FINAL ENGINEERING REPORT

ROBLIN STEEL/ENVIROTEK II SITE

Tonawanda, New York

Presented to:

New York State Department of Conservation

By:

Niagara River World Inc.
Tonawanda, New York

August 10, 2007
Revised October 23, 2007

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Final Engineering Report
Roblin Steel/Envirotek II Facility
Site No. 915056
Town of Tonawanda, Erie County

1. Site Description

The Roblin Steel parcel is a 62 acre, commercial/industrial property currently owned by Niagara River World, Inc. The Roblin Steel parcel is located at 4000 River Road in the town of Tonawanda, Erie County, New York (Figure 1). The Envirotek parcel was a chemical waste treatment and disposal facility that was operated during the 1980's by Envirotek, Ltd. This facility occupied a 2.5 acre parcel within the former Roblin Steel parcel and is referred to as the Envirotek II parcel. The location of the Envirotek II parcel is also shown on Figure 1. Collectively these two parcels are referred to, hereinafter, as the "Site".

The Site occupies an area between River Road to the east, the Niagara River to the west, Tonawanda Coke Corporation property and the Marathon Ashland Petroleum Company facility to the south, Lafarge Corporation ready mix concrete plant and vacant land (also owned by Niagara River World) to the north. A metes and bounds description and survey map for the Site is attached to this Final Engineering Report (FER) as Exhibit A.

2. Summary of Site Regulatory Actions

The following is a chronological summary of regulatory actions taken at the Roblin Steel and Envirotek II parcels:

- In 1984, The New York State Department of Conservation (NYSDEC) issued a Resource Conservation and Recovery Act (RCRA) permit to Envirotek, Ltd. (Envirotek), to operate a commercial hazardous waste treatment and disposal facility.
- In 1985, Envirotek was found to be in violation of their permit and entered into a Consent Order (CO) to reduce its inventory of hazardous wastes.
- In 1985, the NYSDEC listed the Roblin Steel site as a Class 2a site in the Registry of Inactive Hazardous Waste Disposal Sites in New York due to inadequate or insufficient information to classify the site.
- In November 1989, NYSDEC revoked Envirotek's permit to operate.
- In November 1989, the United States Environmental Protection Agency entered into a CO with Potentially Responsible Parties (PRPs)associated with Envirotek II to perform a detailed site investigation and removal action.

- In 1992, the NYSDEC reclassified the Roblin Steel site to Class 2 because of its association with Envirotek II.
- In September 1997, the NYSDEC entered into a CO with the PRPs associated with Envirotek II to implement a Remedial Investigation and Feasibility Study. This CO was amended in August 1998.
- In March 2005, the NYSDEC issued a Record of Decision (ROD) for Envirotek II.

3. Summary of Site Remedial Activities

No remedial activities have been completed on the Roblin Steel parcel. The following three Interim Remedial Measures (IRMs) were completed on the three operable units that constitute the Envirotek II parcel:

As detailed in the "Interim Remedial Measures Final Report for Operable Unit 1", June 2003, prepared by Blasland, Bouck & Lee, Inc., Waste Pit No.6 was excavated, decontaminated and the excavation backfilled. All wastes were transported off-site for disposal. Lead contaminated ink waste was removed from the Boiler House and transported off-site for treatment and disposal. Investigation derived waste was also disposed off-site. As relevant, this document also provides the cleanup levels applied to these remedial actions, pre-remedial data keyed to document completion of the remedial activity, the volume of contaminated materials remediated including the limits and depths of the excavations, as-built drawings, and all documentation of samples collected and analyzed. Post-remedial data was not required by the NYSDEC because the wastes were removed to the underlying and/or surrounding concrete floor and walls. Regarding Operable Unit 1, the March 2005 ROD, page i, concludes "no further action [is required] as the IRM waste removal action completed at this operable unit has eliminated the threat to human health and the environment by removing the source of contamination associated with the operable unit."

As detailed in the "Interim Remedial Measures Final Report for Operable Unit 2", January 2004, prepared by Blasland, Bouck & Lee, Inc., VOC contaminated soil/fill from this area of the Envirotek II parcel was excavated and treated off-site and disposed. Confirmation sampling to meet TAGM 4046 soil cleanup objectives was completed and excavated areas were backfilled and restored. As relevant, this document also provides pre- and post-remedial data keyed to document completion of the remedial activity, the volume of contaminated materials remediated including the limits and depths of the excavations, as-built drawings, and all documentation of samples collected and analyzed. Regarding Operable Unit 2, the March 2005 ROD, page ii, concludes "no further action [is required] as the IRM soil removal action completed at this operable unit has eliminated the threat to human health and the environment by removing the source of contamination associated with this area to acceptable concentrations."

As detailed in the "Interim Remedial Measures Final Report for Operable Unit 3", March 2005, prepared by Blasland, Bouck & Lee, Inc., select groundwater monitoring wells were sampled

to assess the affect of the OU-2 soil removal on groundwater contamination. Sampling demonstrated groundwater contamination has been reduced substantially and natural attenuation is occurring at the Site. As relevant, this document also provides pre- and post-remedial data keyed to document completion of the remedial activity, as-built drawings, and all documentation of samples collected and analyzed. Regarding Operable Unit 3, the March 2005 ROD, page ii, concludes that institutional and/or engineering controls must be implemented at this operable unit. These controls are summarized in Section 4, below.

As detailed in the "Remedial Investigation Report", June 2007, prepared by Natural Resource Group, Inc., select soil, fill and groundwater samples were collected from the OU-4 area and analyzed. The resulting data was compiled with historic data collected from previous Site investigations and assessed by comparison to the Part 375 Restricted Use Soil Cleanup Standard for Industrial Use to determine if any contaminants present in the OU-4 area constitute an unacceptable risk to potential receptors. The Remedial Investigation Report concluded that groundwater contaminants in the OU-4 area decreased in concentration as they move downgradient from the central portion of the Site, and they are not generally found in the downgradient wells near the river. The data infers attenuation of the groundwater contamination is taking place on Site and that there is no risk to either ecologic or human receptors providing groundwater is not appropriated at the Site and that soil vapor is managed above the Envirotek plume. The report also concluded that shallow soil and fill contamination present at the Site was not considered a potential receptor risk provided the Site was developed for industrial use and that subsurface soil and fill was not considered an unmanageable risk. The report concluded that No Action is the appropriate remedy for the OU-4 area of the Site.

4. Institutional and Engineering Controls

The remedy selected in the March 2005 Record of Decision for the Envirotek II parcel includes the development and implementation of a Site Management Plan. The Site Management Plan requires, in part, an Institutional Control/Engineering Control (IC/EC) certification, prepared and submitted by a professional engineer or environmental professional acceptable to the NYSDEC, annually or for a period to be approved by the NYSDEC, which will certify that the institutional controls and engineering controls put in place are unchanged from the previous certification and that nothing has occurred that will impair the ability of the control to protect public health or the environment, or constitute a violation or failure to comply with any operation and maintenance or Soil Management Plan. The institutional control for the Envirotek II parcel will be in the form of an Environmental Easement that will: (a) require compliance with the approved Site Management Plan, (b) limit the use and development of the property to commercial or industrial uses only; (c) restrict use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the Erie County Department of Health; and, (d) require the Site owner to complete and submit to the NYSDEC IC/EC certification. This Environmental Easement, and by inference the Site Management Plan, has been expanded to include the Site. There are no engineering controls on the Site as there are no active remedial systems. The Site Management Plan is attached to this FER

as Exhibit B, the IC/EC certification requirements are within the body of the Institutional and Engineering Control Plan attached to this FER as Exhibit C and the Environmental Easement, including documentation of Title Insurance and the filing of the easement, is attached to this FER as Exhibit D.

5. Certifications

I , the undersigned, certify the following:

The data submitted to the Department demonstrates that the "No Action" remedial option recommended in the October 5, 2007 Natural Resource Group Remedial Investigation Report is appropriate for the Site provided the Site is utilized for industrial development, and that such report is approved by the Department.

Any use restrictions, institutional controls, engineering controls and/or any operation and maintenance requirements applicable to the site are contained in an environmental easement created and recorded pursuant to ECL 71-3605 and that any affected local governments, as defined in ECL 71-3603, have been notified that such easement has been recorded.

A Site Management Plan has been submitted by the applicant for the continual and proper operation, maintenance, and monitoring of any engineering controls employed at the site including the proper maintenance of any remaining monitoring wells, and that such plan has been approved by the Department.

James R. Heckathorne, P.E.
Vice President
O'BRIEN & GERE ENGINEERS, INC.

FIGURE

Site Location Map

Former Roblin Steel Site
Erie County
New York
Roblin Steel Site
Envirotek II Site
0 250 500 1,000 1,500 2,000 Feet
This information is for environmental review purposes only
Tonawanda, NY
River Rd
River Rd
James Ave
Niagara River
Grand Island, NY
NRG
Thermal
Figure 1
Site Location Map
Tonawanda, NY
DATE: 10/12/06
REVISED: 08/02/07
SCALE: 1:12,000
DRAWN BY: JPBOENTJE
M:\Clients\ONR\ArcGIS\2007\
08_Tonawanda_Site_Location.mxd

EXHIBIT A

Site Metes and Bounds Description and Survey

Schedule A

Parcel 1

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Tonawanda, County of Erie and state of New York, being part of Lots 96 and 97 of the Niagara River Reservation, described as follows:

Beginning at the southwest corner of lands conveyed to Marathon Petroleum Company by deed filed in the Erie County Clerk's Office Liber 9184 of Deeds at Page 346, said point being a point on the south line of lands conveyed to Wickwire Spencer Steel Corporation by deed filed in the Erie County Clerk's Office in Liber 1536 of Deeds at Page 196;

Thence northwesterly along the easterly line of lands conveyed to Marathon Petroleum Company bearing N 28° 42' 23" W, a distance of 907.38 feet to a point;

Thence continuing northwesterly along the north line of Marathon Petroleum Company, an exterior angle of 134° 06' 15" on a bearing of N 74° 36' 08" W, a distance of 379.06 feet to a point;

Thence continuing northwesterly along the north line of Marathon Petroleum Company, an exterior angle of 184° 02' 45" on a bearing of N 70° 33' 23" W, a distance of 99.01 feet to a point on the United States Harbor line, said point being northwest corner of lands conveyed to Marathon Petroleum Company;

Thence northerly along the United States Harbor line bearing N 02° 04' 54" E, a distance of 951.36 feet to the south line of "Pump House Parcel" Parcel 3 of lands conveyed to Allied Chemical Corporation by deed filed in the Erie County Clerk's Office in Liber 7271 of Deeds at Page 65, said point being 271 feet south of the north line of Lot 97 as measured at right angles therefrom;

Thence easterly parallel with the north line of Lot 97, N 89° 57' 20" E, a distance of 57.54 feet to a point;

Thence northerly on a bearing of N 0° 02' 40" W a distance of 75.00 feet to a point, said point being 196.0 feet south of the north line of Lot 97 as measured at right angles therefrom;

Thence westerly parallel with the north line of Lot 97, S 89° 57" 20" W, a distance of 54.11 feet to a point on the United States Harbor Line;

Thence northerly along the United States Harbor Line, N 02° 04" 54", E, a distance of 196.2 feet to an angle point on the United States Harbor Line, said point being on the north line of Lot 97

Thence continuing northerly along the United Sates Harbor Line on a bearing N 10° 57" 33" E, a distance of 396.21 feet to the southwest corner of lands conveyed to L. Matthew Duggan, Jr., by deed filed in the Erie County Clerk's Office in Liber 9011 of Deeds at Page 277;

Thence easterly parallel with the south line of Lot 96 along the south line of lands conveyed to L. Matthew Duggan, Jr. on a bearing N 89° 57' 20" E, a distance of 524.36 feet to the northwest corner of lands conveyed to Clarence Materials Corporation by deed filed in the Erie County Clerk's Office in Liber 8892 of Deeds at Page 389;

Thence southerly at right angles to the south line of Lot 96, along the west line of Clarence Materials corporation, bearing S 00° 02" 40" E, a distance of 454.91 feet to the southwest corner of lands conveyed to New York's Central Railroad by deed filed in the Erie County Clerk's Office in Liber 1364 of Deeds at Page 11;

Thence easterly parallel to the north line of Lot 97 along the south line of New York Central Railroad on a bearing N 89° 57' 20" E, a distance of 718.39 feet to a point on the west line of the Erie Barge Canal, said line also known as New York State Blue Line;

Thence southerly the following eight (8) courses and distances along the west line of the Erie Barge Canal, also known as New York State Blue Line:

1) S 04° 55' 26" E, a distance of 475.24 feet to a point
2) S 04° 14' 06" E, a distance of 66.89 feet to a point
3) S 08° 03' 36" E, a distance of 66.94 feet to a point
4) S 09° 46' 56" E, a distance of 661.66 feet to a point
5) S 13° 37' 36" E, a distance of 67.53 feet to a point
6) S 15° 15' 36" E, a distance of 66.95 feet to a point
7) S 16° 43' 16" E, a distance of 66.64 feet to a point
8) S 17° 50' 47" E, a distance of 392.35 feet to a point on the South line of lands conveyed to Wickwire Spencer Steel Corporation;

Thence westerly along the South line of Wickwire Spencer Steel Corporation on a bearing of S 72° 11' 19" W a distance of 851.82 feet to the point or place of beginning, containing 62.480 acres, more or less.

