

July 27, 2009

Mr. Dave Szymanski
New York State Department of Environmental Conservation
270 Michigan Ave.
Buffalo, New York 14203-2999

Re: 2009 Periodic Review Report
Cobey, LLC Site, BCP Site #C915202
Buffalo, New York

Dear Mr. Szymanski:

On behalf of the Site owner (Cobey, LLC), Malcolm Pirnie, Inc. (Pirnie) hereby submits the attached required Periodic Review Report for the above captioned Site. An inspection of the exterior Site cover system was performed as required in the Operations, Maintenance, and Monitoring Work Plan (OMMWP) for this Brownfield Cleanup Program (BCP) Site. The Site inspection was completed on July 2, 2009 by Brad Walker of Malcolm Pirnie, Inc. The exterior cover system was determined to be in place and performing as intended. Mr. Mike Durkin of Cobey, LLC reported there was no new construction activity that required excavation through the building interior floor slab.

Exterior paved surfaces were observed to be in good condition and soil cover was in place with acceptable vegetative cover where required.

Attached to this letter are the following pertinent items:

- Periodic Review Report (PRR)
- Environmental Inspection Form
- Site Map identifying photo subject locations
- Photo log
- Certification form

If you have any questions or require additional information, please call me at 716-667-6654.

Very truly yours,

MALCOLM PIRNIE, INC.



James J. Richert, CPG
Sr. Project Hydrogeologist

Enclosures

cc: Mike Durkin (Cobey, LLC)
Kent McManus (Malcolm Pirnie)

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Cobey, LLC

Cobey, LLC • One Ship Canal Parkway • Buffalo, New York 14218

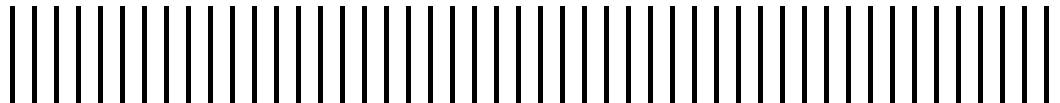
Periodic Review Report

Cobey, LLC Site

Buffalo, New York

BCP Site #C915202

July 2009



Report Prepared By:

Malcolm Pirnie, Inc.

