

E. Paragraph I, II, III, V, VI, X, XI, XII, XIV, XVI.E and XVI.F of Appendix A do not apply to this Order.

VI. Development, Performance and Reporting of Work Plans

A. Work Plan Requirements

All activities at the Real Property 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 the Real Property and shall be developed and implemented in accordance with 6 NYCRR § 375-1.6(a) and 375-6. 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. The Corning Refractories Plant Characterization ("SC") Work Plan: a Work Plan which provides for the identification of the presence of any hazardous waste disposal at the Real Property;
2. "IRM Work Plan" if the Respondent elects to propose an interim remedial measure;
3. "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
4. "Supplemental" if additional work plans other than those set forth in II.A. of this Order are proposed by Respondent 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 this Order. Upon receipt of such notification, Respondent shall, subject to dispute resolution pursuant to Paragraph XV in Appendix A, modify the Work Plan.
 - ii. The Department may request, subject to dispute resolution pursuant to Paragraph XV in Appendix A, that Respondent submit additional or supplemental the Corning Refractories Plant Characterization Work Plans within thirty (30) Days after the Department's written request.

3. If Respondent proposes an IRM Work Plan, and such IRM Work Plan requires an environmental easement and a Site Management Plan, the environmental easement and Site Management Plan shall be submitted in accordance with the schedule set forth in the IRM Work Plan. If an environmental easement is required under the IRM Work Plan, Respondent shall use best efforts to obtain an environmental easement on the Real Property. If, despite Respondent's best efforts, an environmental easement cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. Respondent shall not be deemed in violation of this Order or applicable law based solely on its inability to obtain an environmental easement on the Real Property despite best efforts, and the Department may, as it deems appropriate and within its authority, assist Respondent. In such event, the Department reserves all of its rights to take additional action outside the terms of the Order to obtain an environmental easement on the Real Property.
4. During all field activities conducted under a Department-approved Work Plan, Respondent shall have at the Real Property a representative who is qualified to supervise the activities undertaken in accordance with the provisions of 6 NYCRR 375-1.6(a)(3).

C. Submission of Final Reports and Periodic Reports

1. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final the Corning Refractories Plant Characterization Report.
2. If Respondent proposes an IRM, any final report or final engineering report that includes construction activities, shall include "as built" drawings showing any changes made as part of the IRM.
3. If Respondent proposes an IRM, and in the event that a construction completion report for the Real Property requires management of the Real Property, Respondent shall submit an initial periodic report by in accordance with the schedule in the Corning Refractories Plant 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.

D. Institutional/Engineering Control Certification

In the event that Respondent proposes any IRM for the Real Property that 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).

E. 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 the Department-approved schedule. 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. 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

in Appendix A 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 in Appendix A 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.

VII. Entry Upon the Real Property

- A. Respondent shall use best efforts, upon reasonable notice under the circumstances presented, to obtain permission from owners of property within the Real Property to consent to entry upon the Real Property 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 Real Property, for inspecting, sampling, copying records related to the subject matter of this Order, 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 near the Real Property, 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 once validated 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 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.

VIII. 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 VIII.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 in Appendix A or the Department may commence an enforcement action for non-compliance with ECL 27-1423 and ECL 71-4003.

IX. Public Notice

Public Notice shall be provided in accordance with the Department-approved Citizen Participation Plan and the Department-approved Corning Refractories Plant Characterization Work Plan.

DATED: May 4, 2022

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION


By: *Susan Edwards*

Susan Edwards, P.E., Acting 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 Incorporated

By: 
Title: Director, Global Environment and Sustainability
Date: April 29, 2022

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

On the 29th day of April in the year 2022, before me, the undersigned, personally appeared John F. Novotny (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 29th day of April in the year 2022, before me, the undersigned, personally appeared John F. Novotny (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at HP-ME-03-01, Corning, NY 14831 (full mailing address) and that he/she/they is (are) the Director, Global Environmental & Sustainability (president or other officer or director or attorney in fact duly appointed) Corning Incorporated, 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.