ALSO INCLUDING

Parcel 2

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Tonawanda, County of Erie and state of New York, being part of Lots 96 and 97 of the Niagara River Reservation, described as follows:

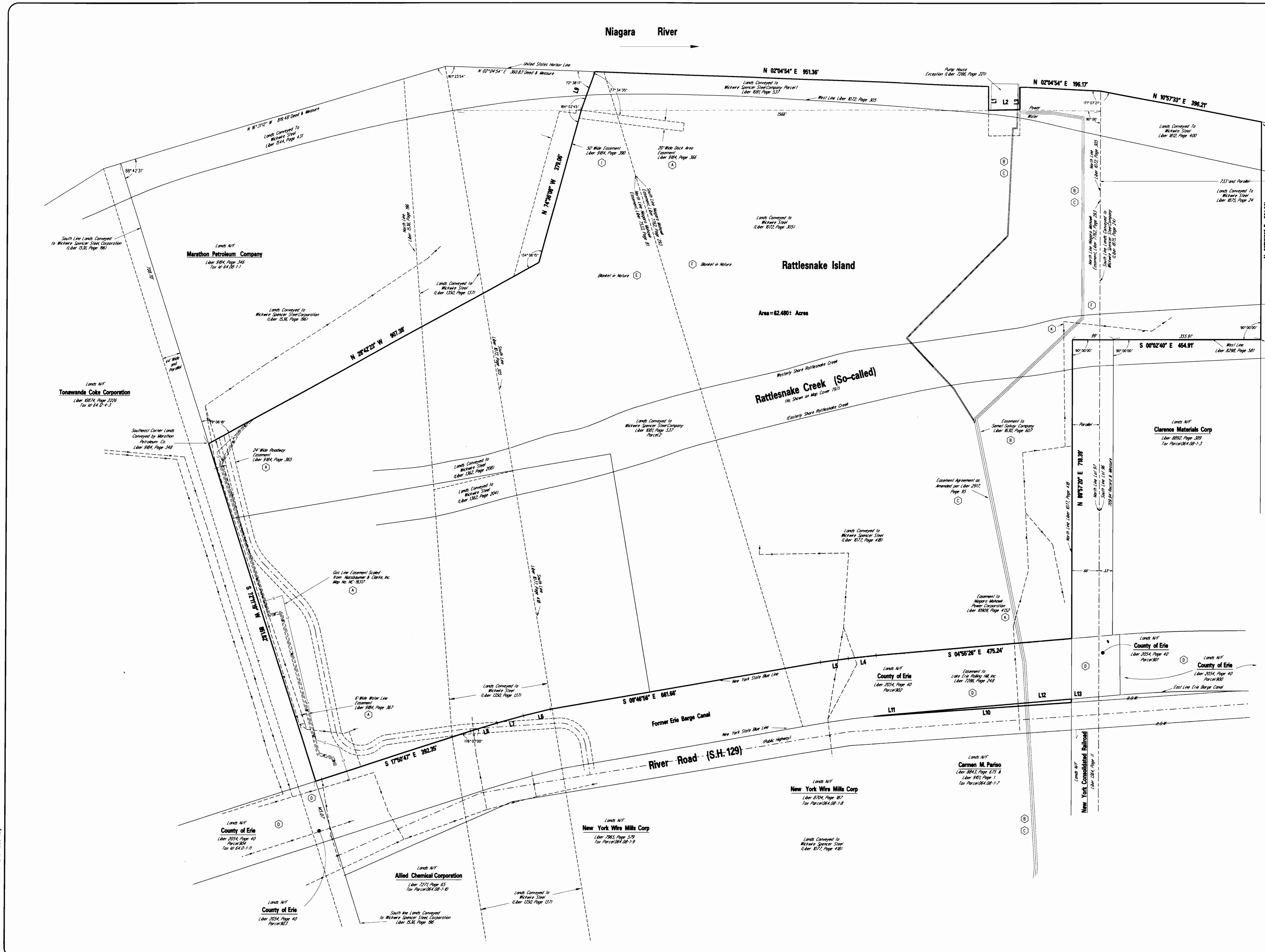
Beginning at the intersection of the west line of River Road (S.H. 129) and the south line of lands conveyed to New York Central Railroad by deed filed in the Erie County Clerk's Office in Liber 1364 of Deeds at Page 11;

Thence southerly along the west line of River Road S 04° 00' 10" E, a distance of 480.13 feet more or less to the east line of the Erie Barge Canal, also known as the New York State Blue Line;

Thence northerly along the east line of the Erie Barge Canal (also known as the New York State Blue Line) on a bearing N 06° 12' 26" W, a distance of 19.53 feet;

Thence continuing north along the east line of the Erie Barge Canal (also known as the New York State Blue Line) on a bearing N 04° 55' 53" W, a distance of 461.24 feet to a point on the south line of lands conveyed to the New York Central Railroad;

Thence easterly along the southerly line of New York Central Railroad on a bearing N 89° 57' 20" E, a distance of 8.25 feet to the point or place of beginning, containing 2,075 square feet or 0.048 acre, more or less.



Line Table

L1	N 89°57'15" E	57.54'
L2	N 00°32'12" W	75.03'
L3	S 89°27'15" W	54.11'
L4	S 06°14'06" E	66.89'
L5	S 08°03'36" E	66.94'
L6	S 13°37'36" E	67.53'
L7	S 15°15'36" E	66.95'
L8	S 16°43'16" E	66.64'
L9	N 70°33'23" W	99.01'
L10	S 04°00'10" E	480.13'
L11	N 06°12'26" W	19.53'
L12	N 04°55'53" W	461.24'
L13	N 89°57'20" E	8.25'

Historical Title & Easement

Sheet 2 of 3

Niagara Boundary And Mapping Services
2475 MILITARY ROAD
NIAGARA FALLS, NY 14304
(716) 297-9584
FAX (716) 297-9586
E-MAIL KLSNBMS@AOL.COM

Map ALTA /ACSM Land Title Survey of Lands Owned by

Niagara River World, Inc.

Deed Reference: Liber 10023, Page 13 & 10942, Page 2189
Tax Parcels: 64.08-1-1.1 & 64.08-1-1.2

LOT	SECTION	TOWNSHIP	RANGE
96 & 97 NYS Reservation		12	8
TOWN		Tonawanda	
COUNTY		Erie	
STATE		New York	
DATE		August 2007	
SCALE		1" = 100'	
JOB NO.		6412-07	
RESURVEYED			DATE

"ONLY COPIES FROM THE ORIGINAL OF THIS SURVEY MARKED WITH AN ORIGINAL OF THE LAND SURVEYOR'S EMBOSSED SEAL SHALL BE CONSIDERED TO BE VALID TRUE COPIES."

THIS SURVEY WAS PREPARED FOR THE PARTIES AND PURPOSE INDICATED HEREON. ANY EXTENSION OF THE USE BEYOND THE PARTIES OR PURPOSE INDICATED IS EXPRESSLY FORBIDDEN WITHOUT WRITTEN RELEASE OR PERMISSION OF THE UNDERSIGNED.

Kenneth L. Slougenhaupt Lic. No. 50349

FILE: Z:\ACTIVE_PROJECT\6412\6412007.dgn

EXHIBIT B

Site Management Plan

Site Management Plan
Roblin Steel/Envirotek II Facility
Site No. 915056
Town of Tonawanda, Erie County

1. Site Description

The Roblin Steel parcel is a 62 acre, commercial/industrial property currently owned by Niagara River World, Inc. The Roblin Steel parcel is located at 4000 River Road in the town of Tonawanda, Erie County, New York (see Figure 1 in the Final Engineering Report [FER]). The Envirotek parcel was a chemical waste treatment and disposal facility that was operated during the 1980's by Envirotek, Ltd. This facility occupied a 2.5 acre parcel within the former Roblin Steel parcel and is referred to as the Envirotek II parcel. The location of the Envirotek II parcel is also shown on Figure 1 in the FER. Collectively these two parcels are referred to, hereinafter, as the "Site".

The Site occupies an area between River Road to the east, the Niagara River to the west, Tonawanda Coke Corporation property and the Marathon Ashland Petroleum Company facility to the south, Lafarge Corporation ready mix concrete plant and vacant land (also owned by Niagara River World) to the north.

2. Statement of Purpose and Basis

In March 2005, the New York State Department of Environmental Conservation (NYSDEC) issued a Record of Decision (ROD) presenting the selected remedy for Operable Units 1, 2 and 3 of the Envirotek portion of the Roblin Steel site, a Class 2 inactive hazardous waste disposal site. The selected remedial program was chosen in accordance with the New York State Environmental Conservation Law and is not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan of March 8, 1990 (40CFR300), as amended. The selected remedy for Operable Unit 3 has been expanded to include the Site.

The selected remedy for Operable Unit 3 requires, in part, that a Site Management Plan be developed. The selected remedy will:

a. Address residual contaminated soils that may be excavated from the Site during future development. This requirement is addressed in the Soils Management Plan attached as Appendix I to this Site Management Plan.
b. Evaluate the potential for vapor intrusion for any buildings developed on the site, including provision for mitigation of any impacts identified. This requirement is addressed in the Soils Management Plan attached as Appendix I to this Site Management Plan.
c. Monitor site groundwater. This requirement is addressed in the Groundwater Management Plan attached as Appendix II to this Site Management Plan.
d. Identify any use restrictions on Site development or groundwater use. This requirement is

addressed in the Environmental Easement that is appended as Exhibit D to the Final Engineering Report submitted for the Site.

APPENDIX I

Soils Management Plan

Soils Management Plan
Roblin Steel parcel/Envirotek II Facility
Site No. 915056
Tonawanda, Erie County

1. Overview and objectives

The Roblin Steel parcel is a 62 acre, commercial/vacant industrial property currently owned by Niagara River World, Inc. The location of the property is shown on Figure 1 of the Final Engineering Report. The Envirotek II facility was a chemical waste treatment and disposal facility that was operated during the 1980's by Envirotek, Ltd. This facility occupied a 2.5 acre parcel within the former Roblin Steel Plant and is referred to as the Envirotek II parcel. Both the Roblin Steel portion of the site and the Envirotek II portion of the site have been characterized during several previous investigations. Collectively, these two parcels are hereinafter referred to as the "Site". The user should refer to the following reports for more detail, as needed:

Envirotek II Parcel

1. "Evaluation of Interim Remedial Alternatives, Still Discharge Area", March 1991, prepared by Blasland, Bouck & Lee, Inc.

2. "Results of Sampling Plan, Envirotek II Superfund Site", June 1991, prepared by Blasland, Bouck & Lee, Inc.

3. "Supplemental Investigation Results, Still Discharge Area", November 1992, prepared by Blasland, Bouck & Lee, Inc.

4. "Remedial Investigation Report", May 2002, prepared by Blasland, Bouck & Lee, Inc.

5. "Interim Remedial Measures Final Report for Operable Unit 1", June 2003, prepared by Blasland, Bouck & Lee, Inc.

6. "Interim Remedial Measures Final Report for Operable Unit 2", January 2004, prepared by Blasland, Bouck & Lee, Inc.

7. "Interim Remedial Measures Final Report for Operable Unit 3", March 2005, prepared by Blasland, Bouck & Lee, Inc.

8. "Focused Feasibility Study", March 2005, prepared by Blasland, Bouck & Lee, Inc.

Roblin Steel Parcel

1. "Phase II Investigation", June 1990, prepared by Recra Environmental, Inc.

2. "Site Evaluation Report", December 2006, prepared by the NYSDEC.

3. "Remedial Investigation Report", June 2007, prepared by the Natural Resource Group, Inc.

The objective of this Soils Management Plan is to set guidelines for the management of soil material during any future excavation activities at the Site. This Soils Management Plan addresses environmental concerns related to soil management and has been reviewed and approved by the New York State Department of Environmental Conservation (NYSDEC).

2. Nature and extent of contamination

Roblin Steel Parcel

Based upon data obtained from previous investigations and the Remedial Investigation completed at the Roblin Steel parcel in 2007, the compounds of concern (COC) at this parcel for soil consist primarily of semivolatile organic compounds (SVOCs) and metals. The primary SVOC contaminants of concern in soil include benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene and naphthalene. These contaminants belong to a class of SVOCs known as polycyclic aromatic hydrocarbons (PAHs). PAHs are a group of over 100 different chemicals that are common in the environment. Sources of PAHs include incomplete combustion of coal, oil, gasoline, garbage and wood from stoves, automobiles and incinerators. Phenolic compounds (phenol, 2-methylphenol and 4-methylphenol) were also detected in soil at elevated concentrations. The primary metals of concern in soil include arsenic, barium, cadmium, chromium, copper, lead, mercury and nickel.

Results of groundwater sampling during previous investigations and the June 2007 Remedial Investigation indicate that shallow overburden groundwater is contaminated with COC including benzene (4 wells), ethylbenzene (1 well), toluene (2 wells), xylenes (2 wells), naphthalene (1 well), phenols (2 wells), chromium (1 well) and lead (1 well) at levels above NYS ground standards. Wells adjacent to the Niagara River meet groundwater standards with the exception of lead in one well.