50 Fountain Plaza
Suite 600
Buffalo, New York 14202
716-667-0900

6245001

**MALCOLM
PIRNIÉ**

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Appendices

- A. Environmental Inspection Form
- B. Photographic Log
- C. Certification Form

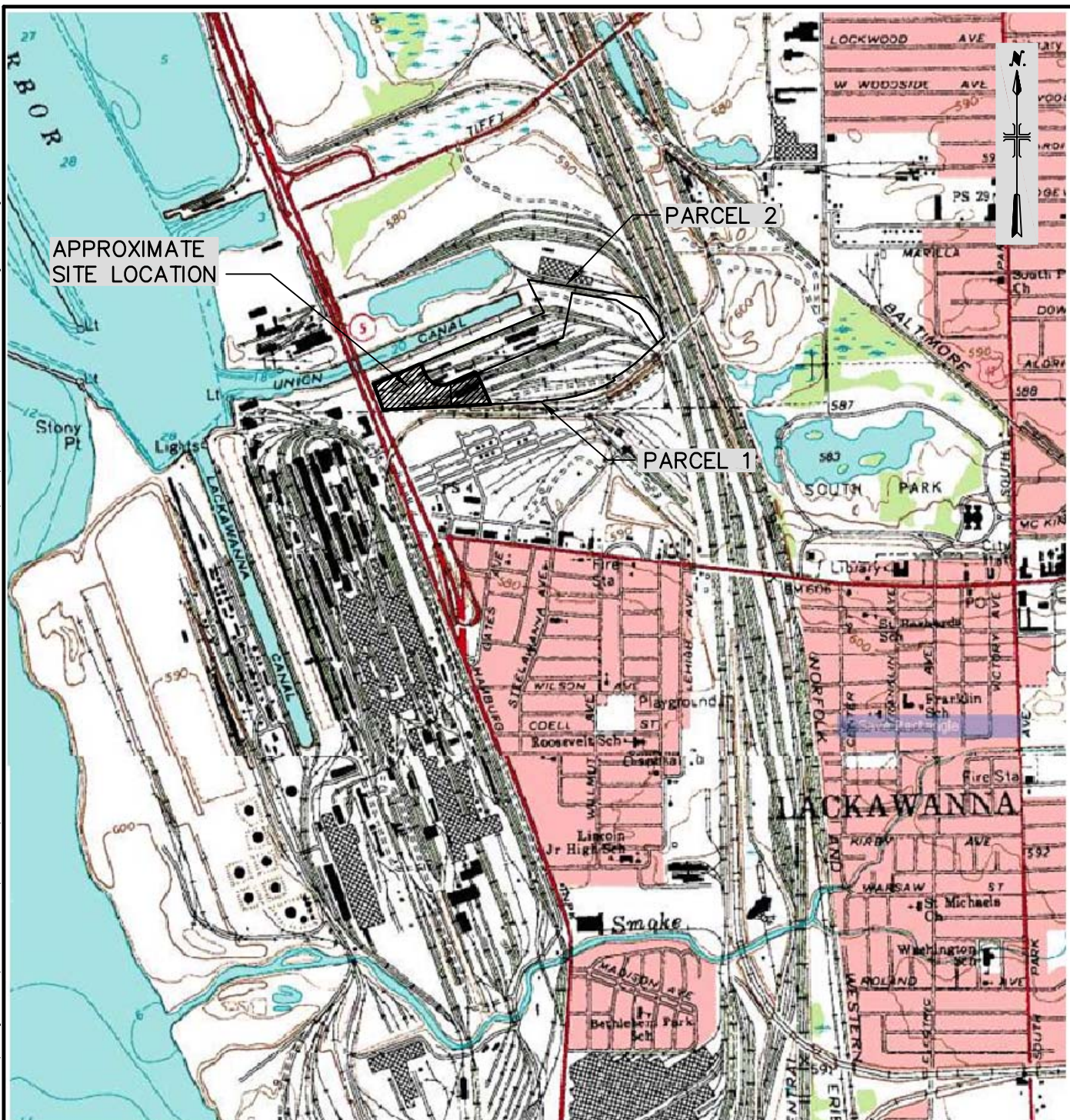
1. Introduction

Malcolm Pirnie, Inc. (Malcolm Pirnie) has prepared this Periodic Review Report (PRR) for the Cobey, LLC (Cobey) Site as a requirement of the New York State Department of Environmental Conservation (NYSDEC) Brownfield Cleanup Program. The Site is part of the Buffalo Lakeside Commerce Park (BLCP) in Buffalo, New York. The Site is located along the southern perimeter of the BCLP and consists of approximately 12.3 acres. The location of the Site is shown on Figure 1-1.

Previous investigations have determined that on-site surface and subsurface soil/fill is identified as the single media of concern. The remedial investigation of the Site performed under the BCP determined that the soil/fill contained SVOCs at concentrations in excess of regulatory criteria applicable at that time (NYSDEC TAGM 4046 Recommended Soil Cleanup Objectives (RSCOs)), and or urban background concentrations. Also, the metals arsenic, barium, cadmium, chromium, lead, mercury selenium, silver, and cyanide were detected at concentrations above the TAGM RSCOs and/or expected background concentrations. The presence, concentration and distribution of these constituents appears to be attributable to the contents of the soil/fill material underlying the entire Site rather than a former or current on-Site contaminant source.

The remedial program at the Site consisted of covering the entire site to isolate the underlying soil/fill material. The cover materials consist of asphalt in areas of paved parking lots and Site driveways, concrete slab foundation beneath the Site building, concrete walkways, and a 12-inch thick layer of clean soil, in low use green-space areas.

Based on the results of the annual periodic inspection, changes to the OM&M Plan or the frequency of PRR submittal are not recommended at this time. The cover system inspection indicates that the various cover system components are in-place and functioning as intended. Several areas of the existing soil cover system require minor remedial action to prevent the functionality and effectiveness of the system from being compromised.



A horizontal number line representing distance in miles. The line starts at 0 and ends at 2 mi. There are major tick marks at intervals of 0.4 miles, labeled 0, 0.4, 0.8, 1.2, 1.6, and 2 mi.



COBEY LLC (PORTIONS
OF PARCELS 1 AND 2)
BUFFALO, NEW YORK

FIGURE 1-1
SITE LOCATION MAP

2. Site Overview

The Site is a 12.3 acre parcel located in the southwestern corner of the BCLP. As shown on Figure 2-1, the Site is bordered on the west by New York State Route 5, to the south by the Lackawanna Commerce Park, to the east by CSX railroad tracks, and north by property owned by the Buffalo Urban Development Corporation (BUDC).