Vanessa R. Westlake 04/29/2022
Notary Public, State of New York

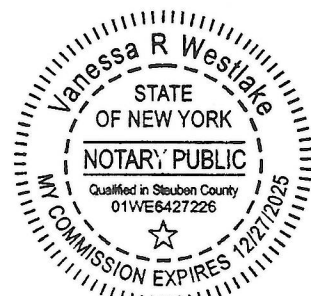
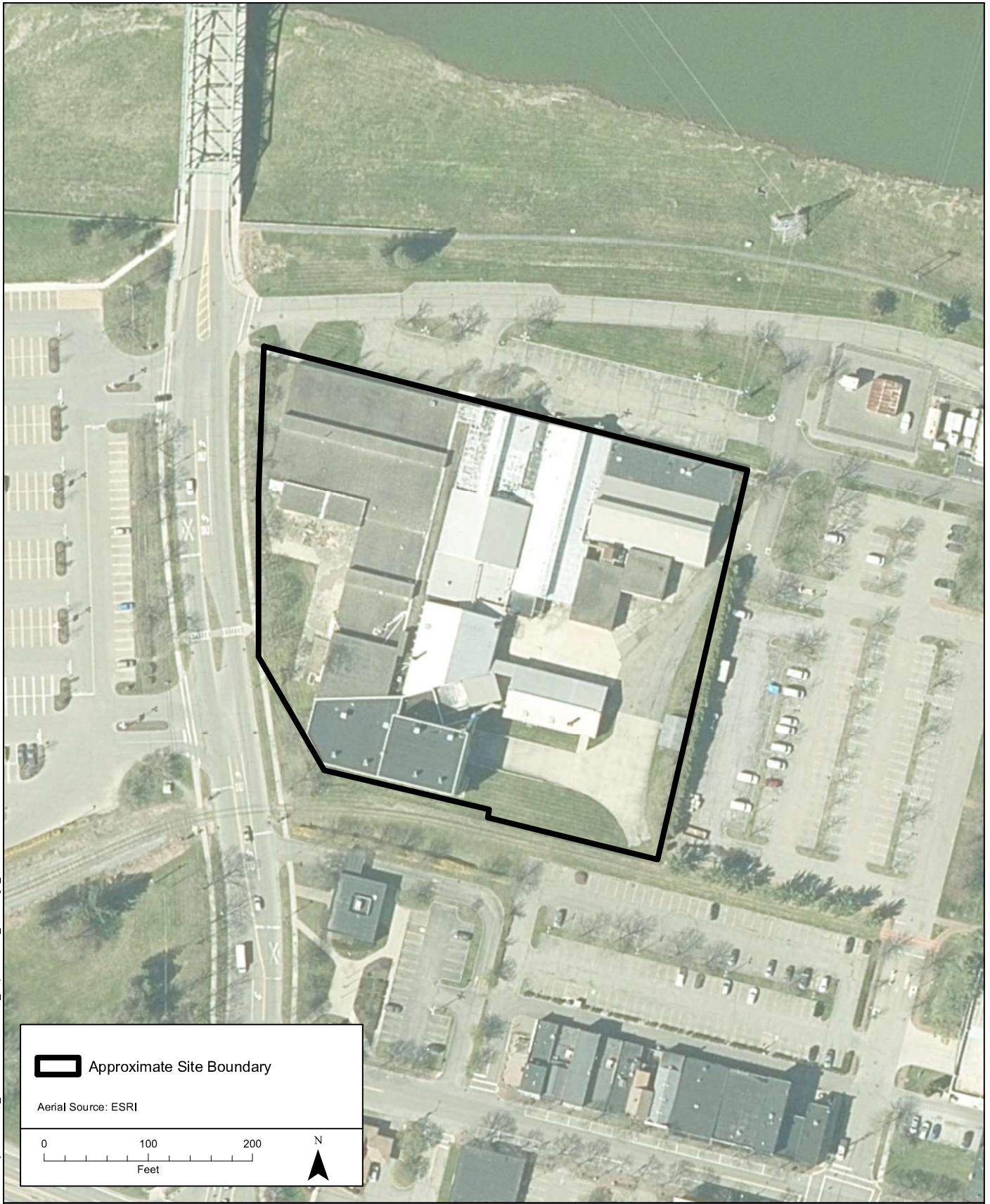


EXHIBIT "A"

N:\GIS\Projects\EF1017_Refractories\Production_Maps\Consent_Order\Fig1_Siteloc.mxd 4/14/2022 9:18:07 AM



31 West 34th Street
Suite 7196
New York, NY 10001
www.integral-corp.com

Figure 1.
Site Location Map
Refractories Plant P-Site Characterization
Corning, NY