Envirotek II Parcel

Based upon data obtained from previous investigations and the Interim Remedial Measures (IRMs) completed at the Envirotek II parcel, a Record of Decision was issued by the NYSDEC in March 2005. The COC at the parcel for both soil and groundwater consist primarily of chlorinated VOCs, including tetrachloroethene, trichloroethene, cis- 1,2-dichloroethene, trans-1,2-dichloroethene and vinyl chloride. Contaminated soil was removed from the Envirotek II parcel during an IRM in October 2003. Slightly contaminated soil, however, may still be present at the parcel.

Results of groundwater sampling indicate that shallow overburden groundwater is impacted with COC. The contaminant concentrations generally decrease downgradient (west) of the former Envirotek treatment facility. Because the COC are volatile, contaminant vapors from the groundwater plume can potentially migrate upwards and create an exposure risk during excavation activities and in new buildings that may be constructed over the footprint of the contaminated groundwater plume. The potential for vapor intrusion (VI) and VI mitigation techniques for new building construction are discussed in Section 6.

3. Contemplated use

As part of the remedy selected in the March 2005 Record of Decision for the Envirotek II parcel, an environmental easement will be required that in part limits the use and development of this site to commercial or industrial uses only. This easement has been expanded to include the entire Site. A portion of the Site is currently being utilized for warehousing operations, while the remainder of the Site is vacant.

4. Purpose and description of surface cover system

Because there is no significant residual soil contamination, no specific surface cover system was required by the Record of Decision for the Envirotek II parcel. Most of the Envirotek II parcel is covered with gravel, so maintenance of this surface is not necessary for safe use of the Site and protection of the environment. Future development of the Site may include buildings, support structures, roadways and parking lots. Under such development, a vegetative cover should be provided beyond the building foot print and paved areas.

5. Management of soils/fill

The purpose of this section is to provide environmental guidelines for the management of subsurface soils/fill during any future intrusive work that generates excavated soil and/or fill at the Site.

The Soils Management Plan includes the following condition:

- Site soil/fill that is excavated and is intended to be removed from the Site must be managed, characterized, and properly disposed of in accordance with NYSDEC regulations and directives.

- Soil/fill excavated at the Site may be reused as backfill material on-site provided it contains no visual, olfactory or evidence of gross chemical contamination.

- Any off-site fill material brought to the Site for filling and grading purposes shall be from an acceptable borrow source free of industrial and/or other potential sources of chemical or petroleum contamination. Off-site borrow sources should be subject to collection of one

representative composite sample per source. The sample should be analyzed for TCL VOCs, SVOCs, pesticides, PCBs, and TAL metals plus cyanide. The soil will be acceptable for use as cover material provided that all parameters meet the NYSDEC recommended Commercial soil cleanup objectives included in Part 375-6.7 (d) for Imported Backfill.

- Prior to any excavation or construction activities, workers are to be notified of the Site conditions with clear instructions regarding how the work is to proceed. Invasive work performed at the property will be performed in accordance with all applicable local, state, and federal regulations to protect worker health and safety.

- The Site Owner shall complete and submit to the NYSDEC an annual report by January 15th of each year. Such annual report shall contain certification that the institutional controls put in place, pursuant to the environmental easement, are still in place, have not been altered and are still effective; and that the conditions at the Site are fully protective of public health and the environment. If excavation work has been performed during the year covered by said annual report, the owner shall include in the report a certification that all excavation work was performed in conformance with this Soils Management Plan.

In addition, an environmental easement has been placed on the Site in accordance with the requirements of Order on Consent Number B9-0407-92-05, requiring compliance with the approved Site Management Plan, restricting groundwater use, limiting the future use of the property to commercial or industrial uses, and requiring the property owner to complete and submit to the NYSDEC the Institutional Control/Engineering Control certification.

5.1. Excavated and stockpiled soil/fill disposal

Soil/fill that is excavated as part of Site development that can not be used as fill on Site will be further characterized prior to transportation off Site for disposal at a permitted facility. For excavated soil/fill with visual evidence of contamination (i.e., staining or elevated PID measurements), one composite sample and a duplicate sample will be collected for each 100 cubic yards of stockpiled soil/fill. For excavated soil/fill that does not exhibit visual evidence of contamination but must be sent for off-site disposal, one composite sample and a duplicate sample will be collected for 2000 cubic yards of stockpiled soil, and a minimum of 1 sample will be collected for volumes less than 2000 cubic yards.

The composite sample will be collected from five locations within each stockpile. A duplicate composite sample will also be collected. PID measurements will be recorded for each of the five individual locations. One grab sample will be collected from the individual location with the highest PID measurement. If none of the five individual sample locations exhibit PID readings, one location will be selected at random. The composite sample will be analyzed by a NYSDOH ELAP-certified laboratory for pH (EPA Method 9045C), Target Compound List (TCL) SVOCs, pesticides, and PCBs, and TAL metals, and cyanide. The grab sample will be analyzed for TCL VOCs.

Soil/fill samples will be composited by placing equal portions of soil/fill from each of the five composite sample locations into a pre-cleaned, stainless steel (or Pyrex glass) mixing bowl. The soil/fill will be thoroughly homogenized using a stainless steel scope or trowel and transferred to pre-cleaned jars provided by the laboratory. Sample jars will then be labeled and a chain-of-custody form will be prepared.

Additional characterization sampling for off-site disposal may be required by the disposal facility. To potentially reduce off-Site disposal requirements/costs, the owner or Site developer may also choose to characterize each stockpile individually. If the analytical results indicate that concentrations exceed the standards for RCRA characteristics, the material will be considered a hazardous waste and must be properly disposed off-Site at a permitted disposal facility within 90 days of excavation. If the analytical results indicate that the soil/fill is not a hazardous waste, the material will be properly disposed off-Site at a non-hazardous waste facility. Stockpiled soil/fill cannot be transported on or off Site until the analytical results are received.

5.2. Subgrade material

Subgrade material used to backfill excavations or placed to increase Site grades or elevation shall meet the following criteria.

- Excavated on-site soil/fill which appears to be visually impacted shall be sampled and analyzed. If analytical results indicate that the contaminants, if any, are present at concentrations below the appropriate restricted soil cleanup objectives of Part 375, the soil/fill can be used as backfill on Site.

- Any off-site fill material brought to the Site for filling and grading purposes shall be from an acceptable borrow source free of industrial and/or other potential sources of chemical or petroleum contamination.

- Off-site soils intended for use as Site backfill cannot otherwise be defined as a solid waste in accordance with 6 NYCRR Part 360-1.2(a).

- If the contractor designates a source as "virgin" soil, it shall be further documented in writing to be native soil material from areas not having supported any known prior industrial or commercial development or agricultural use.

- Virgin soils should be subject to collection of one representative composite sample per source. The sample should be analyzed for TCL VOCs, SVOCs, pesticides, PCBs, arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver, and cyanide. The soil will be acceptable for use as backfill provided that all parameters meet the appropriate restricted soil cleanup objectives of Part 375.

- Non-virgin soils will be tested via collection of one composite sample per 500 cubic yards of material from each source area. If more than 1,000 cubic yards of soil are borrowed from a given off-site non-virgin soil source area and both samples of the first 1,000 cubic yards meet the appropriate restricted soil cleanup objectives of Part 375, the sample collection frequency will be reduced to one composite for every 2,500 cubic yards of additional soils from the same source, up to 5,000 cubic yards. For borrow sources greater than 5,000 cubic yards, sampling frequency may be reduced to one sample per 5,000 cubic yards, provided all earlier samples met the appropriate restricted soil cleanup objectives of Part 375.

6. Vapor Intrusion

The purpose of this section is to provide environmental guidelines for dealing with the potential for vapor intrusion into new buildings constructed on the Site.

6.1. New Building Construction

Vapor intrusion (VI) mitigation techniques will be designed for new buildings constructed on the Site. These techniques will include the use of sub-slab vapor mitigation systems, designed into the foundation of the buildings, and installation of a vapor barrier between the building foundation and the lowest concrete slab flooring. The NYSDEC and NYSDOH will be provided with vapor intrusion mitigation design drawings for comment and approval prior to construction. After the building construction is complete, an indoor air sample will be collected to verify the effectiveness of the VI mitigation. Results of the sampling will be provided to the NYSDEC and NYSDOH.

APPENDIX II

Groundwater Management Plan

Groundwater Management Plan
Roblin Steel parcel/Envirotek II Facility
Site No. 915056
Tonawanda, Erie County

1.0 Existing Groundwater Monitoring Plan

In April 2006, Blasland, Bouck & Lee, Inc. (now ARCADIS BBL) submitted a *Groundwater Monitoring Plan for Operable Unit 3 Envirotek II Site* to the NYSDEC as a component of the monitored natural attenuation (MNA) remedy selected by the NYSDEC in its March 2005 ROD. Subsequently, a *Groundwater Monitoring Report* was submitted by ARCADIS BBL in March 2007 and a *Remedial Investigation Report* was submitted by Natural Resource Group, Inc. (NRG) in June 2007 to the NYSDEC. Both documents included data that evaluated the size and magnitude of the VOC plume, found in Site groundwater, that is associated with releases from Envirotek II at the Site.

2.0 Amended Groundwater Monitoring Plan

Based on the documents developed by NRG and ARCADIS BBL, the ARCADIS BBL *Groundwater Monitoring Plan for Operable Unit 3 Envirotek II Site* will become the Groundwater Monitoring Plan utilized at the Site with the following modifications:

- Section 1.3 – Application of this plan to OU-3 is amended to apply to the entire Site;
- Section 1.5 – Modify the first sentence to read "A qualified contractor will be retained to implement the Plan." Modify the third sentence to read "In addition, all investigation-derived groundwater generated during implementation of this Plan will be disposed on the ground surface of the site.";
- Section 2.1 – Modify to state: "As necessary, the selected contractor will consult the QA/QC procedures cited in the February 2007 NRG *Site Investigation Work Plan* approved by the NYSDEC for groundwater sampling guidance and protocols";
- Section 2.1.2 – Modify to indicate the Site monitoring well network will consist of ENV-1, ENV-3, ENV-4, ENV-7, ENV-8, ENV-9, GW-3, GW-7, NRG-3 and NRG-4 (see Figure 3 in the NRG *Site Investigation Report* attached to the FER). Prior to the next round of sampling, ENV-4 and GW-7 will be repaired or replaced;
- Section 2.2 – Modify this paragraph to state investigation derived wastes will be disposed of on ground surface; and
- Section 3 – This paragraph is modified to indicate the anticipated period of implementation will consist of annual sampling for a period of 3 years, commencing in 2008, with subsequent sampling events taking place every 5 years until the year 2025 (a total of 6 annual sampling events).

REPORT

Groundwater Monitoring Plan Operable Unit 3 Envirotek II Site

Technical Committee Participating Potentially Responsible Parties

Tonawanda, New York

April 2006

BBL®
BLASLAND, BOUCK & LEE, INC.
engineers, scientists, economists

Table of Contents

Acronyms and Units of Measurement

AOC	Administrative Order by Consent
BBL	Blasland, Bouck & Lee, Inc.
COC	constituent of concern
FFS	Focused Feasibility Study
IDW	investigation-derived waste
IRM	Interim Remedial Measures
MNA	monitored natural attenuation
NFA	no further action
NRW	Niagara River World, Inc.
NYSDEC	New York State Department of Environmental Conservation
NYSDOH	New York State Department of Health
OU	Operable Unit
PPE	personal protective equipment
PRP	Potentially Responsible Parties
RASP	Remedial Action Sampling Plan
RCRA	Resource Conservation and Recovery Act
RI	remedial investigation
ROD	Record of Decision
SDA	Still Discharge Area
STL	Severn Trent Laboratories, Inc.
TSDF	treatment, storage, and disposal facility
USEPA	United States Environmental Protection Agency
VOC	volatile organic compound

1. Introduction

1.1 General

Blasland, Bouck & Lee, Inc. (BBL), on behalf of the Envirotek II Site Potentially Responsible Parties (PRP) Group, has prepared the following *Groundwater Monitoring Plan – Operable Unit 3* (Plan) (groundwater) at the Envirotek II Superfund Site located at 4000 River Road in the town of Tonawanda, Erie County, New York (site) (Figures 1 and 2).

Precursors to preparation of this Plan include the following:

- the submittal of the March 2004 *IRM Work Plan for OU-3* (BBL, 2004b), the New York State Department of Environmental Conservation's (NYSDEC's) March 24, 2004 approval of that plan (NYSDEC, 2004), and BBL's implementation of the *IRM Work Plan for OU-3* in the second half of 2004;

- an August 26, 2004 meeting, including representatives from the NYSDEC and BBL at the NYSDEC's Buffalo office where the Plan was originally conceptualized and where monitored natural attenuation (MNA) was proposed as the primary component of the final remedy for Operable Unit 3 (OU-3);

- BBL's submittal of the January 2005 *Interim Remedial Measures Final Report for Operable Unit 3 – Envirotek II Site* (IRM Final Report for OU-3) (BBL, 2005a) that supported the selection of an MNA remedy;

- the NYSDEC's March 9, 2005 approval of the IRM Final Report for OU-3 (NYSDEC, 2005a);

- BBL's submittal of the March 2005 *Focused Feasibility Study Report – Envirotek II Site* (FFS) (BBL, 2005b), which identified MNA as the best remedial option for OU-3;

- the NYSDEC's March 24, 2005 approval of the FFS (NYSDEC, 2005b); and

- the NYSDEC's March 2005 Record of Decision (ROD) (NYSDEC, 2005c), which selects MNA as the proposed remedy to complete the final remedial action of OU-3.