Previous investigations of the on-site surface and subsurface soil/fill identified elevated SVOC concentrations in excess of NYSDEC guidance criteria in place at the time of investigation (TAGM 4046 Recommended Soil Cleanup Objectives (RSCOs), and or urban background concentrations). Also, metals that included arsenic, barium, cadmium, chromium, lead, mercury selenium, silver, and cyanide were detected at concentrations above the TAGM RSCOs and/or accepted background concentrations.

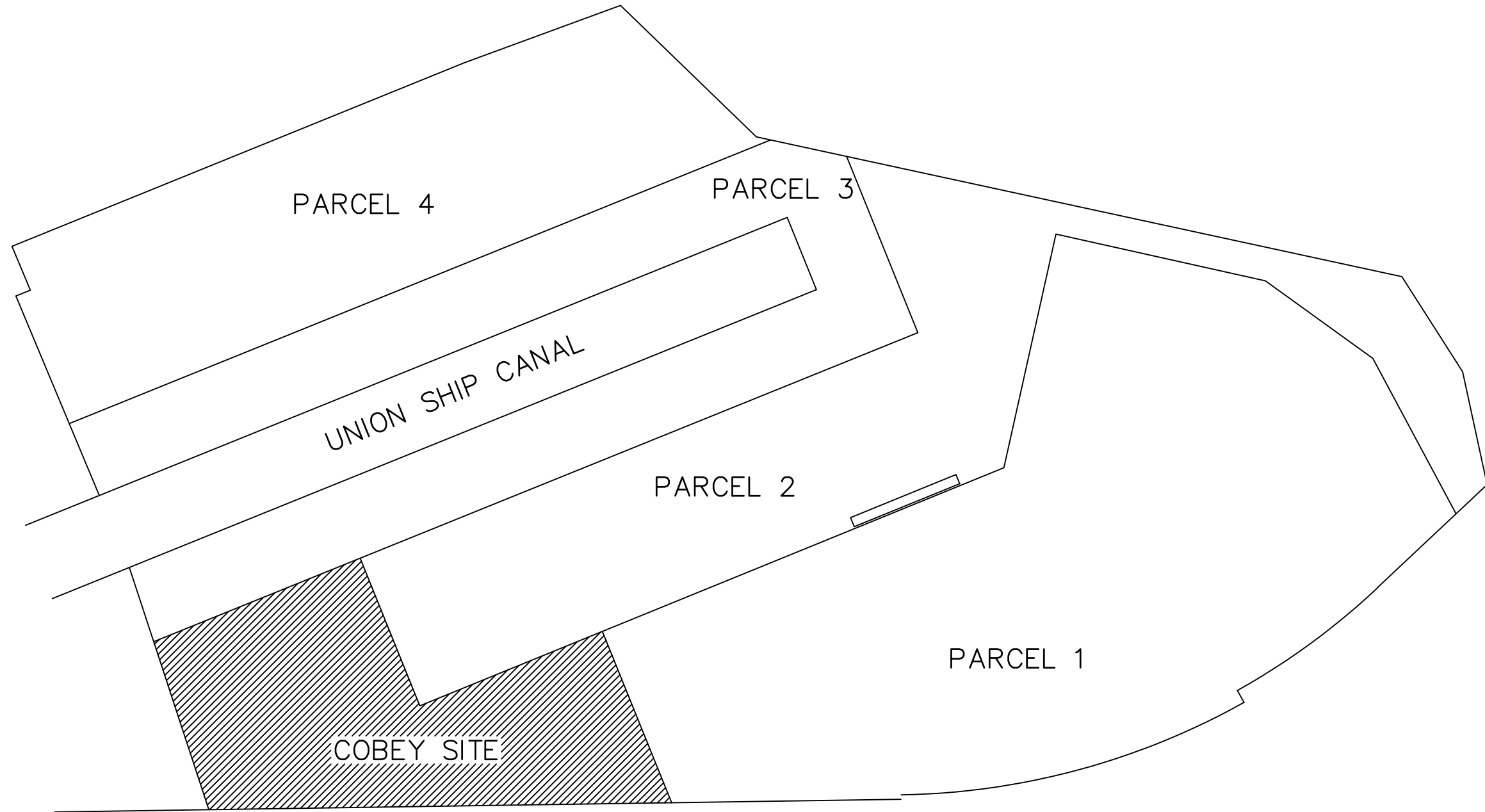
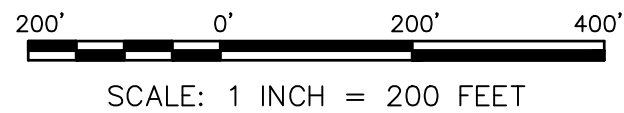
As a prerequisite for occupancy, one or more institutional and/or engineering controls were implemented. Accordingly, the entire Site was covered with a final cover system as required in the Remedial Action Work Plan (Malcolm Pirnie, 2006). This cover system was installed to eliminate the potential for human contact with the soil/fill material. The cover material at the site consists of a barrier layer that may include a combination of one or more of the following protective layers:

- a minimum of 12-inches of clean soil;
- four inches of asphalt;
- four inches of concrete with a minimum gravel sub-base thickness of six inches placed in newly paved areas of the Site, including the Site building.

During advancement of the Cobey building foundation footers using a caisson drill, oily soil/fill material was observed at one of the caisson borings identified as location D-20. The impacted soil/fill was stockpiled, characterized, and disposed of offsite with NYSDEC approval at a permitted landfill. The location of where the impacted soil/fill was encountered is illustrated as point A on Figure 2-2.

A remnant of a buried steel vessel was encountered during Site development activities that included the excavation of utility trenches and building footers. In accordance with the soil handling protocols described in the NYSDEC-approved Soil/Fill Management Plan, the vessel and surrounding impacted soil/fill were removed as part of the Site redevelopment. The volume of soil/fill removal from within and around the steel vessel was approximately 51 tons. Figure 2-2 illustrates the approximate location from where the vessel and related impacted soil/fill were removed. A combined total of 67.68 tons of

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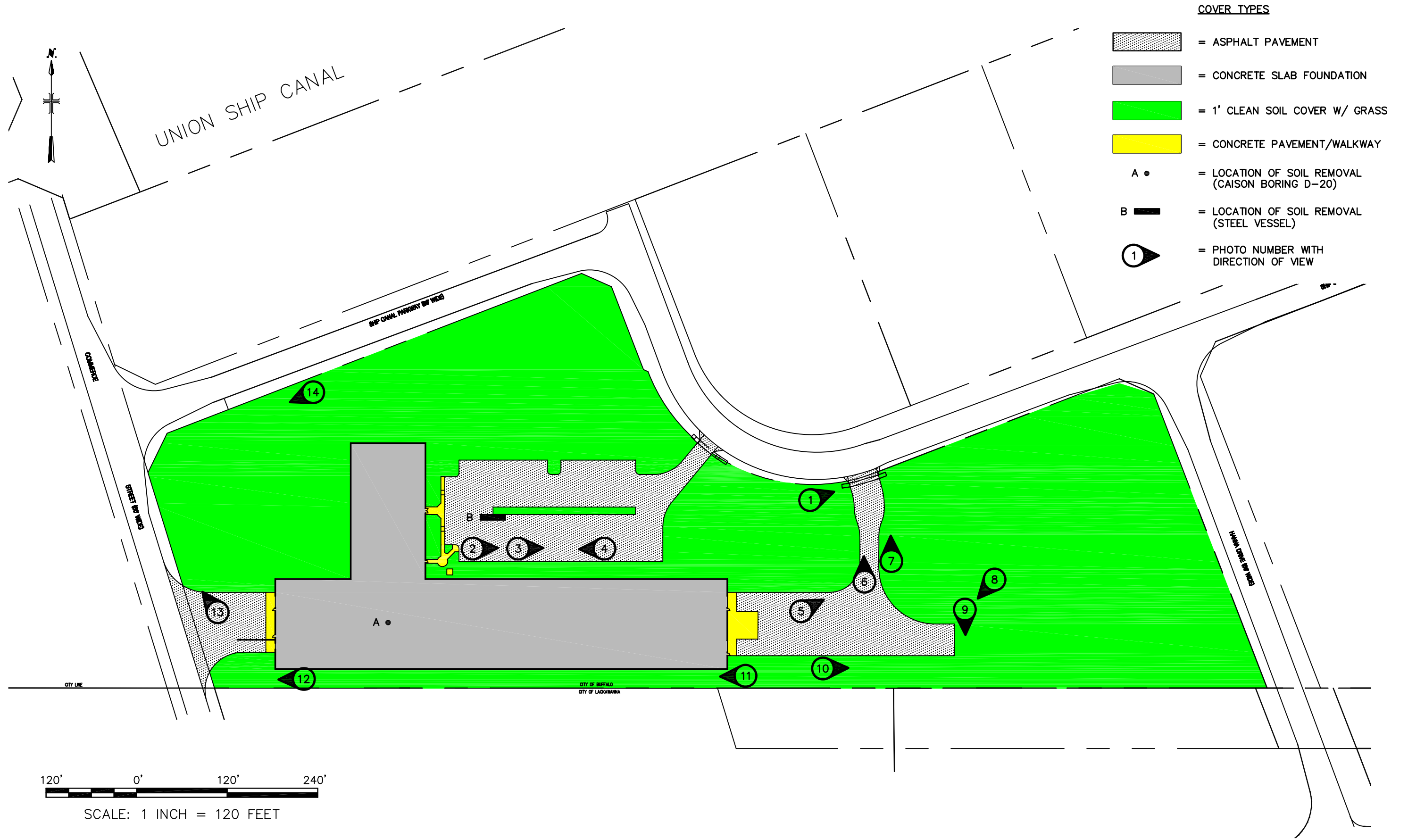
**MALCOLM
PIRNIE**

