

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
NEW YORK WORKS II ENVIRONMENTAL RESTORATION PROJECT

In the Matter of the  
implementation of a  
Remedial Program for

NYWII ERP AGREEMENT  
Index No. NYWII-B00063-12-14

**26-28 Whitesboro Street**  
DEC Site Number: **B00063**  
26-28 Whitesboro Street  
Utica, New York 13502

Hereinafter referred to as "Site"

by:

**City of Utica**  
1 Kennedy Plaza  
Utica, New York 13502

Hereinafter referred to as "Municipality"

WHEREAS, the New York State Department of Environmental Conservation ("Department" or "NYSDEC") is authorized by Article 56 of the New York State Environmental Conservation Law (hereinafter the "ECL") to address contamination at municipal sites; and

WHEREAS, the Legislature has determined that the preservation, enhancement, restoration and improvement of the quality of the State's environment is one of government's most fundamental obligations; and

WHEREAS, Chapter 54, Laws of 2013 (the "Law of 2013"), provides New York Works funding for services, expenses, and indirect costs related to various environmental projects including, but not limited to, environmental restoration projects. The Law of 2013 allows the Department to enter into agreements with municipalities to undertake environmental restoration projects on behalf of a municipality upon request, provided that the municipality shall provide ten percent of the total project costs (hereinafter referred to as "NYWII ERP Agreement"); and

WHEREAS, the Legislature authorized the Department to develop and implement environmental restoration investigation and remediation projects for certain properties held in title by them; and

WHEREAS, the Municipality submitted an Application requesting that the Department undertake the development and implementation (i.e., the remedial design and remedial construction) of an environmental restoration remediation project (the "Project"), the purpose and scope of which is set forth in the Record of Decision ("ROD") provided in Exhibit A of this NYWII ERP Agreement, on the Site that is described in Exhibit B by metes and bounds and by reference to a recorded map showing its boundaries and bearing the seal and signature of a licensed land surveyor; and

WHEREAS, the Municipality agrees to comply with all terms and conditions of this NYWII ERP Agreement; and

WHEREAS, the Municipality submitted an approvable Application, including submission of its documentation of its authorization to enter into this NYWII ERP Agreement, and of its authorization of the person signing the same to do so; and

WHEREAS, the Project was given a priority ranking based on a score derived from information provided in the Application and is eligible to participate in NYWII ERP; and

WHEREAS, the Municipality has disclosed all responsible party payments received related to the Site prior to entering into this Agreement. Except as provided herein relative to responsible party funding, the Municipality may use any other funding available (i.e., federal, State or other private party monies) towards its cost share; and

WHEREAS, the Department's execution of this NYWII ERP Agreement is made in reliance upon the information provided by, and representations of, the Municipality in its application papers and in this NYWII ERP Agreement; and

WHEREAS, the Municipality has complied, and commits to comply, with the requirements for municipalities established under Article 56 of the ECL.

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I) Duties and responsibilities of the Department and the Municipality.

A) The Department, as required by the scope of the Project, shall:

- 1) implement a Citizen Participation Plan (CPP) for the Project consistent with DER-23; and
- 2) design and implement the remedy set forth in the ROD; and
- 3) prepare any necessary Environmental Easement (EE) documents for the Municipality's execution; and
- 4) prepare any necessary Site Management Plan (SMP).

B) The Municipality shall:

- 1) provide necessary assistance to the Department in the implementation of the Site CPP, including providing venues for meetings and contact information; and
- 2) execute and implement any Department prepared EE; and

- 3) implement the SMP, if one is required under this NYWII ERP Agreement, including all operation, maintenance and monitoring; and
- 4) provide the required Periodic Review Reports (PRR) as set forth in the SMP.

In the event that the remedy for the Site, or any Work Plan for the Site, requires a SMP as a consequence of operation, maintenance, and monitoring requirements, including reliance upon institutional or engineering controls, the Municipality shall file the initial PRR on the first day of the eighteenth month following the anniversary of the start of the SMP and continuing at the Department designated period until the Department notifies the Municipality in writing that such PRR may be discontinued.

Such PRR shall be signed by a Professional Engineer or by a qualified environmental professional as defined in 6 NYCRR 375-1.2(ak) approved by the Department to perform that function and certified under penalty of perjury that the institutional and/or engineering controls are unchanged from the previous certification and that nothing has occurred that would impair the ability of such controls to protect public health and the environment or constitute a violation or failure to comply with the approved SMP.

The Municipality shall notify the Department within twenty-four (24) hours of discovery of any breach, upset, interruption, or termination of one or more controls without the prior approval of the Department. Further, the Municipality shall take all actions required by the Department to maintain conditions at the Site that achieve the objectives of the remedy and/or the Work Plan and are protective of public health and the environment. An explanation of such upset, interruption, or termination of one or more controls and the steps taken in response shall be included in the foregoing notice and in the PRR required by this.

The Municipality can petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a Professional Engineer stating that such controls are no longer necessary. The Department shall not unreasonably withhold its approval of such petition.

## II) Allowable Use

The ROD determined that the Site will be used for Commercial Use, and the Municipality agrees for itself and for its lessees and successors in title that any proposed change to the Contemplated Use shall be governed by the provisions of ECL § 56-0511 and any implementing regulations thereto.

### III) Enforcement and Force Majeure

This NYWII ERP Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. The Municipality shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this NYWII ERP Agreement as a result of a Force Majeure Event provided it notifies the Department in writing within ten (10) days of when it obtains knowledge of any such event. The Municipality shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this NYWII ERP Agreement. The Municipality shall have the burden of proving by a preponderance of the evidence that an event qualifies as a Force Majeure Event pursuant to this Paragraph.