BBL proposes, in accordance with the ROD, an annual MNA groundwater sampling program utilizing the existing monitoring well network (ENV-1, ENV-3R, ENV-4, ENV-7, ENV-8, ENV-9, and GW-3) (Figure 3) will be implemented. This Plan has considered the NYSDEC's Division of Environmental Remediation December 2002 *Draft DER-10 Technical Guidance for Site Investigation and Remediation* (NYSDEC, 2002).

1.2 Objectives

The ROD concluded that natural attenuation processes continue to degrade and shrink the volatile organic compound (VOC) plume in groundwater and is, therefore, the appropriate final remedy for OU-3. Therefore, the objective of this Plan is to provide guidance for obtaining additional data necessary to supplement existing groundwater monitoring data to evaluate whether MNA continues to be an effective remedy for OU-3.

1.3 Site Location

The site consists of a 2.5-acre parcel of land located within the 50-acre Roblin Steel complex (NYSDEC Site #915056) at 4000 River Road in the Town of Tonawanda, Erie County, New York. A map identifying the approximate location of the Roblin Steel complex is presented on Figure 1. Figure 2 presents a site plan of the Roblin Steel complex, showing that it is in an industrialized area along River Road, and identifies the 2.5-acre Envirotek II site. The Roblin Steel complex (Figure 2), which is presently owned by Niagara River World, Inc. (NRW), is bounded on the west by the Niagara River, on the east by River Road, on the south by Marathon Oil, and on the north by a facility that was investigated and remediated by the NYSDEC (i.e., the River Road Site [NYSDEC Site #915031]).

1.4 Site History

The history of the site is interrelated with the history of the Roblin Steel complex, as the site was formerly leased from Roblin Steel for industrial use. Between August 1981 and June 1989, Envirotek Ltd. (Envirotek) operated a solvent recovery operation at the site located within the Roblin Steel property (Figure 3).

A review of the Roblin Steel property history indicates that industrial steel production activities have been associated with the property since the early 1900s. Prior to development of the property, a section of the Erie Canal along River Road was filled with unspecified materials. In addition, Rattlesnake Creek, which formerly ran through the Roblin Steel property, was backfilled with slag and other materials to bridge Rattlesnake Island with the main property. Because areas of the Roblin Steel property were located in seasonal floodplains, those low areas were filled with slag and other industrial debris to raise the site grade. The property was developed in the early 1900s for the production of steel by the Wickwire Spencer Steel Company (Wickwire). In 1945, the property was sold to the Colorado Fuel and Iron Corporation (Colorado F&I), which subsequently merged with Wickwire and was operated by Colorado F&I until it went bankrupt in 1963. In the mid- to late 1960s, Roblin Steel purchased the property and used it primarily for storage. Roblin Steel also subleased portions of the property to a number of other companies, including, but not limited to, Ascension Chemical, Rupp Rental, Freightways Transportation, Envirotek, and Booth Oil.

In 1984, the NYSDEC issued a Resource Conservation and Recovery Act (RCRA) Part B Permit to Envirotek to operate the site as a hazardous waste treatment, storage, and disposal facility (TSDF). After violations of this permit in 1985, including improper waste characterization, RCRA drum handling violations, and lack of insurance and financial assurance, Envirotek entered into an Administrative Order by Consent (AOC) with the NYSDEC that required a reduction of Envirotek's hazardous waste inventory.

In 1988, Envirotek submitted a *Facility Closure Plan* (Envirotek, 1988) to the NYSDEC to remove and dispose all materials remaining onsite and to take measures to decontaminate the property. The NYSDEC's review determined that the *Facility Closure Plan* was unacceptable, citing inaccurate closure costs and the use of unqualified personnel to implement the closure as reasons for rejecting the *Facility Closure Plan.*

On February 2, 1989, Envirotek filed a petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court of the Western District of New York. The current owner of the property, NRW, evicted Envirotek in June 1989, at which time Envirotek abandoned the facility. The NYSDEC formally revoked Envirotek's RCRA Part B Permit to operate on November 16, 1989, on the basis of Envirotek's inability to develop an acceptable Facility Closure Plan.

Following abandonment of the site, the United States Environmental Protection Agency (USEPA) inspected the site and confirmed the presence of abandoned and unsecured drums and containers, pits containing hazardous substances, and contaminated process vessels and tanks. Preliminary analysis of some of the materials suggested that corrosive, air-reactive, and metal-contaminated wastes, as well as oils and waste solvents, were present onsite. Many of the materials located onsite were flammable, with some known to be either acutely or chronically toxic.

As a result, the USEPA notified former Envirotek customers of their potential liability at the site and requested the performance of a removal action to control site conditions. As a result, on May 14, 1990, the USEPA entered into an AOC with site respondents to perform a removal action at the site (Removal Action AOC). The site boundaries, as defined in the Removal Action AOC, included the property once leased by Envirotek and the southeast portion of the hangar-like building that contained the aforementioned pits, which was located adjacent to the property once leased by Envirotek.

Under the Removal Action AOC, several tasks were completed by the site PRP Group, including the following:

- Between June 1990 and November 1990, a removal action was implemented at the site that consisted of the characterization, removal, transportation, and offsite disposal of approximately 980 drums; 3,500 gallons of liquid wastes; 363 tons of solid wastes; and 146 lab pack containers, all of which had been stored in Buildings 13, 24, and 153.

- Between July 1990 and October 1990, a removal action was implemented at the site that consisted of the characterization, removal, transportation, and offsite disposal of waste materials that were formerly stored in Pits 1, 2, 3, 3A, 4, and 5; decontamination of the former pits; offsite transportation and disposal of decontamination water; and backfilling of the pits.

- Between June 1990 and January 1991, decontamination activities were performed at the site for a number of process vessels, tanks, buildings, and equipment.

- Between September 1990 and November 1990, BBL implemented a *Remedial Action Sampling Plan* (RASP) (BBL, 1990) at the site to identify areas onsite, other than the Still Discharge Area (SDA), at which spills or releases of chemical compounds may have occurred. The RASP also estimated the direction and rate of groundwater flow in the shallow overburden aquifer underlying the site, evaluated the nature of chemical compounds in groundwater that were associated with the former activities at the site, and provided a preliminary characterization of site conditions that would be the basis for evaluating whether further investigation and/or remediation of the site would be warranted. To accomplish these objectives, BBL performed a soil gas survey, installed and sampled site groundwater monitoring wells, analyzed groundwater samples for VOCs, and collected soil samples from the SDA.

  The results of this investigation indicated the following:

  - the soil gas survey indicated elevated levels of VOCs in the area of the SDA and in an area to the west of Building 153;
  - the analytical results for the groundwater sampling indicated the presence of VOC-impacted groundwater associated with the site; and
  - the analytical results for the soil sampling indicated that there were elevated levels of chlorinated and aromatic VOCs and that the soils containing the highest level of VOCs were located in the vicinity of the SDA.

- Following implementation of the RASP in 1990, BBL performed an evaluation of potential interim remedial alternatives for the SDA in March 1991.

- As a result of this evaluation, in May 1993, a removal action was implemented at the site that consisted of the removal of approximately 175 tons of impacted soil from the SDA. Soils with field headspace screening results greater than 1,000 units of total volatile organic vapors were removed from this area. A polyethylene sheet was placed over the remaining soils in the excavation, and clean fill was placed over the polyethylene sheet. A 12-inch-diameter production well located near the Power Building was also abandoned during this field activity.

Additionally, from 1999 to 2001, BBL conducted a remedial investigation (RI) at the site to assess the onsite surface and subsurface soil quality, offsite subsurface soil quality, site groundwater quality, and site geologic and hydrogeologic characteristics. The results of the RI for the site are presented in the *Remedial Investigation Report* (RI Report) (BBL, 2002). Based on the results of the RI, the Envirotek II Site PRP Group submitted recommendations to the NYSDEC, including:

- implementing an IRM to remove the Boiler House ink waste for offsite disposal; removing soils containing elevated levels of VOCs from Waste Pit No. 6, decontaminating the pit, and backfilling the pit with clean backfill; and disposal of all solid, liquid, and personal protection equipment (PPE) generated during this IRM to an approved offsite disposal facility(ies);

- reducing the potential for migration of VOC constituents of concern (COCs) from source-area soils to the shallow overburden groundwater; and

- reducing the concentration of VOC COCs in shallow overburden groundwater associated with elevated VOC concentrations in source-area soils.

The first recommendation, which is defined as Operable Unit 1 (OU-1) and is related to the removal of ink waste in the Boiler House and VOC-impacted soil in Waste Pit No. 6, was implemented in April 2003 and is summarized in the *Interim Remedial Measures Final Report for OU-1* (IRM Final Report for OU-1) (BBL, June 2003). The IRM Final Report for OU-1 was reviewed and approved by the NYSDEC in No Further Action (NFA) letters dated November 5 and 19, 2003. The second recommendation, which is defined as Operable Unit 2 (OU-2) and is related to reducing the potential for migration of VOC COCs from source-area soils to the shallow overburden groundwater, was implemented in October 2003 (including removal of 7,100 tons of impacted soil) and is summarized in the *Interim Remedial Measures Final Report for OU-2* (IRM Final Report for OU-2) (BBL, 2004a). Following review of the IRM Final Report for OU-2, the NYSDEC issued an NFA letter for OU-2 dated February 9, 2004. The third recommendation, which is defined as OU-3 and is related to reducing the concentration of VOC COCs in shallow overburden groundwater associated with elevated VOC concentrations in source-area soils was addressed, as described in the IRM Final Report for OU-3 (BBL, 2005a).

The NYSDEC approved the IRM Final Report for OU-3 on March 9, 2005 (NYSDEC, 2005a). BBL then submitted the March 2005 FFS on March 11, 2005 (BBL, 2005b), which was approved by the NYSDEC on March 24, 2005 (NYSDEC, 2005b). The NYSDEC then issued the ROD for the site on March 31, 2005 (NYSDEC, 2005c).

1.5 Roles and Responsibilities

BBL has been retained to implement this Plan. All analytical testing will be performed by a New York State Department of Health- (NYSDOH-) certified laboratory. In addition, all investigation-derived waste (IDW) generated during implementation of this Plan will be transported via a licensed transporter offsite for treatment/disposal by a permitted treatment/disposal facility.

2. OU-3 Groundwater Monitoring Plan Activities

This Plan includes the following tasks:

- Groundwater Monitoring (groundwater gauging, assessment of groundwater flow, and groundwater sampling); and
- Reporting.

These tasks are described in greater detail in the following sections.

2.1 Groundwater Monitoring

The field portion of this Plan will be performed as described in the two subtasks below. BBL will also consult the *Sampling and Analysis Plan and Quality Assurance/Quality Control Plan* contained with the March 1999 *Remedial Investigation/Feasibility Study Work Plan* (BBL, 1999) for additional groundwater sampling guidance and protocol, as necessary.

2.1.1 Groundwater Gauging and Assessment of Groundwater Flow

Previous site investigations have interpreted groundwater flow as radial on the eastern side of the site and more unidirectional (to the west) on the western side of the site with groundwater ultimately flowing to the Niagara River. During the period of implementation of this Plan, all site groundwater monitoring wells (Figure 3) will be gauged annually. Data will be tabulated, plotted, and evaluated to confirm whether groundwater gradients and gradient directions remain similar to those witnessed during past groundwater gauging events.

2.1.2 Groundwater Sampling – Monitoring Well Network

During each groundwater monitoring event, groundwater samples will be collected from the monitoring wells that define the OU-3 monitoring well network (ENV-1, ENV-3R, ENV-4, ENV-7, ENV-8, ENV-9, and GW-3) (Figure 3). As discussed with the NYSDEC, BBL originally planned to include groundwater monitoring well GW-7 in to the monitoring well network. In October 2005, during the most recent groundwater monitoring event, BBL observed significant damage to monitoring well GW-7, which will prevent it from being sampled in the future. This well had very low concentrations of VOCs (low microgram per liter range), as reported for previous sampling events, and, therefore, adds little value with regard to establishing longer term sitewide groundwater concentration trends. Therefore, monitoring well GW-7 is excluded from the monitoring well network.

Groundwater samples will be collected using the low-flow purging and sampling technique with data recorded on groundwater sampling logs, as presented in Appendix A. Prior to sampling, each monitoring well will be purged using a peristaltic pump and dedicated tubing until parameters of pH, conductance, dissolved oxygen, temperature, and oxidation-reduction potential have stabilized. Stabilization of these parameters will provide an indication that water drawn from the well is representative of the groundwater in the surrounding formation. After the monitored parameters have stabilized, samples will be collected with a disposable bailer. During each

sampling event, the sampling team will collect several quality control samples, including a trip blank, a field blank, a matrix spike and matrix spike duplicate, and a field duplicate.