07/09 3198F007

COBEY, LLC
REMEDIAL ACTION REPORT
BUFFALO, NEW YORK

FIGURE 2-1
BUFFALO LAKESIDE COMMERCE PARK
PARCEL MAP

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6245F002

**MALCOLM
PIRNIE**

REMEDIAL ACTION REPORT
BUFFALO, NY
COBEY, LLC SITE

SITE COVER SYSTEM
INSPECTION PHOTOS

MALCOLM PIRNIE, INC.

JULY 2009

FIGURE 2-2

impacted soil were removed and disposed off-Site at a permitted landfill. The removal work was completed with NYSDEC oversight and approval.

The entire Site was covered to isolate the underlying soil/fill material using asphalt, concrete, or a 12-inch thick layer of clean soil.

The soil cover was installed in areas where vehicular use is not anticipated. Prior to placement of the soil cover, a demarcation layer was rolled out over the entire area. The demarcation layer is composed of a fine polypropylene mesh made by Internet[®] that is bright orange in color with a mesh size of 3/4" x 5/8". The soil cover system installed at the Site is comprised of borrow soil from off Site locations that were tested and confirmed "clean" in accordance with the Soil/Fill Management Plan.

3. Remedy Performance

Annual inspections have been conducted at the Cobey Site since 2008. The site inspections consisted of a visual site walk-over to observe and photograph the integrity of the cover systems including sloughing, cracks, settlement, erosion, distressed vegetation, and damaged cover system. The July 2009 site inspection indicates that the cover system has been functioning as intended. No deficiencies in the cover system have been noted, only areas needing minor improvements to the grass cover have been identified to prevent future damage to the soil cover system. The Site inspection report and photographs are included as Appendix A and Appendix B, respectively.

4. IC/EC Plan Compliance Report

Institutional Controls and Engineering Controls (IC/EC) currently enacted for the Cobey Site include:

- Soil/Fill Management Plan;
- Operation, Monitoring, and Maintenance Work Plan;
- Environmental Easement.

4.1.1. The Soil/Fill Management Plan

The Soil/Fill Management Plan (S/FMP) is designed to provide for the protection of human health and the environment during redevelopment and use of the Site. The S/FMP documents known Site background information and describes requisite handling procedures for subsurface contamination, if encountered. The S/FMP establishes protocols to be implemented during the following events for redevelopment and infrastructure improvements. The protocols provide for and include:

- Sampling, handling, excavation and grading of on-Site soils.
- Standards for soil/fill acceptability from off-Site sources for use as on-Site backfill, subgrade fill, or cover material.
- Erosion and dust control.
- Installation of fencing and other Site access control devices.
- Health and safety procedures for Site construction work.

Any construction or redevelopment activities that take place at the Cobey Site will follow the protocols outlined in the S/FMP.

4.1.2. Operation, Monitoring, and Maintenance Work Plan

The Operation, Monitoring, and Maintenance Work Plan describes the conditions and procedures for maintaining the physical components of the completed Site redevelopment and defines requisite elements for this annual inspection and certification.