### IV) Entry upon Site

The Municipality hereby agrees to provide access to the Site and to all relevant information regarding activities that may have involved hazardous waste at the Site in accordance with the provisions of ECL § 56-0515. Such access shall be for purposes of implementing any investigation, design, and remediation activities necessary to complete the ROD required remedy and inspecting the Site to ensure that any SMP for the conditions on such Site is being implemented satisfactorily, that the engineering and/or institutional controls are continually maintained in the manner the Department may require, that no person has engaged or is engaging in any activity that is not consistent with restrictions placed upon the use of the Site or that will or that reasonably is anticipated to: prevent or interfere significantly with a proposed, ongoing or completed project; or expose the public health or the environment to a significantly increased risk of harm or damage from such Site.

- A) The Department shall have the right to periodically inspect the Site to ensure that the use of the Site complies with the terms and conditions of this NYWII ERP Agreement; such right of inspection shall survive termination of this NYWII ERP Agreement.
- B) If the Department determines that the Municipality has failed to comply with the terms of the NYWII ERP Agreement, the Department may carry out any measures necessary to return the Site to a condition sufficiently protective of human health, in accordance with ECL § 56-0509.4; and neither the Municipality nor any of successors in title, lessees or lenders shall interfere with such access. The Municipality or successor and assign shall pay all costs incurred by the State and any release and indemnification shall be revoked.

### V) Payment of State Costs

- A) The Municipality hereby agrees to pay the Department for the Municipality's share of the Project. The Municipality's share is ten percent (10%) of the Project cost for design and construction of the remedy. Construction costs are estimated at \$236,127 based on the Capital Cost provided in the ROD dated 03/24/2011 and adjusted by the Consumer Price Index Inflation Calculator through 2013. The actual Project costs may vary.

- B) The Department will invoice the Municipality periodically. Within ninety (90) days after receipt of an invoice from the Department, the Municipality shall reimburse the Department for the Project costs incurred by the Department at a rate of ten percent (10%) of the Project costs.
- C) Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)ii. The Department shall not be required to provide any other documentation of costs, provided, however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.
- D) Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:  
  
Director, Bureau of Program Management  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-7012
- E) The provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply to any objections by the Municipality to any invoiced costs under this NYWII ERP Agreement. Objections shall be sent to the Department as provided under subparagraph V.D.
- F) In the event of non-payment of any invoice within the ninety (90) days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with the Laws of 2013 and ECL § 71-4003. If such failure to pay is after the issuance of the Certificate of Completion (COC), enforcement shall include revocation of the COC and loss of any liability protection.

#### VI) Disposition of Site

- A) In the event that there is a Disposition of the Site or any portion of such Site, the Municipality is required to reimburse the State the amount owed. The amount owed shall consist of the "value of the Disposition of the Site" less the Municipal costs allowed to offset such value. The maximum amount of money owed the State is defined as an amount of money, not to exceed the State's costs incurred for the investigation and remediation of this Site under this NYWII ERP Agreement and any prior ERP State Assistance Contract (SAC) or Agreement for this Site. The Municipality's allowed costs consist of taxes owed to the Municipality upon acquisition and the Municipality's share of the Project costs (related to the disposed property) provided under this NYWII ERP Agreement as well as any costs allowed under the prior ERP SAC or Agreement for this Site.

For purposes of this subparagraph, the "value of the Disposition of the Site", or that portion of the Site that is disposed, consists, if the Site is disposed by transfer of title, of

the higher of the Site's sale price or the Site's fair market value at time of sale; or, if the Site is disposed by lease, the higher of the present worth of the stream of rent over a 30 year period beginning the effective date of this NYWII ERP Agreement or the present worth of the fair market value of the stream of rent over the same 30 year period.

However, if the Site is located in an economic development zone or in a zone equivalent area, as those terms are defined in Sections 957 and 959(bb), respectively, of the General Municipal Law; or if the Site is located in a project area that is the subject of a redevelopment plan approved by Municipality's legislative body under Article 18-B of the General Municipal Law; or if the Site will be used to maintain or expand the supply of housing for persons of low income and families of low income as Section 2 of the Private Housing Finance Law defines them, then if the Site is disposed by sale, the "value of the Disposition of the Site", or that portion of the Site that is disposed, consists of the Site's sale price, and if the Site is disposed by lease, the present worth of the stream of rent over a 30 year period beginning the effective date of this NYWII ERP Agreement.

- B) If the Municipality disposes of the Site by sale to a responsible party, the disposition must be at fair market value. Additionally, the Municipality shall collect from such responsible party, in addition to such other consideration, an amount of money constituting the amount of Project costs incurred by the State under this NYWII ERP Agreement and any prior ERP SAC or Agreement for this Site plus accrued interest and transaction costs. The Municipality shall pay such funds immediately to the Department for deposit into an appropriate account.

#### VII) Cost Recovery

- A) The State hereby reserves the right to seek to recover the full amount of any Project Costs incurred by the State under this NYWII ERP Agreement and any prior ERP SAC or Agreement for this Site through litigation brought under Article 56 of the ECL or other statute or under the common law, or through cooperative agreements, with responsible parties, other than the following:
  - 1) The Municipality; and
  - 2) any successor in title to the Site, any lessee of the Site, and any person that provides financing to the Municipality, such successor in title, or such lessee relative to the remediation, restoration, or redevelopment of the Site, that did not generate, arrange for, transport, or dispose, and did not cause the generation, arrangement for, transportation, or disposal of any hazardous substance located at the Site and did not own the Site before the Municipality acquired title to the Site.
- B) The Municipality shall assist the Department and/or the State in compelling responsible parties to bear the cost of the Project by providing upon request by the Department all information that exists as of the start of the term of this NYWII ERP Agreement and any prior ERP SAC or Agreement for this Site that identifies the Site's responsible parties and all other information acquired during the course of the Project's implementation.