Samples will be delivered under chain of custody to the NYSDOH-certified laboratory for analysis of chlorinated VOCs by USEPA Method 8260.

2.2 Investigation-Derived Waste

IDW generated during the implementation of the groundwater sampling activities will be containerized in labeled Department of Transportation-approved 55-gallon drums and staged onsite pending waste profiling and pre-disposal acceptance by a permitted treatment/disposal facility. At that time, the drummed wastes will be transported by a licensed hauler and treated/disposed at the permitted TSDF.

2.3 Reporting

Upon completion of the field work for each annual sampling event, BBL will validate the laboratory data and prepare an Annual Groundwater Monitoring Report. The Annual Groundwater Monitoring Report will include:

- a description of field activities;
- tabulated groundwater gauging and laboratory analytical data;
- a groundwater potentiometric surface map;
- a map that will display the spatial distribution of VOCs in site groundwater;
- an evaluation of MNA field parameters (pH, conductance, dissolved oxygen, temperature, and oxidation-reduction potential);
- analysis of the groundwater flow and quality data and comparison of these data with historical groundwater monitoring results; and
- conclusions based on VOC and MNA field parameter data regarding the continued effectiveness of MNA in addressing the dissolved VOC groundwater plume at OU-3. Each annual assessment will also include an evaluation of whether the OU-3 remedy has been sufficiently effective to allow a reduction or termination of future groundwater monitoring described in this Plan.

3. Schedule

The Plan will be implemented over a period of up to 3 years and will include annual assessments of groundwater flow and groundwater quality as described in Section 2.3. Each annual assessment will include a determination of whether MNA has effectively reduced the size of the chlorinated VOC plume and the concentration of the chlorinated VOCs in groundwater. If it is concluded during any annual assessment that MNA has and will continue to improve groundwater quality, BBL may petition the NYSDEC to either further reduce the size of the groundwater monitoring well network described in this Plan or terminate future groundwater monitoring altogether.

The first groundwater sampling event was performed in the fourth quarter of 2005. The 2005 Annual Groundwater Monitoring Report will be submitted to the NYSDEC within 60 days of approval of this Plan. Subsequent Annual Groundwater Monitoring Reports will be submitted to the NYSDEC approximately 60 days after field activities have been completed.

4. References

Blasland, Bouck & Lee, Inc. 1990. *Remedial Action Sampling Plan.* Prepared for the Envirotek II Superfund Site in the Town of Tonawanda, Erie County, New York.

Blasland, Bouck & Lee, Inc. 1999. *Remedial Investigation/Feasibility Study Work Plan.* Prepared for the Envirotek II Superfund Site in the Town of Tonawanda, Erie County, New York. March 1999.

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New York State Department of Environmental Conservation. 2005b. *Department Approval of the Focused Feasibility Study Report, Envirotek II – Roblin Steel Property, DEC Hazardous Waste Site No. 915056, Tonawanda (T), Erie Co.* March 24.

New York State Department of Environmental Conservation. 2005c. *Record of Decision, Envirotek II Portion of the Roblin Steel Site, Operable Unit Nos. 1, 2 and 3, Tonawanda, Erie County, New York, Site Number 9-15-056.* March 2005.

Figures

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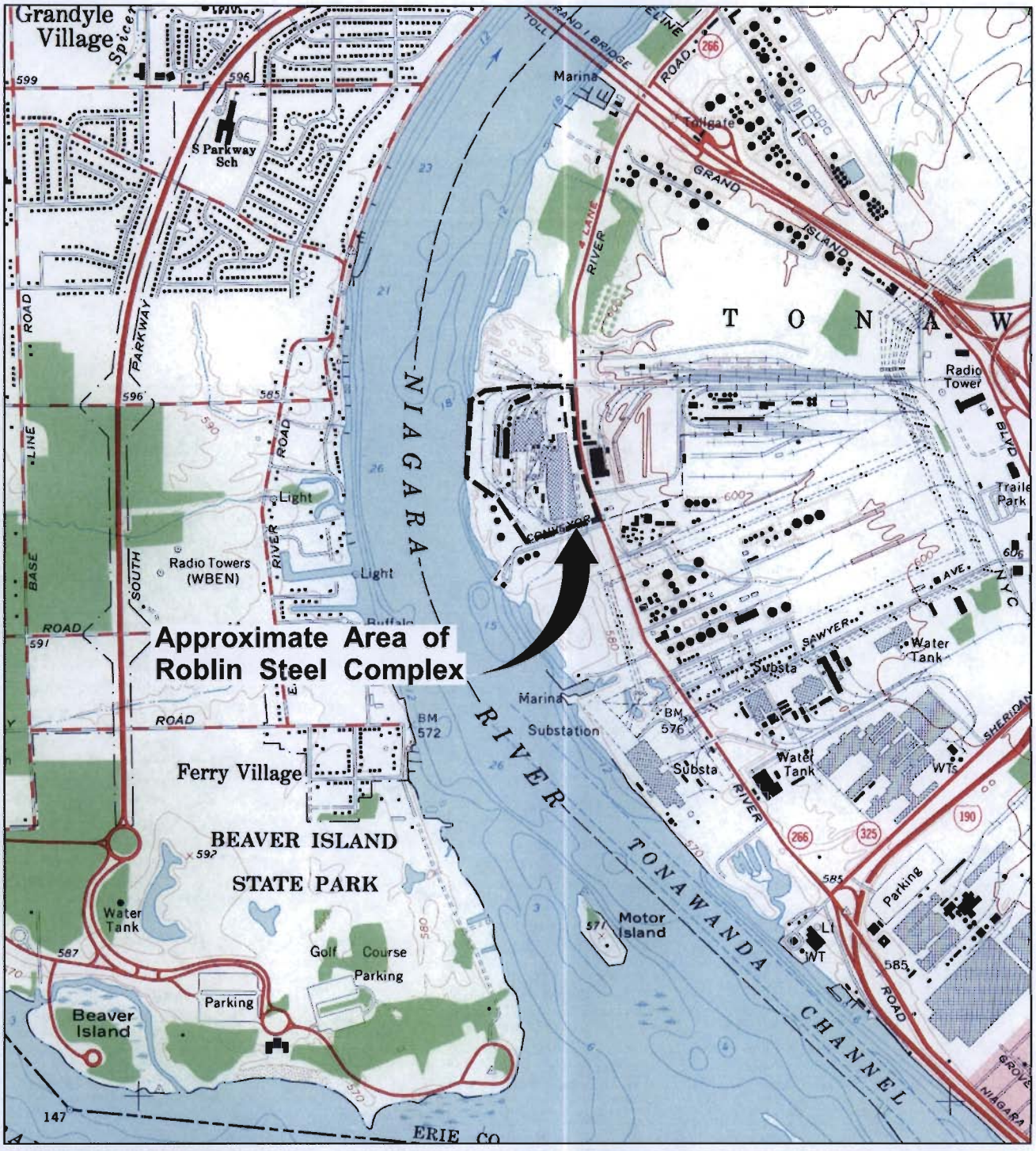

REFERENCE: BASE MAP SOURCE USGS 7.5 MINUTE QUAD. SERIES BUFFALO NW, NEW YORK, ONTARIO, 1965.

2000' 0 2000'

Approximate Scale: 1" = 2000'

04/03/06 SYR-D85-DJH-KLS
58002093/58002n01.cdr

ENVIROTEK II SITE
TONAWANDA NEW YORK

OU-3 GROUNDWATER MONITORING PLAN

SITE LOCATION MAP

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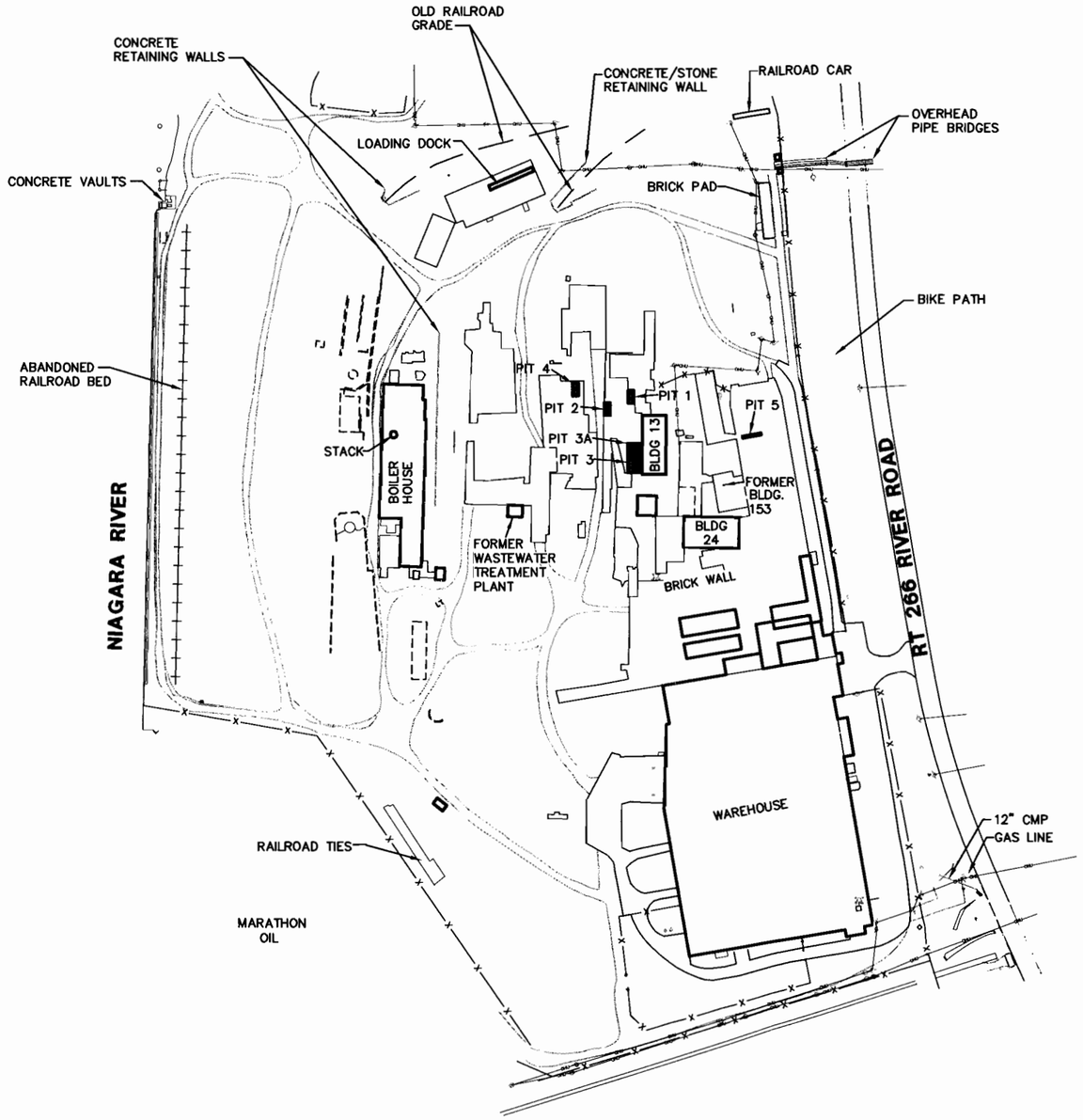
FIGURE 1



LEGEND

- FENCE
- EXISTING BUILDING
- CONCRETE PAD
- ABANDONED CONCRETE FOUNDATION
- EXISTING OVERHEAD UTILITY LINES

NOTE:

BASE MAP PREPARED FROM BLASLAND, BOUCK & LEE, INC. SURVEY DATED OCTOBER 1999.