4.1.3. Environmental Easement

An Environmental Easement pursuant of Title 36 to Article 71 of the New York State Environmental Conservation Law, and the NYSDEC was granted for the Cobey site. The easement was signed on June 26, 2006 and accepted by the State of New York on

September 6, 2006. The easement stipulates that the property can be used for commercial and industrial purposes contingent upon the long-term implementation of the institutional and engineering controls summarized below:

- Site (Controlled Property) soil/fill must be covered with a NYSDEC-approved barrier layer that may include structures, concrete, asphalt, or a minimum of 12-inches of clean soil cover.
- Site (Controlled Property) soil/fill that is excavated below the barrier layer on the Controlled Property will be managed, characterized and properly disposed of in accordance with NYSDEC regulations, directives and the Soil/Fill Management Plan.
- Site (Controlled Property) groundwater may not be used unless rendered safe for drinking or industrial use, as appropriate, subsequent to obtaining permission from the regulatory agency.
- Use of the Controlled Property for day care, child or medical care is prohibited without an express written waiver from the governing regulatory agency.
- The above stated engineering controls may not be discontinued, and use of the Controlled Property will not be elevated to an unrestricted or residential property without an amendment or extinguishment of the Environmental Easement.
- Until such time that the Environmental Easement is extinguished, the property deed and all instruments of conveyance related to the Controlled Property will state in 15-point bold font type that “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”.
- All leases, licenses or other instruments granting use of the Controlled Property will be subject to the Environmental Easement.
- The owner of the Controlled Property will submit an annual written statement to the NYSDEC that certifies that all approved engineering controls are unchanged and have remained in effect.

4.2. IC/EC Conclusions and Recommendations

All IC/EC for the Cobey Site have been implemented in accordance with the NYSDEC approved Environmental Easement. To date, two annual inspections conducted at the Site during 2008 and 2009 indicate that the cover system is intact and functioning as intended. It is recommended that the additional steps shown below be taken to maintain the integrity of the soil cover system. These steps include:

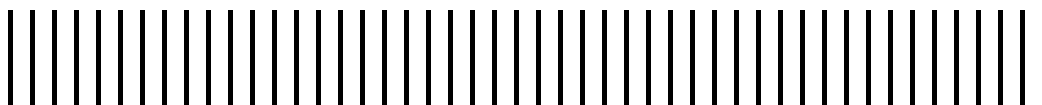
- Placing parking curbs and/or permanent barriers at the pavement edge and inside turns to prevent vehicles from driving off paved surfaces and causing damage to vegetative cover.

- Adding top soil and reseeding grass cover impacted at eastern edge of paved loading area where wooden pallets and shipping containers are stored, see photo #9.
- Adding top soil and reseeding grass cover in several areas due to poor quality topsoil conditions; see photos 6, 9, 13, and 14 in Appendix B.
- Backfill and reseed minor holes and rutted areas identified along south side of Cobey building and paved area along south side of east loading dock, see photos 10, 11, and 12.

Cobey, LLC Site
Periodic Review Report
BCP Site #C915202

Appendix A

Environmental Inspection Form



ENVIRONMENTAL INSPECTION FORM

COBEY, LLC
(BCP Site # C915202)

Property Name: Cobey, LLC Site Inspection Date: July 2, 2009

Property Address: One Ship Canal Parkway

City: Buffalo State: New York Zip Code: 14218

Property ID: (Tax Assessment Map)

Section-Block-Lot no's: 132.19-2-1, 132.19-2-2, and 132.20-2-13

Total Acreage: approximately 12.0

Weather (during inspection): Temperature: ~70° F

Conditions: Cloudy

SIGNATURE:

The findings of this inspection were discussed with appropriate personnel, corrective actions were identified and implementation was mutually agreed upon:

Inspector: [Signature] Date: 7/2/09

Next Scheduled Inspection Date: Spring 2010

SECURITY AND ACCESS

- | | Yes | No |
|---|-------|-------|
| 1. Access controlled by perimeter fencing? | | NA |
| Are there sections of the fence material damaged or missing? | | |
| Are the fence or gate post foundations structurally sound? | | |
| 2. "No Trespass" signs posted in appropriate languages? | | NA |
| Are the signs securely attached to the fencing or posts? | | |
| Are there sufficient signs; are the signs adequately spaced around the perimeter of the property? | | |
| 3. Is there evidence of trespassing? | _____ | __N__ |
| Is there evidence of illegal dumping? | _____ | __N__ |