- C) Upon approval by the Department, the Municipality may make efforts to recover costs from responsible parties. The Municipality hereby agrees to provide the Department with timely advance written notice of any negotiations, proposed agreements, proposed settlements or legal action by which recovery is sought. The Municipality further agrees not to commence such legal action nor enter into any such proposed agreement or settlement without the approval of the Department.
- D) If any responsible party payments and/or other responsible party consideration become available to the Municipality during or after the completion of an environmental restoration project, the Municipality shall immediately notify the Department of such availability. The State is entitled to its share of the amount recovered from the responsible party under this NYWII ERP Agreement and any prior ERP SAC or Agreement for this Site. If the Municipality shall fail to make such payment to the State within sixty (60) days of receipt of any responsible party payment (or within ninety (90) days of signing this NYWII ERP Agreement, if the payment was received before the NYWII ERP Agreement was signed), the Department may take measures provided for by law.

If any responsible party payments are received prior to entering into this Agreement, the Municipality must pay the State ninety (90) percent of such payments, unless such payments were received for remedial activities conducted under any prior ERP SAC or Agreement for this Site.

The Municipality agrees that it will immediately notify the Department in writing of its receipt of funds from other sources for any of the Municipality's expenditures incurred pursuant to this NYWII ERP Agreement. Any such funds shall first be applied to the Municipality project share. Any additional funds shall then be applied to the State's share of the project costs.

#### VIII) Liability Protection

As set forth at ECL § 56-0509, the Municipality and applicable successors and assigns shall be entitled to certain liability protections, subject to the terms and conditions stated therein, upon the issuance of a COC for the Site by the Department. However, if the Municipality or its successor or assigns fails to comply with the EE and/or the SMP for the Site after the issuance of the COC, the Department reserves its right to revoke the COC and rescind any release of liability granted to the Municipality pursuant to ECL Article 56.

#### IX) Indemnification

The Municipality shall indemnify and save harmless the Department and the State of New York from and against all losses from claims, demands, payments, suits, actions, recoveries and judgments, of every nature and, description brought or recovered against it by reason of any acts or omissions of the Municipality, its agents, employees, or contractors related to this Site.

## X) Change of Use

The Municipality shall notify the Department at least sixty (60) days in advance of any change of use as defined in ECL § 56-0511, which is proposed for the Site. In the event that the proposed change of use is inconsistent with the remedial program, the Department shall notify the Municipality of such determination within forty-five (45) days of receipt of such notice. In such event, the Municipality shall not implement the proposed change of use.

## XI) Environmental Easement

A) If the Department's issuance of a ROD relies upon one or more institutional and/or engineering controls, the Department shall provide an EE for signature. The authorized representative for the Municipality shall within sixty (60) days of receipt of the EE, sign and submit it to the Department for execution. The Municipality's submittal shall satisfy the statutory and regulatory requirements of law as set forth in ECL Article 71, Title 36 and 6 NYCRR Part 375. The executed EE shall be recorded with the recording officer for the county in which the Site is located.

B) The Municipality or the owner of the Site may petition the Department to modify or extinguish the EE filed pursuant to this NYWII ERP Agreement at such time as it can certify that the Site is protective of human health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer. The Department will not unreasonably withhold its consent.

## C) Engineering and Institutional Controls

1) In the event that engineering and/or institutional controls are components of the remedy selected in the Department's ROD pertaining to the Site, the Department will cause the development of a plan to ensure that such controls are continually maintained in the manner satisfactory to the Department. The Municipality and its successors in title, lessees and lenders are prohibited from challenging the imposition or continuance of such controls, and failure to implement or comply with the Department-approved plan or to maintain such controls constitute a violation of this NYWII ERP Agreement and for the duration of such failure, the release and indemnification granted pursuant to ECL § 56-0509.1 shall have no force and effect.

2) The municipality's or successors' in title, lessees' and lenders' failure to cure such violation of engineering or institutional controls in the time period set by the Department will result in the Department seeking recovery of any funds expended on the Site and permanent revocation of any release and indemnification.



## XII) Site Lease/Transfer Conditions

The Municipality shall not enter into any lease or transfer title to, the Site or any portion of it until the Municipality binds itself and its lessees and its successors in title, to the following conditions:

- A) The Site will not be used for the use set forth in Paragraph II or any less restrictive use until it is remediated. The Site may continue to be used for the purpose for which it is being used as of the start of the term of this NYWII ERP Agreement if the Department or DOH has not found that the existing state of contamination is such as to prohibit such use from continuing, giving due regard for public health and environmental protection; and
- B) If, before an EE for the Site is executed and recorded, the Municipality wishes to subdivide the Site into separate parcels, it may do so after submitting a change of use notice pursuant to 375-1.11(d).
- C) If a Municipality wishes to sell all or part of a Site before it is remediated, the Municipality's successor in title must first agree to remediate all such parcels under Department oversight in accordance with the Department's ROD and any such parcel cannot be used for the use set forth in Paragraph II or any less restrictive use until it is remediated. The Site may continue to be used for the purpose for which it is being used as of the start of the term of this NYWII ERP Agreement if the Department or DOH has not found that the existing state of contamination is such as to prohibit such use from continuing, giving due regard for public health and environmental protection.

## XIII) Communications

A) All written communications required by this NYWII ERP Agreement shall be transmitted by electronic mail unless otherwise specified by the DER project manager.