0 300' 600'

GRAPHIC SCALE

ENVIROTEK II SITE
TONAWANDA, NEW YORK

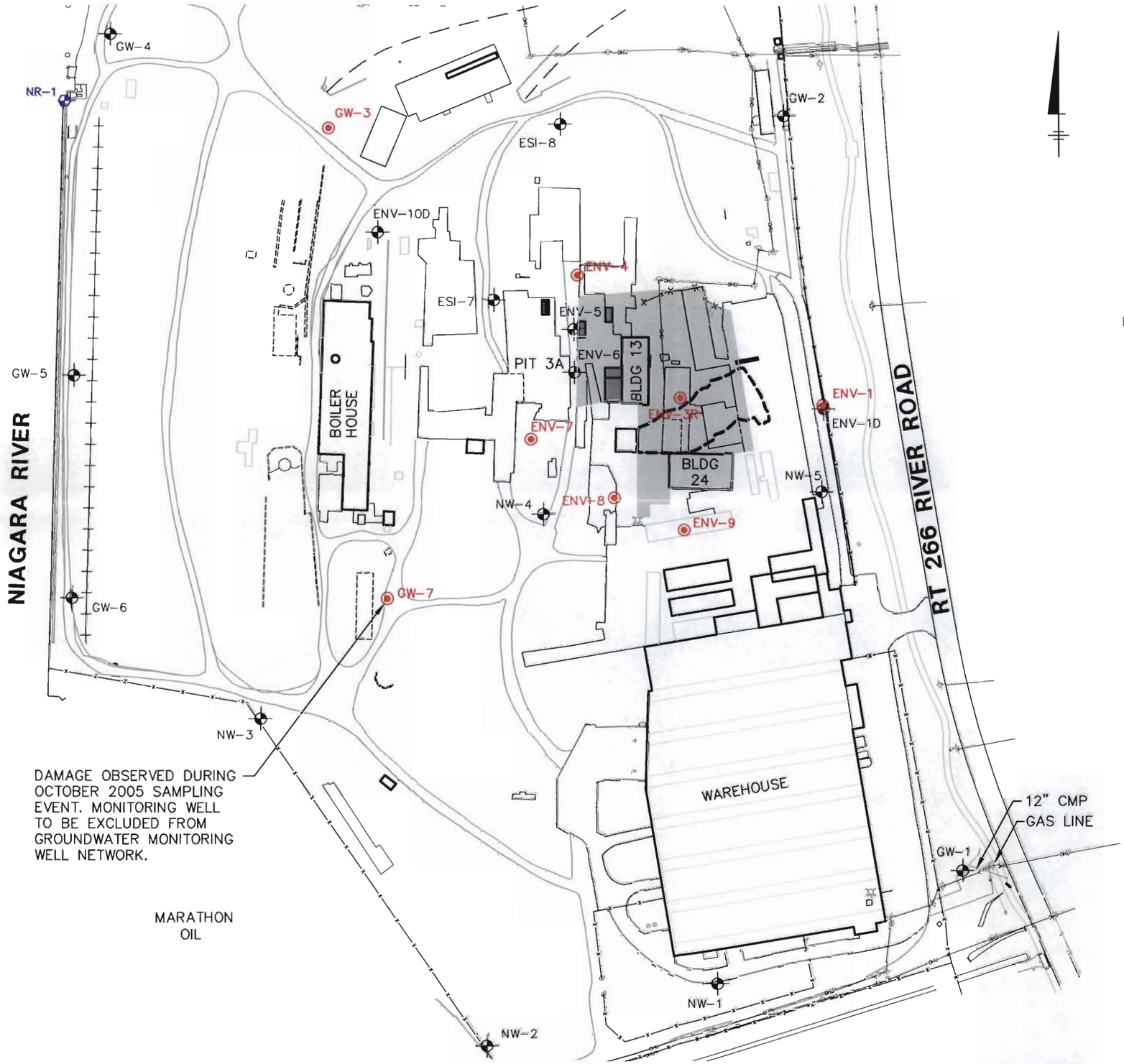
OU-3 GROUNDWATER MONITORING PLAN

ROBLIN STEEL COMPLEX SITE PLAN

BBL BLASLAND, BOUCK & LEE, INC. engineers, scientists, economists

FIGURE 2

X: 58002X03 , X00.DWG
L: ON=*;OFF=REF*,0,
P: PAGESET/PLT-BL
4/3/06 SYR- RCB PRO
58002093/58002B01.DWG



LEGEND:

- FENCE
- EXISTING BUILDING
- CONCRETE PAD
- ABANDONED CONCRETE FOUNDATION
- EXISTING OVERHEAD UTILITY LINES
- ENVIROTEK II SITE
- ENV-10D — MONITORING WELL
- NR-1 — STAFF GAUGE
- ENV-1 — SITE GROUNDWATER MONITORING NETWORK WELL
- FINAL LIMITS OF SDA SOIL EXCAVATION

NOTES;

1. BASE MAP PREPARED FROM BLASLAND, BOUCK & LEE, INC. SURVEY DATED OCTOBER 1999.
2. MONITORING WELL DESIGNATIONS:
   GW: NYSDEC MONITORING WELL
   ENV: ENVIROTEK MONITORING WELL
   NW: NIAGARA RIVER WORLD MONITORING WELL
   ESI: EMPIRE SOILS INVESTIGATIONS MONITORING WELL

0 200' 400'

GRAPHIC SCALE

ENVIROTEK II SITE
TONAWANDA, NEW YORK

OU-3 GROUNDWATER MONITORING PLAN

SITE MAP

BBL BLASLAND, BOUCK & LEE, INC. engineers, scientists, economists

FIGURE 3

X: 58002X00, X02.DWG
L: ON=*, OFF=REF*
P: PAGESET/SYR-BL
3/3/05 SYR-85-JMS PGL RCB
58002093/58002C01.DWG

Appendix A

Example Groundwater Sampling Log

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EXAMPLE

Envirotek II Site, Tonawanda, New York — **Low-Flow Sampling Program**

Site — Event

GROUNDWATER SAMPLING PROGRAM

Sampling Personnel: Michael R. Arleuckas — Well ID: GW-3

Job Number: 13048.002 — Date:

Weather: 70°F SUNNY & SLIGHT BREEZE — Time In: — Time Out:

WELL INFORMATION (record from top of inner casing at minimum)

		TIC	TOC	BGS
Well Depth	(feet)	20.85		
Water Table Depth	(feet)	8.79		

check where appropriate

Well Type: Flushmount ☐ Stick-Up ☒

Well Locked: Yes ☒ No ☐

Measuring Point Marked: Yes ☒ No ☐

Well Diameter: 1" ☐ 2" ☒ Other:

WELL WATER INFORMATION

Length of Water Column:	(feet)	12.06
Volume of Water in Well:	(gal)	1.92
Pumping Rate of Pump:	(mL/min)	300 mL/MIN
Pumping Rate of Pump:	(GPM)	—
Minutes of Pumping:	(min.)	45 MIN
Total Volume Removed:	(gal)	3.5 GAL

Conversion Factors

gallons per foot	1" ID	2" ID	4" ID	6" ID
of water column:	0.034	0.16	0.65	1.5

1 gal = 3.785 L = 3785 mL = 0.1337 cubic ft

Unit Stability

pH	Cond.	Turb.	DO	Temp.	ORP
+/-	+/-	< 50	+/-	+/-	+/-
0.1	3.00%	NTU's	10%		10 mV

SAMPLING INFORMATION

Analyses:

VOC's (3 - 40 mL vials) ☒

Sample ID: GW-3

Sample Time: 1135

MS/MSD: Yes ☐ No ☒

Duplicate: Yes ☐ No ☒

Duplicate ID: —

Total Bottles: 2

EVACUATION INFORMATION

Evacuation Method	Bailer ☐	Grundfos Pump ☐	MasterFlex ☒	_____ ☐
Tubing Used	Dedicated ☒	Decanned ☐		
Sampling Method	Bailer ☒	Grundfos Pump ☐	MasterFlex ☐	_____ ☐
Did well go dry?	Yes ☐	No ☒		

Water Quality Meter Type: Horiba U-22

Time / Parameter	1040 Initial	1045	1050	1055	1100	1105	1110	1115	1120
Volume Purged (gal)	0	1500	3000	4500	6000	7500	9000	10500	12000
Purge Rate (mL/min)	300	300	300	300	300	300	300	300	300
Depth to Water (ft. TIC)	8.84	8.86	8.86	8.86	8.86	8.85	8.85	8.85	8.85
pH	7.46	7.45	7.39	7.35	7.35	7.31	7.31	7.34	7.31
Conductance (mS/cm)	1.01	1.016	0.976	0.981	0.973	0.973	0.976	0.977	0.978
Turbidity (NTU's)	126.0	112.0	96.9	83.1	71.6	54.9	49.9	47.6	48.8
DO (mg/L)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Temp (°C)	7.09	7.05	7.05	7.10	7.11	7.11	7.09	7.10	7.10
ORP (mV)	235	227	219	207	209	211	208	209	211

Comments/Notes

USEPA SW-846 Method 8260B - Volatile Organic Compounds (VOCs)

Laboratory: Severn Trent Laboratories - Buffalo, New York — Sample was ☐ shipped day of sampling ☐ sent on 9/29/04

Shipped Via: ☐ Federal Express Other: Blasland, Bouck & Lee, Inc

Chain of Custody Signed by:

EXHIBIT C

Institutional and Engineering Control Plan

Institutional and Engineering Control Plan
Roblin Steel Site/Envirotek II Facility
Site No. 915056
Town of Tonawanda, Erie County

1. Overview and objectives

The Roblin Steel site is a 62 acre, commercial/vacant industrial property currently owned by Niagara River World, Inc. The location of the property is shown on Figure 1 of the Final Engineering Report. The Envirotek II facility was a chemical waste treatment and disposal facility that was operated during the 1980's by Envirotek, Ltd. This facility occupied a 2.5 acre parcel within the former Roblin Steel site and is referred to as the Envirotek II parcel. The location of the Envirotek II parcel is also shown on Figure 1 of the Final Engineering Report. Both the Roblin Steel portion of the site and the Envirotek II portion of the site have been characterized during several previous investigations. Collectively, these two parcels are hereinafter referred to as the "Site". The user should refer to the following reports for more detail, as needed:

Envirotek II Parcel

- "Evaluation of Interim Remedial Alternatives, Still Discharge Area", March 1991, prepared by Blasland, Bouck & Lee, Inc.
- "Results of Sampling Plan, Envirotek II Superfund Site", June 1991, prepared by Blasland, Bouck & Lee, Inc.
- "Supplemental Investigation Results, Still Discharge Area", November 1992, prepared by Blasland, Bouck & Lee, Inc.
- "Remedial Investigation Report", May 2002, prepared by Blasland, Bouck & Lee, Inc.
- "Interim Remedial Measures Final Report for Operable Unit 1", June 2003, prepared by Blasland, Bouck & Lee, Inc.
- "Interim Remedial Measures Final Report for Operable Unit 2", January 2004, prepared by Blasland, Bouck & Lee, Inc.
- "Interim Remedial Measures Final Report for Operable Unit 3", March 2005, prepared by Blasland, Bouck & Lee, Inc.
- "Focused Feasibility Study", March 2005, prepared by Blasland, Bouck & Lee, Inc.

Roblin Steel Parcel

- "Phase II Investigation", June 1990, prepared by Recra Environmental, Inc.
- "Site Evaluation Report", December 2006, prepared by the New York State Department of Environmental Conservation (NYSDEC).
- "Remedial Investigation Report", June 2007, prepared by the Natural Resource Group, Inc.

2. Nature and extent of contamination

Roblin Steel Parcel

Based upon data obtained from previous investigations and the Remedial Investigation completed at the Roblin Steel parcel in 2007, the compounds of concern (COC) at the parcel for soil consist primarily of semivolatile organic compounds (SVOCs) and metals. The primary SVOC contaminants of concern in soil include benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene and naphthalene. These contaminants belong to a class of SVOCs known as polycyclic aromatic hydrocarbons (PAHs). PAHs are a group of over 100 different chemicals that are common in the environment. Sources of PAHs include incomplete combustion of coal, oil, gasoline, garbage and wood from stoves, automobiles and incinerators. Phenolic compounds (phenol, 2-methylphenol and 4-methylphenol) were also detected in soil at elevated concentrations. The primary metals of concern in soil include arsenic, barium, cadmium, chromium, copper, lead, mercury and nickel.

Results of groundwater sampling during previous investigations and the Remedial Investigation indicate that shallow overburden groundwater is contaminated with COC including benzene (4 wells), ethylbenzene (1 well), toluene (2 wells), xylenes (2 wells), naphthalene (1 well), phenols (2 wells), chromium (1 well) and lead (1 well) at levels above New York State (NYS) ground standards. Wells adjacent to the Niagara River meet groundwater standards with the exception of lead in one well.

Envirotek II Parcel

Based upon data obtained from previous investigations and the Interim Remedial Measures (IRMs) completed at the Envirotek II parcel, a Record of Decision was issued by the NYSDEC in March 2005. The COC at the site for both soil and groundwater consist primarily of chlorinated VOCs, including tetrachloroethene, trichloroethene, cis-1,2-dichloroethene, trans-1,2-dichloroethene and vinyl chloride. Contaminated soil was removed from the Envirotek II parcel during an IRM in October 2003. Slightly contaminated soil, however, may still be present at the parcel.

Results of groundwater sampling indicate that shallow overburden groundwater is impacted with COC. This sampling also indicates that total volatile organic compound (VOC) contamination is greatest at the former Envirotek II facility and decreases significantly downgradient of the former

facility. The total VOC concentrations in wells near the Niagara River are below the ambient groundwater quality standards, suggesting that contaminants from the Envirotek II parcel are not adversely impacting the Niagara River.

In addition to the total VOC concentrations decreasing downgradient from the former Envirotek II facility, total VOC concentrations have also decreased over time in individual wells. For example, in wells ENV-4 (northwest of Pit 1) and GW-7 (south of the Boiler House) the concentrations have decreased over 99%. Other wells exhibit decreases in total VOC concentrations but not as remarkable as the decreases in ENV-4 and GW-7.