COVER & VEGETATION

- | | | |
|---|-----------------------|-------|
| 4. Final cover in acceptable condition? | __Y__ | _____ |
| Is there evidence of sloughing, erosion, ponding or settlement? | _____ | __N__ |
| Is there evidence of unintended traffic; rutting? | __Y ⁽¹⁾ __ | _____ |
| Is there evidence of distressed vegetation/turf? | __Y ⁽²⁾ __ | _____ |

	Yes	No
5. Final cover sufficiently covers soil/fill material?	<u>Y</u> ⁽²⁾	_____
Are there cracks visible in the soil or pavement?	_____	<u>N</u>
Is there evidence of erosion in the stormwater channels or swales?	_____	<u>N</u>
Is there damage to the synthetic erosion control fabric in the channels or swales?		NA

ACTIVITY ON SITE

6. Any activity on site that mechanically disturbed soil cover?	<u>Y</u> ⁽³⁾	_____
---	-------------------------	-------

ADDITIONAL FACILITY INFORMATION

Development on or near the site? (Specify size and type: e.g., residential, 40 acres, well and septic)

No

COMMENTS

Item

⁽¹⁾ Minor erosion from vehicles cutting corners of pavement, see photos # 3 through #7, recommend placing parking curbs and large boulders at pavement edge and inside turns to prevent vehicles from driving off paved surfaces and causing damage. Grass cover impacted at eastern edge of paved loading area where wooden pallets and shipping containers are stored, see photo #9. Recommend adding top soil and reseeding in this area.

⁽²⁾ There are areas with incomplete grass cover due to poor quality topsoil conditions, see photos 6, 9, 13, and 14 for some examples. Recommend adding top soil and reseeding.

⁽³⁾ Minor rutting and surface disturbance from heavy equipment driving along south side of building and snow removal activities along south side of east loading dock paved area. Recommend filling holes with top soil and seeding. See photos # 10, 11 and 12.

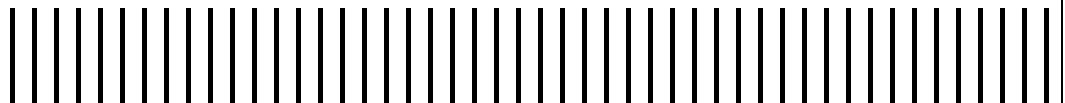
ATTACHMENTS

1. Site Sketch
2. Photographs

Cobey, LLC Site
Periodic Review Report
BCP Site #C915202


Appendix B

Photographic Log





Project: Cobey Annual Inspection of Site Cover System		Location: Buffalo, New York	Project No. 6245-001
Photo No. 1	Date: 7-2-2009		
Direction Photo Taken: Southeast			
Description: Site Entrance			

Project: Cobey Annual Inspection of Site Cover System		Location: Buffalo, New York	Project No. 6245-001
Photo No. 2	Date: 7-2-2009		
Direction Photo Taken: Northeast			
Description: Condition of paved surfaces			


Project: Cobey Annual Inspection of Site Cover System		Location: Buffalo, New York	Project No. 6245-001
Photo No. 3	Date: 7-2-2009		
Direction Photo Taken: East			
Description: Minor rutting from vehicle tires driving off paved surfaces.			


Project: Cobey Annual Inspection of Site Cover System		Location: Buffalo, New York	Project No. 6245-001
Photo No. 4	Date: 7-2-2009		
Direction Photo Taken: West			
Description: Minor rutting from vehicle tires driving off paved surfaces.			

Project: Cobey Annual Inspection of Site Cover System		Location: Buffalo, New York	Project No. 6245-001
Photo No. 5	Date: 7-2-2009		
Direction Photo Taken: Northeast			
Description: Tire ruts/grass erosion from vehicles cutting the corner at eastern service entrance.			


Project: Cobey Annual Inspection of Site Cover System		Location: Buffalo, New York	Project No. 6245-001
Photo No. 6	Date: 7-2-2009		
Direction Photo Taken: North			
Description: Bare areas of soil cover system in need of top soil and reseeding, and tire ruts/grass erosion from vehicles cutting the corner at eastern service entrance.			

Project: Cobey Annual Inspection of Site Cover System		Location: Buffalo, New York	Project No. 6245-001
Photo No. 7	Date: 7-2-2009		
Direction Photo Taken: North			
Description: Tire ruts/grass erosion from vehicles cutting the corner at eastern service entrance.			