1) Communication from the Municipality shall be sent to:

(i) George Heitzman, P.E., Director  
Remedial Bureau C  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233  
(518) 402-9662  
george.heizman@dec.ny.gov

(ii) Krista Anders, Director  
Bureau of Environmental Exposure Investigation  
New York State Department of Health  
Empire State Plaza  
Corning Tower, Room 1787  
Albany, New York 12237

Email: [krista.anders@health.ny.gov](mailto:krista.anders@health.ny.gov)

(iii) Andrew Guglielmi, Esq.  
NYSDEC Office of General Counsel  
625 Broadway  
14th Floor  
Albany, New York 12233-1500  
Phone: (518) 402-9185  
Email: [andrew.guglielmi@dec.ny.gov](mailto:andrew.guglielmi@dec.ny.gov)

2) Communication from the Department to the Municipality shall be sent to:

Robert Palmieri, Mayor  
City of Utica  
1 Kennedy Plaza  
Utica, New York 13502  
Phone: 315-734-9250  
Email: [mayor@cityofutica.com](mailto:mayor@cityofutica.com)

- B) The Department and the Municipality reserve the right to designate additional or different addressees for communication on written notice to the other.
- C) Each party shall notify the other within ninety (90) days after any change in the addresses listed in this Paragraph.

#### XIV) Completion or Termination of NYWII ERP Agreement

- A) If the Municipality complies with the requirements of applicable State and federal laws and regulations and with the terms of this NYWII ERP Agreement, the Department shall issue a COC. This NYWII ERP Agreement shall end when the Department issues the COC.
- B) The Department may terminate this NYWII ERP Agreement without prejudice or waiver of any other rights the State has if the Municipality fails to comply with any of the requirements of applicable State or federal laws and regulations or with any of the requirements of this NYWII ERP Agreement. The Department shall provide written notification to the Municipality of its breach of contract, setting forth in writing the basis for termination of the NYWII ERP Agreement and allowing the Municipality a reasonable and specific amount of time within which to cure its breach. If the Municipality does not cure its breach of contract within the period of time allowed by the Department, this NYWII ERP Agreement shall terminate on the date set forth in the letter ("Termination Letter"). The Department shall notify the Municipality of the amount of money that the Municipality owes the State for repayment of State costs incurred for the Project, including the Department's oversight costs and for any other costs incurred by the State in administering and terminating the Municipality's environmental restoration

remediation project ("Demand Letter"). The Municipality agrees that if this NYWII ERP Agreement is terminated by the Department under this Subparagraph B:

1) the Municipality, a successor in title, lessee and lender are not entitled to claim any liability limitation benefits provided under ECL § 56-0509 because the Municipality has failed to satisfy the requirement of ECL § 56-0509 (1)(a)(I) to comply with all of the terms and conditions of the NYWII ERP Agreement; and

2) the Municipality shall pay to the Department an amount of money constituting the amount of Project costs incurred by the State under this NYWII ERP Agreement plus accrued interest and transaction costs, with interest thereon as provided by law, within 45 days of the Municipality's receipt of the Department's Demand Letter.

C) The Municipality may terminate this NYWII ERP Agreement without prejudice or waiver of any other rights within thirty (30) days of receiving notice of the completion of the Remedial Design if the associated engineer's estimate of project costs exceeds the costs as set forth in Paragraph V.A by at least three times. The requirement for the Municipality to pay ten percent (10%) of the Project cost committed up to the date of termination survives the termination.

XV) If this NYWII ERP Agreement is completed or terminated, the following requirements shall survive such completion or termination: Paragraphs VI (Disposition of Site), VII (Cost Recovery), and XII (Site Lease/Transfer Conditions).

If this NYWII ERP Agreement is terminated, the following requirements shall survive such termination: Paragraphs II (Allowable Use), IV (Entry upon Site), V (Payment of State Costs), X (Change of Use), XI (Environmental Easement), and XIII (Communications).

XVI) Miscellaneous

A) The Municipality shall file all appropriate forms for registration and closure for all known or identified petroleum bulk storage tanks on the Site, and/or all known or identified chemical bulk storage tanks on the Site to allow proper registration and/or closure of all such tanks.

B) The Department is exempt from the requirement to obtain any State or local permit or other authorization for any activity conducted pursuant to 6 NYCRR Part 375.

C) The Municipality shall cooperate with the Department to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform the obligations under this NYWII ERP Agreement.

D) The Municipality shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this NYWII ERP Agreement.

- E) The paragraph headings set forth in this NYWII ERP Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this NYWII ERP Agreement.
- F) The terms of this NYWII ERP Agreement shall constitute the complete and entire agreement between the Department and Municipality concerning the implementation of the activities required by this NYWII ERP Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this NYWII ERP Agreement shall be binding unless made in writing and subscribed by both parties. In the event of a conflict between the terms of this NYWII ERP Agreement and any Work Plan submitted pursuant to this NYWII ERP Agreement, the terms of this NYWII ERP Agreement shall control over the terms of the Work Plan(s). The Municipality consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this NYWII ERP Agreement and further agrees not to contest the validity of this NYWII ERP Agreement or its terms.
- G) Unless otherwise expressly provided herein, terms used in this NYWII ERP Agreement which are defined in ECL Article 56 or in 6 NYCRR Part 375 shall have the meaning assigned to them under said statute or regulations.
- H) The Municipality's obligation under this NYWII ERP Agreement represents payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty. This NYWII ERP Agreement does not constitute a permit and does not confer upon the Municipality the right to engage in the Contemplated Use or any other use of the Site for any particular purpose.
- I) No delay or omission on the part of either party in exercising any right under this NYWII ERP Agreement shall operate as a waiver of such right or of any other right under this NYWII ERP Agreement. A waiver shall not be construed as a bar to any right and/or remedy. No waiver or consent shall be binding unless it is in writing and executed by the Department and the Municipality.
- J) This NYWII ERP Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.
- K) The effective date of this NYWII ERP Agreement is the date it is signed by the Commissioner or the Commissioner's designee after all other parties have signed.
- L) The Municipality acknowledges that it has read, understands, and agrees to abide by all the terms set forth in this NYWII ERP Agreement.
- M) In accordance with Section 41 of the State Finance Law, the State shall have no liability under this NYWII ERP Agreement beyond funds available for this NYWII ERP Agreement.