3. Institutional and engineering controls

The remedy selected in the March 2005 Record of Decision for the Envirotek II parcel includes the development and implementation of a Site Management Plan (SMP). The SMP requires, in part, an Institutional Control/Engineering Control (IC/EC) certification, prepared and submitted by a professional engineer or environmental professional acceptable to the Department, annually or for a period to be approved by the NYSDEC, which will certify that the institutional controls and engineering controls put in place are unchanged from the previous certification and that nothing has occurred that will impair the ability of the control to protect public health or the environment, or constitute a violation or failure to comply with any operation and maintenance or Soil Management Plan. The institutional control for the Envirotek II parcel will be in the form of an environmental easement that will: (a) require compliance with the approved Site Management Plan, (b) limit the use and development of the property to commercial or industrial uses only; (c) restrict use of groundwater as a source of potable or process water, without necessary water quality treatment as determined by the Erie County Department of Health; and, (d) require the Site owner to complete and submit to the NYSDEC IC/EC certification. This easement, and by inference the Site Management Plan, has been expanded to include the entire Site. There are no engineering controls on the Site as there are no active remedial systems.

4. Institutional control and engineering control (IC/EC) certification

The Site owner is required to complete and submit the attached Institutional and Engineering Controls (IC/EC) Certification Form (Enclosure 1 of this IC/EC). If a periodic site management report (a component of the operation and maintenance phase of the site remedy) is also due, this should be submitted along with the IC/EC Certification Form. Periodic certifications, indicating that all IC/ECs at the Site are in-place and effective, is mandated by various statutory and/or regulatory authorities under the New York Environmental Conservation Law and its implementing regulations (see Enclosure 2 of this IC/EC).

Step-by-step instructions for completing the IC/EC Certification Form and for determining if the form needs to be signed by a registered Professional Engineer or another Qualified Environmental Professional (QEP), in addition to the Site owner, or their designated representative, are given in Enclosure 2 of this IC/EC. In order to verify current IC/ECs, you may access the site

information database which includes IC/EC information and up-to-date site information, by visiting the NYSDEC's Website. This database also contains Site summaries, the name(s) of the Site owner(s), the location, and status of the Site.

The attached IC/EC Certification Form must be signed/certified, dated, and submitted to the NYSDEC within 45 days of the date of notice by the NYSDEC. Note that this form must be submitted even if an IC/EC cannot be certified; however, the certification process will not be considered complete until corrective action is conducted and all controls are certified.

ENCLOSURE 1
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
INSTITUTIONAL AND ENGINEERING CONTROLS CERTIFICATION FORM

SITE DETAILS

SITE NO. **9-15-056**

SITE NAME **Roblin Steel**

SITE ADDRESS: 4000 River Road ZIP CODE: 14150

CITY/TOWN: Tonawanda

COUNTY: Erie

CURRENT USE: Warehousing/Vacant

CURRENT CERTIFICATION FREQUENCY: Annually

VERIFICATION OF SITE DETAILS

		YES	NO
1.	Are the SITE DETAILS above, correct?	☐	☐
	If NO, are changes handwritten above or included on a separate sheet?	☐	
2.	Has some or all of the site property been sold, subdivided, merged, or undergone a tax map amendment since the initial/last certification?	☐	☐
	If YES, is documentation or evidence that documentation has been previously submitted included with this certification?	☐	
3.	Have any federal, state, and/or local permits (e.g., building, discharge) been issued for or at the property since the initial/last certification?	☐	☐
	If YES, is documentation or evidence that documentation has been previously submitted included with this certification?	☐	
4.	Has a change-of-use occurred since the initial/last certification?	☐	☐
	If YES, is documentation or evidence that documentation has been previously submitted included with this certification?	☐	
5.	Has any new information come to your attention to indicate that assumptions made in the qualitative exposure assessment for offsite contamination are no longer valid (applies to non-significant threat sites subject to ECL 27-1415.7(c))?	☐	☐
	If YES, is the new information or evidence that new information has been previously submitted included with this certification?	☐	
6.	Are the assumptions in the qualitative exposure assessment still valid (must be certified every five years for non-significant threat sites subject to ECL 27-1415.7(c))?	☐	☐
	If NO, are changes in the assessment included with this certification?	☐	

SITE NO. 9-15-056

Description of Institutional/Engineering Control	**Control Certification**	
	YES	NO
ENVIRONMENTAL EASEMENT	☐	☐
Limit the use and development of the property to commercial or industrial uses only; Restrict use of groundwater as a source of potable or process water	☐	☐

CONTROL CERTIFICATION STATEMENT

For each institutional or engineering control listed above, I certify by checking "Yes" that all of the following statements are true:

(a) the institutional control and/or engineering control employed at this site is unchanged from the date the control was put in-place, or last approved by the Department;

(b) nothing has occurred that would impair the ability of such control to protect public health and the environment;

(c) nothing has occurred that would constitute a violation or failure to comply with any Site Management Plan for this control; and

(d) access to the site will continue to be provided to the Department to evaluate the remedy, including access to evaluate the continued maintenance of this control.

(e) if a financial assurance mechanism is required under the remedial work plan for the site, the mechanism remains valid and sufficient for their intended purpose under the work plan.

CONTROL CERTIFICATIONS
SITE NO. 9-15-056

SITE OWNER OR DESIGNATED REPRESENTATIVE SIGNATURE

I certify that all information and statements in this certification form are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law.

I _____(print name), _____

(print business address), am certifying as _____ (Owner or Owner's Designated Site Representative (if the site consists of multiple properties, I have been authorized and designated by all site owners to sign this certification) for the Site named in the Site Details section of this form.

_____ _____
Signature of Site Owner or Representative Rendering Certification Date

QUALIFIED ENVIRONMENTAL PROFESSIONAL (QEP) SIGNATURE

I certify that all information and statements in this Certification form are true. I understand that a false statement made herein is punishable as a Class "A" misdemeanor, pursuant to Section 210.45 of the Penal Law.

I _____(print name), _____

(print business address), am certifying as a Qualified Environmental Professional for the_____

_____ (Owner or Owner's Representative) for the Site named in the Site Details section of this form.

_____ _____ _____
Signature of Qualified Environmental Professional, for the Owner or the Owner's Representative, Rendering Certification | Stamp (if Required) | Date

Enclosure 2

Certification of Institutional Controls/ Engineering Controls (ICs/ECs) Step-by-Step Instructions, Certification Requirements and Definitions

The Site owner, or site owner's representative, and when necessary, a Professional Engineer (P.E.), or the Qualified Environmental Professional (QEP), must review and complete the IC/EC Certification Form, sign it, and return it, along with the Periodic Site Management Report, within 45 days of the date of notice by the Department.

Institutional Controls (defined below) are organized into 4 categories: Governmental Controls (e.g., groundwater-use restrictions), Proprietary Controls (e.g., Environmental Easements), Enforcement and Permit Tools (e.g., Consent Orders), and Informational Devices (e.g., State Registries of Inactive Hazardous Waste Sites). The Certification Form shows the Control information the Department has for this Site. Please use the following instructions to complete the IC/EC Certification.

I. Verification of Site Details (First and Second Boxes):

1. Verify the accuracy of information in the **Site Details** section by answering the 6 questions. If necessary, you and/or your P.E. or QEP may handwrite changes and submit supporting documentation.

II. Verification of Institutional / Engineering Controls (Third and Fourth Boxes)

1. Review the listed Institutional / Engineering Controls and select "YES" or "NO" for **Control Certification** for each IC/EC, based on Sections (a)-(d) of the **Control Certification Statement**.

2. If you cannot certify "Yes" for each Control, please continue to complete the remainder of this **Control Certification** form. Attach supporting documentation that explains why the **Control Certification** cannot be rendered, as well as a statement of proposed corrective measures, and an associated schedule for completing the corrective measures. Note that this **Control Certification** form must be submitted even if an IC or EC cannot be certified; however, the certification process will not be considered complete until corrective action is conducted.

   If the Department concurs with the explanation, the corrective measures, and the proposed schedule, a letter authorizing the implementation of those corrective measures will be issued. If the Department has any questions or concerns regarding the completion of the certification, the Project Manager will contact you.

III. Certification by Signature (Fifth and Sixth Boxes):

1. WHY IC/EC Certification is required:
   The Section of the New York Environmental Conservation Law that includes the requirement of a periodic certification of IC(s) and EC(s) is as follows:

For State Superfund Projects: Environmental Conservation Law Section 27-1318. (Institutional and engineering controls)

2. To determine WHO signs the **Control Certification,** please use the following table:

Signature Requirements for IC/EC Certification Form		
Type of Control	**Example of IC/EC**	**Required Signatures**
IC	Environmental Easement Deed Restriction.	Site Owner or their designated representative, e.g., a Property Manager.
EC with no treatment system, or engineered caps.	Fence, Clean Soil Cover.	Site Owner or their designated representative, and QEP. (P.E. license not required)
EC that includes treatment systems, or engineered caps.	Pump & Treat System providing hydraulic control of a plume, Part 360 Cap.	Site Owner or his designated representative, and QEP with P.E. License.

3. WHERE to mail the signed Certification Form within 45 days of the date of the notice:

New York State Department of Environmental Conservation
Division of Environmental Remediation
270 Michigan Avenue
Buffalo, New York 14203
Attn: Glenn M. May, Project Manager

Please note that extra postage may be required.

IV. Definitions:

"Engineering Control" (EC), means any physical barrier or method employed to actively or passively contain, stabilize, or monitor any hazardous waste or petroleum waste to ensure the long-term effectiveness of an inactive site remedial program or brownfield site remedial program or environmental restoration project, or to eliminate potential exposure pathways to any such hazardous waste or petroleum waste. Engineering Controls include, but are not limited to: pavement, caps, covers, subsurface barriers and slurry walls; building ventilation systems; fences, other barriers and access controls; and provision of alternative water supplies via connection to an existing public water supply, addition of treatment technologies to an existing public water supply, and installation of filtration devices on an existing private water supply.

"Institutional Control" (IC), means any non-physical means of enforcing a restriction on the use of real property, that limits human or environmental exposure to any hazardous waste or petroleum waste, restricts the use of groundwater; provides notice to potential owners, operators, or members of the public; or prevents actions that would interfere with the effectiveness of an inactive site remedial program or brownfield site remedial program or environmental restoration project, or with the effectiveness and/or integrity of Site Management activities at or pertaining to any site.

"Professional Engineer" means a person, including a firm headed by such a person, who holds a current New York State Professional Engineering license or registration, and has the equivalent of three (3) years of full-time relevant experience in site investigation and remediation of the type detailed in this Control Certification.

"Property Owner" means, for purposes of an IC/EC certification, the actual owner of a property. If the site has multiple properties with different owners, the Department requires that the owners be represented by a single representative to sign the certification.

"Oversight Document" means any document the Department issues pursuant to each Remedial Program (see below) to define the role of a person participating in the investigation and/or remediation of a site or area(s) of concern. Examples for the various programs are as follows:

BCP (after approval of the BCP application by DEC) - Brownfield Site Cleanup Agreement.
ERP (after approval of the ERP application by DEC) - State Assistance Contract.
Federal Superfund Sites - Federal Consent Decrees, Administrative Orders on Consent or Unilateral Orders issued pursuant to CERCLA.
Oil Spill Program - Order on Consent, or Stipulation pursuant to Article 12 of the Navigation Law (and the New York Environmental Conservation Law).
State Superfund Program - Administrative Consent Order.
VCP (after approval of the VCP application by DEC) - Voluntary Cleanup Agreement.
RCRA Corrective Action Sites- Federal Consent Decrees, Administrative Orders on Consent or permit conditions issued pursuant to RCRA.

"Qualified Environmental Professional" (QEP), means a person, including a firm headed by such a person, who possesses sufficient specific education, training, and experience necessary to exercise professional judgment, to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property or off-site areas, sufficient to meet the objectives and performance factors for the areas of practice identified by this guidance (DER10 Technical Guide).

1. Such a person must:
   i. Hold a current Professional Engineering or a Professional Geologist license or registration, and have the equivalent of three (3) years of full-time relevant

experience in site investigation and remediation of the type detailed in this guidance; or

ii. Be a site remediation professional licensed or certified by the federal government, a state; or a recognized, accrediting agency, to perform investigation or remediation tasks identified by this guidance, and have the equivalent of three (3) years of full-time relevant experience. Examples of such license or certification include, but are not limited to, the following titles:

- Licensed Site Professional, by the State of Massachusetts;
- Licensed Environmental Professional, by the State of Connecticut;
- Qualified Environmental Professional, by the Institute of Professional Environmental Practice;
- Certified Hazardous Materials Manager, by the Institute of Hazardous Materials Management.

2. The definition of QEP provided above does not preempt State Professional licensing or registration requirements such as those for a Professional Geologist, Engineer, or Site Remediation Professional. Before commencing work, a person should determine the applicability of State professional licensing or registration laws to the activities to be undertaken pursuant to section 1.5 (DER10 Technical Guide).

3. A person who does not meet the above definition of a QEP under the foregoing definition may assist in the conduct of all appropriate investigation or remediation activities in accordance with this document if such person is under the supervision or responsible charge of a person meeting the definition provided above.