Project: Cobey Annual Inspection of Site Cover System		Location: Buffalo, New York	Project No. 6245-001
Photo No. 8	Date: 7-2-2009		
Direction Photo Taken: Southwest			
Description: View of soil cover system			

Project: Cobey Annual Inspection of Site Cover System		Location: Buffalo, New York	Project No. 6245-001
Photo No. 9	Date: 7-2-2009		
Direction Photo Taken: Northeast			
Description: Soil erosion/grass removed from storage of wooden pallets and shipping containers. Bare areas of soil cover system in need of top soil and reseeded.			

Project: Cobey Annual Inspection of Site Cover System		Location: Buffalo, New York	Project No. 6245-001
Photo No. 10	Date: 7-2-2009		
Direction Photo Taken: East			
Description: Disturbed soil cover system from snow removal.			

Project: Cobey Annual Inspection of Site Cover System		Location: Buffalo, New York	Project No. 6245-001
Photo No. 11	Date: 7-2-2009		
Direction Photo Taken: West			
Description: Tire ruts along south side of building.			

Project: Cobey Annual Inspection of Site Cover System		Location: Buffalo, New York	Project No. 6245-001
Photo No. 12	Date: 7-2-2009		
Direction Photo Taken: West			
Description: Tire ruts along south side of building.			

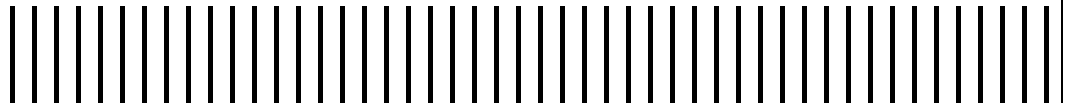
Project: Cobey Annual Inspection of Site Cover System		Location: Buffalo, New York	Project No. 6245-001
Photo No. 13	Date: 7-2-2009		
Direction Photo Taken: Northwest			
Description: Bare areas of soil cover system in need of top soil and reseeding.			

Project: Cobey Annual Inspection of Site Cover System		Location: Buffalo, New York	Project No. 6245-001
Photo No. 14	Date: 7-2-2009		
Direction Photo Taken: Northeast			
Description: Bare areas of soil cover system in need of top soil and reseeding.			

Cobey, LLC Site
Periodic Review Report
BCP Site #C915202

Appendix C

Certification Form



ANNUAL CERTIFICATION
OF INSTITUTIONAL/ENGINEERING CONTROLS

COBEY, LLC
BCP Site # C915202

SITE DETAILS

SITE NO. C915202

SITE NAME Cobey, LLC Site

SITE ADDRESS: One Ship Canal Parkway ZIP CODE: 14218

CITY/TOWN: Buffalo, New York

COUNTY: Erie

PROPERTY ID (Tax Assessment Map):
Section-Block-Lots: 132.19-2-1, 132.19-2-2, and 132.20-2-13

CURRENT USE: Light Manufacturing

CURRENT CERTIFICATION FREQUENCY: Annually

VERIFICATION OF SITE DETAILS

- | | YES | NO |
|---|-------------------------------------|-------------------------------------|
| 1. Are the SITE DETAILS above, correct? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| If NO, are changes handwritten above or included on a separate sheet? | <input type="checkbox"/> | |
| 2. Has some or all of the site property been sold, subdivided, merged, or undergone a tax map amendment since the initial/last certification? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| If YES, is documentation or evidence that documentation has been previously submitted included with this certification? | <input type="checkbox"/> | |
| 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? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| If YES, is documentation or evidence that documentation has been previously submitted included with this certification? | <input type="checkbox"/> | |
| 4. Has a change-of-use occurred since the initial/last certification? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 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 is 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? ☐

DESCRIPTION OF INSTITUTIONAL/ENGINEERING CONTROL

Control Certification

- | | YES | NO |
|--|-------------------------------------|--------------------------|
| • Site is used for commercial/industrial use. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| • The NYSDEC-approved barrier Layer remains in place. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| • Excavation through barrier layer will be pre-approved by NYSDEC and performed in accordance with the Site Management Plan. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| • Groundwater is not used on site. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

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 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 MICHAEL DUKINS (print name), 1 SHIP CANAL PKWY, BUFFALO, NY
(print business address), am certifying as Owner's Designated Site Rep (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

7/28/09
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 Kent R. McManus
(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



7/30/09
Date