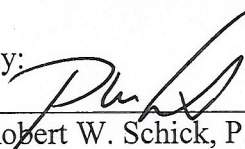
N) Notwithstanding any provision to the contrary, the Department expressly reserves its rights to postpone, suspend, abandon or terminate this NYWII ERP Agreement, and such actions shall in no event be deemed a breach of this NYWII ERP Agreement.

DATED:

FEB 24 2015

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

By:

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

CONSENT BY MUNICIPALITY

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

Municipality's Name:

By: [Signature]  
Printed Name: Robert M Palmieri  
Title: Mayor, City of Utica  
Date: 1/27/15

STATE OF NEW YORK

COUNTY OF Oneida

On the 27<sup>th</sup> day of January in the year 2015, before me, the undersigned, personally appeared Robert M Palmieri (full name) personally known to me who, being duly sworn, did depose and say that he/she resides at 806 Arthur St Utica NY 13501 (full mailing address) and that he/she is the Mayor of the The City of Utica (full legal name of municipality), the municipality described in and which executed the above instrument; and that he/she signed his/her name thereto as authorized by said municipality.

Notary Public, State of New York Ashley B Sabis (B Sabis)

**ASHLEY B. SABIS**  
Notary Public, State of New York  
Registration #01SA6236877  
Qualified in Oneida County  
Commission Expires March 7, 2015

...authorizing any provision to the contrary, the Department expressly reserves its right to prepare, accept, amend or terminate this NYWILB Agreement and any related staff in no event be deemed a breach of this NYWILB Agreement.

Exhibit A  
Record of Decision

DATE:

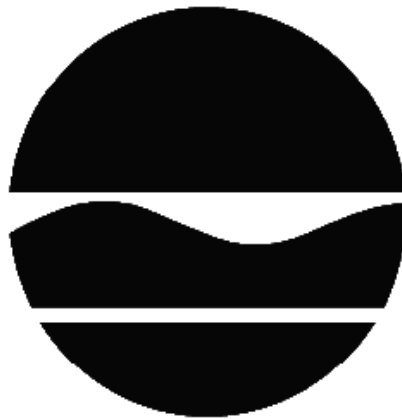
JOSEPH J. MARINO  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION  
By

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

# RECORD OF DECISION

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26-28 Whitesboro Street  
Environmental Restoration Project  
Utica, Oneida County  
Site No. B00063  
March 2011



Prepared by  
Division of Environmental Remediation  
New York State Department of Environmental Conservation



# **DECLARATION STATEMENT - RECORD OF DECISION**

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26-28 Whitesboro Street  
Environmental Restoration Project  
Utica, Oneida County  
Site No. B00063  
March 2011

## **Statement of Purpose and Basis**

This document presents the remedy for the 26-28 Whitesboro Street site, an environmental restoration site. The remedial program was chosen in accordance with the New York State Environmental Conservation Law and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 375.

This decision is based on the Administrative Record of the New York State Department of Environmental Conservation (the Department) for the 26-28 Whitesboro Street site and the public's input to the proposed remedy presented by the Department. A listing of the documents included as a part of the Administrative Record is included in Appendix B of the ROD.

## **Description of Selected Remedy**

The estimated present worth cost to implement the remedy is \$267,000. The cost to construct the remedy is estimated to be \$228,000 and the estimated average annual cost is \$14,000.

The elements of the selected remedy are as follows:

1. A remedial design program will be implemented to provide the details necessary for the construction, operation, maintenance, and monitoring of the remedial program. Green remediation principals and techniques will be implemented to the extent feasible in the design, implementation, and site management of the remedy as per DER-31. The major green remediation components are as follows;

- Considering the environmental impacts of treatment technologies and remedy stewardship over the long term;
- Reducing direct and indirect greenhouse gas and other emissions;
- Increasing energy efficiency and minimizing use of non-renewable energy;
- Conserving and efficiently managing resources and materials;
- Reducing waste, increasing recycling and increasing reuse of materials which will otherwise be considered a waste;
- Maximizing habitat value and creating habitat when possible;
- Fostering green and healthy communities and working landscapes which balance ecological, economic and social goals; and
- Integrating the remedy with the end use where possible and encouraging green and

sustainable re-development.

2. Approximately 1,300 cubic yards of contaminated surface and subsurface soils from four areas on-site will be excavated for off-site disposal at a permitted facility. Soil will be excavated with the goal of reaching the lower of the protection of groundwater or commercial SCOs for VOCs. If it is not possible to attain the protection of groundwater SCOs, additional measures to meet the protection of groundwater SCOs will be evaluated and/or post closure monitoring may be required.

3. A site-wide cover will be required to allow for commercial use of the site. The cover will consist either of the structures such as buildings, pavement, sidewalks comprising the site development or a soil cover in areas where the upper one foot of exposed surface soil will exceed the applicable soil cleanup objectives (SCOs). Where the soil cover is required it will be a minimum of one foot of soil, meeting the SCOs for cover material as set forth in 6 NYCRR Part 375-6.7(d) for commercial use. The soil cover will be placed over a demarcation layer, with the upper six inches of the soil of sufficient quality to maintain a vegetation layer.

4. Imposition of an institutional control in the form of an environmental easement that will: (a) limit the use and development of the property to commercial uses only; (b) restrict use of groundwater as a source of potable or process water without necessary water quality treatment as determined by the New York State Department of Health; (c) require the property owner to complete and submit to the NYSDEC a periodic certification; and (d) the implementation of the required site management plan.