"Remedial Party" means any person or persons, as defined in 6NYCRR 375, who executes, or is otherwise subject to, an oversight document (State Superfund, BCP, ERP or VCP Program). For purposes of this guidance, remedial party also includes:

1. Any person or persons who is performing the investigation and/or remediation, or has control over the person (for example, contractor or consultant) who is performing the investigation and/or remediation, including, without limitation, an owner, operator or volunteer; and

2. The DER for State-funded investigation and/or remediation activities.

"Site Management" (SM) means the activities included in the last phase of the remediation of a site, in accordance with a Site Management Plan, which continue until the remedial action objectives for the project are met and the site can be closed-out. Site Management includes the management of the institutional and engineering controls required for a site, as well as the implementation of any

necessary long-term monitoring and/or operation and maintenance of the remedy. (Formerly referred to as Operation and Maintenance (O&M)).

"Site Management Plan" (SMP) means a document which details the steps necessary to assure that the institutional and engineering controls required for a site are in-place, and any physical components of the remedy are operated, maintained and monitored to assure their continued effectiveness, developed pursuant to Section 6 (DER10 Technical Guide).

"Site Owner" means the actual owner of a site. If the site has multiple owners of multiple properties with ICs and/or ECs, the Department requires that the owners designate a single representative for IC/EC Certification activities.

"Site Owner's Designated Representative" means a person, including a firm headed by such a person, who has been designated in writing by the Site Owner(s) to complete and sign the Institutional and Engineering Controls Certification Form.

EXHIBIT D

Environmental Easement

ERIE COUNTY CLERKS OFFICE

County Clerk's Recording Page

Return To:

BOX 135

Book: **11137** Page: **6723**

Page Count: **10**

Doc Type: **EASEMENT/RTWY <500**

Rec Date: **11/26/2007**

Rec Time: **03:52:14 PM**

Control #: **2007251593**

User ID: **francine**

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DEED SEQ: **TT2007006895**

MTG SEQ:

UCC:

SCAR:

INDEX:

Party 1:

NIAGARA RIVER WORLD INC

Party 2:

PEOPLE OF THE STATE OF NEW YORK

Recording Fees:	
RECORDING	$0.00
COE COUNTY	0
COE STATE GENERAL	$0.00
COE STATE RM	$0.00
TP584	$0.00

Consideration Amount:	**$1.00**
BASIC	**$0.00**
SONYMA	**$0.00**
ADDL	**$0.00**
NFTA MT	**$0.00**
TRANSFER	**$0.00**
NFTA TT	**$0.00**

Total: **$0.00**

STATE OF NEW YORK
ERIE COUNTY CLERK'S OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERK'S ENDORSEMENT, REQUIRED BY SECTIONS 319&316-a (5) OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH. THIS IS NOT A BILL.

Kathleen C. Hochul
County Clerk

County: Erie Site No: #915056 Order No: B9-0407-92-05

ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36 OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

THIS INDENTURE made this 21st day of November, 2007, between Owner **NIAGARA RIVER WORLD, INC.**, or having an office at 4000 River Road, Town of Tonawanda, New York 14150 (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of environmental easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and of ensuring the potential restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that environmental easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and;

WHEREAS, Grantor, is the owner of real property located at 4000 River Road, Town of Tonawanda, Erie County, New York being part of Lots Nos. 96 and 97 of the Niagara River Reservation, known and designated on the tax map of the County of Erie as tax map parcels bearing SBL Nos. 64.08-1-1.1 and 64.08-1-1.2, containing 62.34 acres more or less, and being the same property conveyed to Grantor by deed dated April 3, 1989 and recorded May 17, 1989 and recorded in the Office of the Clerk of the County of Erie in Liber 10023 of Deeds at page 13, and by deed, dated November 10, 1998 and recorded November 19, 1998 in the Office of the Clerk of the County of Erie in Liber 10942 of Deeds at page 2189. The referenced property is hereinafter more fully described in Schedule A attached hereto and made a part hereof (the " Controlled Property"); and;

WHEREAS, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36;and

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein and the terms and conditions of Order on Consent Number B9-0407-92-05, Site #915056 Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The following controls apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees, and any person using the Controlled Property:

A. The Controlled Property may be used for restricted commercial and industrial use as long as the following long-term engineering controls are employed:

(I) restrict the use of site groundwater as a source of potable or process water without necessary water quality treatment as determined by the Erie County Department of Health;

(ii) any proposed soil excavation on the property requires prior notification and prior approval of NYSDEC in accordance with the Site Management Plan approved by NYSDEC for this Controlled Property. The excavated soil must be managed, characterized, and properly disposed of in accordance with NYSDEC regulations and directives; and

(iii) evaluate the potential for vapor intrusion for any buildings developed on the site. Provision for mitigation, such as installation of a vapor barrier and sub-slab vapor system or other engineering controls shall be implemented on all structures, prior to occupancy.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated November 2007 ("SMP"). The SMP describes obligations that Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system on the Controlled Property, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The Department may change the SMP for the Controlled Property from time to time on the basis of requests or information submitted by Grantor, and modifications in applicable statutes regulations, guidance or site conditions. The Department reserves a unilateral right to modify the SMP. The Grantor and all successors and

assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Regional Remediation Engineer:
Region 9
NYS Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203
or:

Site Control Section
Division of Environmental Remediation
NYS Department of Environmental Conservation
625 Broadway
Albany, New York 12233

B. The Controlled Property may not be used for a higher level of use such as unrestricted or residential use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an environmental easement held by the New York State Department of Environmental Conservation pursuant of Title 36 to Article 71 of the Environmental Conservation Law.

D. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

E. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Controlled Property, including:

1. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

2. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This environmental easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this environmental easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person intentionally violates this environmental easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 27, Title 14, or Article 56, Title 5 with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:
County, NYSDEC Site Number, NYSDEC Order Number.

County: Erie Site No: #915056 Order No: B9-0407-92-05

Parties shall address correspondence to: Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

Such correspondence shall be delivered by hand, or by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. This environmental easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This environmental easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

NIAGARA RIVER WORLD, INC.

By: Bonnie M Leto

Title: Vice-President

STATE OF FLORIDA)
)ss
COUNTY OF BREVARD)

On the 15 day of November, in the year 2007 before me, the undersigned, personally appeared BONNIE M. LETO, personally known to me who, being duly sworn, did depose and say that he/she/they reside at 1981 HARVEY RD GRAND ISLAND NY (full mailing address) and that he/she/they is (are) the VICE PRESIDENT (President or other officer or director or attorney in fact duly appointed of the **NIAGARA RIVER WORLD, INC.**, 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.

Norine E Lester

Notary Public - State of ~~New York~~ FLORIDA

NORINE E. LESTER
Notary Public - State of Florida
My Commission Expires Jul 4, 2010
Commission # DD 570167

County: Erie Site No: #915056 Order No: B9-0407-92-05

THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation

by: _____
Alexander B. Grannis, Commissioner

Grantee's Acknowledgment

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

On the 21st day of November, in the year 2007, before me, the undersigned, personally appeared Alexander B. Grannis personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public - State of New York

ALAN T. MICHAELS
Notary Public, State of New York
No. 02MI6092164
Qualified in Rensselaer County
Commission Expires May 12, 2011

EDMS: 284106

OWNER'S POLICY OF TITLE INSURANCE
ALTA OWNER'S POLICY (6/17/06)

No: 5007-41667

PARCEL "1"

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Tonawenda, County of Erie and State of New York, being part of Lots Nos. 96 and 97 of the Niagara River Reservation, described as follows:

BEGINNING at the southwest corner of lands conveyed to Marathon Petroleum Company by deed filed in the Erie County Clerk's Office in Liber 9184 of Deeds at Page 346, said point being a point on the south line of lands conveyed to Wickwire Spencer Steel Corporation by deed filed in the Erie County Clerk's Office in Liber 1536 of Deeds at Page 196:

Thence northwesterly along the easterly line of lands conveyed to Marathon Petroleum Company bearing N 28° 42' 23" W, a distance of 907.38 feet to a point;

Thence continuing northwesterly along the north line of Marathon Petroleum Company, an exterior angle of 134° 06' 15" on a bearing of N 74° 36' 08" W, a distance of 379.06 feet to a point;

Thence continuing northwesterly along the north line of Marathon Petroleum Company, an exterior angle of 164° 02' 45" on a bearing of N 70° 33' 23" W, a distance of 99.01 feet to a point on the United States Harbor line, said point being northwest corner of lands conveyed to Marathon Petroleum Company;

Thence northerly along the United States Harbor line bearing N 02° 04' 54" E, a distance of 951.36 feet to the south line of "Pump House Parcel" Parcel 3 of lands conveyed to Allied Chemical Corporation by deed filed in the Erie County Clerk's Office in Liber 7271 of Deeds at page 65, said point being 271 feet south of the north line of Lot 97 as measured at right angles therefrom;

Thence easterly parallel with the north line of Lot 97, N 89° 57' 20" E, a distance of 57.54 feet to a point;

Thence northerly on a bearing of N 0° 02" 40" W a distance of 75.00 feet to a point, said point being 196.0 feet south of the north line of Lot 97 as measured at right angles therefrom;

Thence westerly parallel with the north line of Lot No. 97, S 89° 57' 20", a distance of 54.11 feet to a point on the United States Harbor line;

Thence northerly along the United States Harbor Line, N 02° 04' 54" E, a distance of 196.2 feet to an angle point on the United States Harbor Line, said point being on the north line of Lot 97,

Thence continuing northerly along the United States Harbor line on a bearing N 10° 57' 33" E, a distance of 396.21 feet to the southwest corner of lands conveyed to L. Matthew Duggan, Jr., by deed filed in the Erie County Clerk's Office in Liber 9011 of Deeds at page 277;

Thence easterly parallel with the south line of Lot 96 along the south line of lands conveyed to L. Matthew Duggan, Jr. on a bearing N 89° 57' 20" E, a distance of 524.36 feet to the northwest corner of lands conveyed to Clarence Materials Corporation by deed filed in the Erie County Clerk's Office in Liber 8892 of Deeds at page 389;

OWNER'S POLICY OF TITLE INSURANCE
ALTA OWNER'S POLICY (6/17/06)

No: 5007-41667

Thence southerly at right angles to the south line of Lot 96, along the west line of Clarence Materials Corporation, bearing S 00° 02' 40" E, a distance of 454.91 feet to the southwest corner of lands conveyed to New York Central Railroad by deed filed in the Erie County Clerk's Office in Liber 1364 of Deeds at page 11:

Thence easterly parallel to the north line of Lot 97 along the south line of New York Central Railroad on a bearing N 89° 57' 20" E, a distance of 718.39 feet to a point on the west line of the Erie Barge Canal, said line also known as New York State Blue Line:

Thence southerly the following eight (8) courses and distances along the west line of the Erie Barge Canal, also known as New York State Blue line:

1. S 04° 55' 26" E, a distance of 475.24 feet to a point
2. S 04° 14' 06" E, a distance of 66.89 feet to a point
3. S 08° 03' 36" E, a distance of 66.94 feet to a point
4. S 09° 46' 56" E, a distance of 661.66 feet to a point
5. S 13° 37' 36" E, a distance of 67.53 feet to a point
6. S 15° 15' 36" E, a distance of 66.95 feet to a point
7. S 16° 43' 16" E, a distance of 66.64 feet to a point
8. S 17° 50' 47" E, a distance of 392.35 feet to a point on the South line of lands conveyed to Wickwire Spencer Steel Corporation.

Thence westerly along the South line of Wickwire Spencer Steel Corporation on a bearing of S 72° 11' 19" W, a distance of 851.82 feet to the point or place of beginning, containing 62.480 acres, more or less.

PARCEL "2"

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Tonawanda, County of Erie and State of New York, being part of Lots Nos. 96 and 97 of the Niagara River Reservation, described as follows:

BEGINNING at the intersection of the west line of River Road (S.H. 129) and the south line of lands conveyed to New York Central Railroad by deed filed in the Erie County Clerk's Office in Liber 1364 of Deeds at Page 11:

Thence southerly along the west line of River Road S 04° 00' 10" E, a distance of 460.13 feet more or less to the east line of the Erie Barge Canal, also known as the New York State Blue Line:

Thence northerly along the east line of the Erie Barge Canal (also known as the New York State Blue Line) on a bearing N 06° 12' 26" W, a distance of 19.53 feet:

Thence continuing north along the east line of the Erie Barge Canal (also known as the New York State Blue Line) on a bearing N 04° 55' 53" W, a distance of 461.24 feet to a point on the south line of lands conveyed to the New York Central Railroad:

Thence easterly along the southerly line of New York Central Railroad on a bearing N 89 ° 57' 20" E, a distance of 8.25 feet to the point or place of beginning, containing 2.075 square feet or 0.048 acres, more or

Issued By:
TICOR TITLE INSURANCE COMPANY

Schedule A (cont'd)

OWNER'S POLICY OF TITLE INSURANCE
ALTA OWNER'S POLICY (6/17/06)

No: 5007-41667

less.

23-97-1

STATE OF NEW YORK COUNTY OF ERIE, ss.
I, KATHLEEN C. HOCHUL, Clerk of said County and also Clerk of Supreme and County Courts of said County, do hereby certify that I have compared the annexed copy with the original Easement filed in my office and that the same is a correct transcript therefrom and of the whole of said original.
WITNESS my hand and seal of said County and Courts on this 26 day of NOV 26 2007 20

/s/ Kathleen C. Hochul
COUNTY CLERK