5. Development of a site management plan which will include the following: (a) identification and mapping of materials and areas which must be managed in accordance with the site management plan; (b) an excavation plan to establish how soils will be tested and properly handled to protect the health and safety of workers and the nearby community if they are encountered during future excavations; (c) a restoration plan to identify how the site will be restored at the conclusion of any redevelopment. Any fill material brought to the site will meet the requirements for the identified site use as set forth in 6 NYCRR Part 375-6.7(d); (d) a groundwater monitoring plan to confirm the effectiveness of the remedy; and (e) an evaluation of the potential for vapor intrusion for any existing or new buildings must be performed upon redevelopment of the site and the evaluation must include provisions for the monitoring or mitigation, if deemed necessary by the Department.

6. The City of Utica or subsequent property owner will provide a periodic certification of institutional and engineering controls for the site, prepared and submitted by a professional engineer or such other expert, acceptable to the Department, until the Department notifies the property owner in writing that this certification is no longer needed. This submittal will: (a) contain certification that the institutional controls and engineering controls put in place are still in place, and are either unchanged from the previous certification or are compliant with Department-approved modifications; (b) allow the Department access to the site; and (c) state 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 the site management plan unless otherwise approved by the Department.

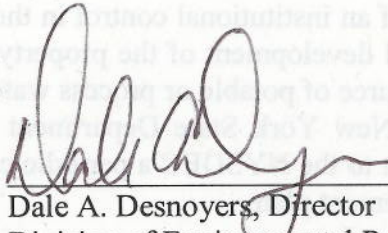
**New York State Department of Health Acceptance**

The New York State Department of Health (NYSDOH) concurs that the remedy for this site is protective of human health.

**Declaration**

The selected remedy is protective of human health and the environment, complies with State and Federal requirements that are legally applicable or relevant and appropriate to the remedial action to the extent practicable, and is cost effective. This remedy utilizes permanent solutions and alternative treatment or resource recovery technologies, to the maximum extent practicable, and satisfies the preference for remedies that reduce toxicity, mobility, or volume as a principal element.

MAR 24 2011



Date

Dale A. Desnoyers, Director  
Division of Environmental Remediation

# RECORD OF DECISION

26-28 Whitesboro Street  
Utica, Oneida County  
Site No. B00063  
March 2011

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## **SECTION 1: SUMMARY AND PURPOSE**

The New York State Department of Environmental Conservation (the Department), in consultation with the New York State Department of Health (NYSDOH), has selected a remedy for the above referenced site. The disposal of contaminants at the site has resulted in threats to public health and the environment that would be addressed by the remedy. The disposal or release of contaminants at this site, as more fully described in this document, has contaminated various environmental media. Contaminants include hazardous waste and/or petroleum. The remedy is intended to attain the remedial action objectives identified for this site for the protection of public health and the environment. This Record of Decision (ROD) identifies the selected remedy, summarizes the other alternatives considered, and discusses the reasons for selecting the remedy.

The 1996 Clean Water/ Clean Air Bond Act provides funding to municipalities for the investigation and cleanup of brownfields. Brownfields are abandoned, idled, or under-used properties where redevelopment is complicated by real or perceived environmental contamination. They typically are former industrial or commercial properties where operations may have resulted in environmental contamination. Brownfields often pose not only environmental, but legal and financial burdens on communities. Under the Environmental Restoration Program, the state provides grants to municipalities to reimburse up to 90 percent of eligible costs for site investigation and remediation activities. Once remediated, the property can then be reused.

The Department has issued this document in accordance with the requirements of New York State Environmental Conservation Law and 6 NYCRR Part 375. This document is a summary of the information that can be found in the site-related reports and documents.

## **SECTION 2: SITE DESCRIPTION AND HISTORY**

**Location:** The site is located in an urban area. The 1.61 acre site is located at 26-28 Whitesboro Street in Utica, Oneida County, New York. The site is situated adjacent to a railroad line on the north side and Genesee Street to the east. The Utica Harbor and Mohawk River are located approximately 0.25 miles north of the property.

**Site Features:** The site is vacant and covered with a mixture of concrete sidewalks, asphalt parking and weedy vegetation.

Current Zoning/Uses: The site is currently inactive, and is zoned for commercial use. The surrounding parcels are currently vacant or used for a combination of commercial, public recreation and light industrial.

Historical Uses: The west side of the site was historically used for the manufacturing of fishing rods and accessories, and the east side of the site was occupied by various hotels from 1925 until 1973. In 1993, the City of Utica acquired the property in lieu of back taxes. All on-site structures were demolished after a fire in 1994 and the site is currently vacant.

Site Geology and Hydrogeology: The site contains historic backfill material to a depth of approximately 4 - 6 feet. Soils found beneath the fill are characterized as sandy, clayey silt. The depth to groundwater in the overburden soil is approximately 10 feet and flows in a northerly direction towards the Mohawk River.

A site location map is attached as Figure 1.

### **SECTION 3: LAND USE AND PHYSICAL SETTING**

The Department may consider the current, intended, and reasonably anticipated future land use of the site and its surroundings when evaluating a remedy for soil remediation. For this site, alternatives (or an alternative) that restrict(s) the use of the site to restricted-residential use (which allows for commercial use and industrial use) as described in Part 375-1.8(g) is/are being evaluated in addition to an alternative which would allow for unrestricted use of the site.

A comparison of the results of the investigation to the appropriate standards, criteria and guidance values (SCGs) for the identified land use and the unrestricted use SCGs for the site contaminants is included in the Tables for the media being evaluated in Exhibit A.

### **SECTION 4: ENFORCEMENT STATUS**

Potentially Responsible Parties (PRPs) are those who may be legally liable for contamination at a site. This may include past or present owners and operators, waste generators, and haulers.

No PRPs have been documented to date.

Since no viable PRPs have been identified, there are currently no ongoing enforcement actions. However, legal action may be initiated at a future date by the state to recover state response costs should PRPs be identified. The City of Utica will assist the state in its efforts by providing all information to the state which identifies PRPs. The City of Utica will also not enter into any agreement regarding response costs without the approval of the Department.

### **SECTION 5: SITE CONTAMINATION**

#### **5.1: Summary of the Remedial Investigation**

A Remedial Investigation (RI) has been conducted. The purpose of the RI was to define the nature and extent of any contamination resulting from previous activities at the site. The field activities and findings of the investigation are described in the RI Report.

The following general activities are conducted during an RI:

- Research of historical information,
- Geophysical survey to determine the lateral extent of wastes,
- Test pits, soil borings, and monitoring well installations,
- Sampling of waste, surface and subsurface soils, groundwater, and soil vapor,
- Sampling of surface water and sediment,
- Ecological and Human Health Exposure Assessments.

#### **5.1.1: Standards, Criteria, and Guidance (SCGs)**

The remedy must conform to promulgated standards and criteria that are directly applicable or that are relevant and appropriate. The selection of a remedy must also take into consideration guidance, as appropriate. Standards, Criteria and Guidance are hereafter called SCGs.

To determine whether the contaminants identified in various media are present at levels of concern, the data from the RI were compared to media-specific SCGs. The Department has developed SCGs for groundwater, surface water, sediments, and soil. The NYSDOH has developed SCGs for drinking water and soil vapor intrusion. The tables found in Exhibit A list the applicable SCGs in the footnotes. For a full listing of all SCGs see: <http://www.dec.ny.gov/regulations/61794.html>

#### **5.1.2: RI Information**

The analytical data collected on this site includes data for:

- groundwater
- soil

The data have identified contaminants of concern. A "contaminant of concern" is a contaminant that is sufficiently present in frequency and concentration in the environment to require evaluation for remedial action. Not all contaminants identified on the property are contaminants of concern. The nature and extent of contamination and environmental media requiring action are summarized in Exhibit A. Additionally, the RI Report contains a full discussion of the data. The contaminant(s) of concern identified at this site is/are:

vinyl chloride	chromium
trichloroethene (tce)	copper
benzene	lead
toluene	manganese
ethylbenzene	mercury
xylene (mixed)	selenium
1,2,4-trimethylbenzene	zinc
benz(a)anthracene	fluoranthene
benzo(b)fluoranthene	pyrene
benzo(k)fluoranthene	dibenz[a,h]anthracene
benzo(a)pyrene	polychlorinated biphenyls (pcb)
chrysene	nickel
indeno(1,2,3-cd)pyrene	acenaphthene
beryllium	anthracene
cadmium	fluorene
	phenanthrene

As illustrated in Exhibit A, the contaminant(s) of concern exceed the applicable SCGs for:

- groundwater
- soil

### **5.2: Interim Remedial Measures**

An interim remedial measure (IRM) is conducted at a site when a source of contamination or exposure pathway can be effectively addressed before issuance of the Record of Decision.

There were no IRMs performed at this site during the RI.

### **5.3: Summary of Human Exposure Pathways**

This human exposure assessment identifies ways in which people may be exposed to site-related contaminants. Chemicals can enter the body through three major pathways (breathing, touching or swallowing). This is referred to as *exposure*.

The site is not fenced and persons who enter the site could contact contaminants in the soil by walking on the site, digging or otherwise disturbing the soil. People are not drinking the contaminated groundwater because the area is served by a public water supply that is not affected by this contamination.

Volatile organic compounds in the groundwater may move into the soil vapor (air spaces within the soil), which in turn may move into overlying buildings and affect the indoor air quality. This process, which is similar to the movement of radon gas from the subsurface into the indoor air of buildings, is referred to as soil vapor intrusion. Because there is no on-site building, inhalation of site contaminants in indoor air due to soil vapor intrusion does not represent a concern for the

site in its current condition. However, the potential exists for the inhalation of site contaminants due to soil vapor intrusion for any future on-site development.

#### **5.4: Summary of Environmental Assessment**

This section summarizes the assessment of existing and potential future environmental impacts presented by the site. Environmental impacts may include existing and potential future exposure pathways to fish and wildlife receptors, wetlands, groundwater resources, and surface water.

Based upon the resources and pathways identified and the toxicity of the contaminants of ecological concern at this site, a Fish and Wildlife Resources Impact Analysis (FWRIA) was deemed not necessary for OU 01.

Surface and subsurface soils have been impacted by the disposal of hazardous wastes from the previous site operations. Surface soils exceed the unrestricted and commercial SCOs for SVOCs and metals in the eastern portion of Area 2. Subsurface soils are contaminated by VOCs, SVOCs, metals and pesticides/PCBs above the unrestricted and commercial SCOs. Groundwater has been impacted by the disposal of chlorinated and non chlorinated solvents. Site related contamination is impacting groundwater. Areas of grossly contaminated soils exist in the vicinity of Boring 18 (B-18) and Boring 3 (B-3) in Area # 1 and in the vicinity of MW-6 in Area 2.

### **SECTION 6: SUMMARY OF THE EVALUATION OF ALTERNATIVES**

To be selected the remedy must be protective of human health and the environment, be cost-effective, comply with other statutory requirements, and utilize permanent solutions, alternative technologies or resource recovery technologies to the maximum extent practicable. The remedy must also attain the remedial action objectives identified for the site, which are presented in Exhibit B. Potential remedial alternatives for the Site were identified, screened and evaluated in the alternatives analysis (AA) report.

A summary of the remedial alternatives that were considered for this site is presented in Exhibit C. Cost information is presented in the form of present worth, which represents the amount of money invested in the current year that would be sufficient to cover all present and future costs associated with the alternative. This enables the costs of remedial alternatives to be compared on a common basis. As a convention, a time frame of 30 years is used to evaluate present worth costs for alternatives with an indefinite duration. This does not imply that operation, maintenance, or monitoring would cease after 30 years if remediation goals are not achieved. A summary of the Remedial Alternatives Costs is included as Exhibit D.

#### **6.1: Evaluation of Remedial Alternatives**

The criteria to which potential remedial alternatives are compared are defined in 6 NYCRR Part 375. A detailed discussion of the evaluation criteria and comparative analysis is included in the AA report.



The first two evaluation criteria are termed "threshold criteria" and must be satisfied in order for an alternative to be considered for selection.

1. Protection of Human Health and the Environment. This criterion is an overall evaluation of each alternative's ability to protect public health and the environment.
2. Compliance with New York State Standards, Criteria, and Guidance (SCGs). Compliance with SCGs addresses whether a remedy will meet environmental laws, regulations, and other standards and criteria. In addition, this criterion includes the consideration of guidance which the Department has determined to be applicable on a case-specific basis.

The next six "primary balancing criteria" are used to compare the positive and negative aspects of each of the remedial strategies.

3. Long-term Effectiveness and Permanence. This criterion evaluates the long-term effectiveness of the remedial alternatives after implementation. If wastes or treated residuals remain on-site after the selected remedy has been implemented, the following items are evaluated: 1) the magnitude of the remaining risks, 2) the adequacy of the engineering and/or institutional controls intended to limit the risk, and 3) the reliability of these controls.
4. Reduction of Toxicity, Mobility or Volume. Preference is given to alternatives that permanently and significantly reduce the toxicity, mobility or volume of the wastes at the site.
5. Short-term Impacts and Effectiveness. The potential short-term adverse impacts of the remedial action upon the community, the workers, and the environment during the construction and/or implementation are evaluated. The length of time needed to achieve the remedial objectives is also estimated and compared against the other alternatives.
6. Implementability. The technical and administrative feasibility of implementing each alternative are evaluated. Technical feasibility includes the difficulties associated with the construction of the remedy and the ability to monitor its effectiveness. For administrative feasibility, the availability of the necessary personnel and materials is evaluated along with potential difficulties in obtaining specific operating approvals, access for construction, institutional controls, and so forth.
7. Cost-Effectiveness. Capital costs and annual operation, maintenance, and monitoring costs are estimated for each alternative and compared on a present worth basis. Although cost-effectiveness is the last balancing criterion evaluated, where two or more alternatives have met the requirements of the other criteria, it can be used as the basis for the final decision.
8. Land Use. The Department may consider the current, intended, and reasonable anticipated future land use of the site and its surroundings in the selection of the soil remedy.

The final criterion, Community Acceptance, is considered a "modifying criterion" and is taken into account after evaluating those above. It is evaluated after public comments on the Proposed Remedial Action Plan have been received.

9. Community Acceptance. Concerns of the community regarding the investigation, the evaluation of alternatives, and the PRAP are evaluated. A responsiveness summary will be prepared that describes public comments received and the manner in which the Department will address the concerns raised. If the selected remedy differs significantly from the proposed remedy, notices to the public will be issued describing the differences and reasons for the changes.

## **6.2: Elements of the Remedy**

The basis for the Department's remedy is set forth at Exhibit E.

The estimated present worth cost to implement the remedy is \$267,000. The cost to construct the remedy is estimated to be \$228,000 and the estimated average annual cost is \$14,000.

The elements of the selected remedy are as follows:

1. A remedial design program will be implemented to provide the details necessary for the construction, operation, maintenance, and monitoring of the remedial program. Green remediation principals and techniques will be implemented to the extent feasible in the design, implementation, and site management of the remedy as per DER-31. The major green remediation components are as follows;

- Considering the environmental impacts of treatment technologies and remedy stewardship over the long term;
- Reducing direct and indirect greenhouse gas and other emissions;
- Increasing energy efficiency and minimizing use of non-renewable energy;
- Conserving and efficiently managing resources and materials;
- Reducing waste, increasing recycling and increasing reuse of materials which will otherwise be considered a waste;
- Maximizing habitat value and creating habitat when possible;
- Fostering green and healthy communities and working landscapes which balance ecological, economic and social goals; and
- Integrating the remedy with the end use where possible and encouraging green and sustainable re-development.

2. Approximately 1,300 cubic yards of contaminated surface and subsurface soils from four areas on-site will be excavated for off-site disposal at a permitted facility. Soil will be excavated with the goal of reaching the lower of the protection of groundwater or commercial SCOs for VOCs. If it is not possible to attain the protection of groundwater SCOs, additional measures to meet the protection of groundwater SCOs will be evaluated and/or post closure monitoring may be required.

3. A site-wide cover will be required to allow for commercial use of the site. The cover will consist either of the structures such as buildings, pavement, sidewalks comprising the site development or a soil cover in areas where the upper one foot of exposed surface soil will exceed

the applicable soil cleanup objectives (SCOs). Where the soil cover is required it will be a minimum of one foot of soil, meeting the SCOs for cover material as set forth in 6 NYCRR Part 375-6.7(d) for commercial use. The soil cover will be placed over a demarcation layer, with the upper six inches of the soil of sufficient quality to maintain a vegetation layer.

4. Imposition of an institutional control in the form of an environmental easement that will: (a) limit the use and development of the property to commercial uses only; (b) restrict use of groundwater as a source of potable or process water without necessary water quality treatment as determined by the New York State Department of Health; (c) require the property owner to complete and submit to the NYSDEC a periodic certification; and (d) the implementation of the required site management plan.

5. Development of a site management plan which will include the following: (a) identification and mapping of materials and areas which must be managed in accordance with the site management plan; (b) an excavation plan to establish how soils will be tested and properly handled to protect the health and safety of workers and the nearby community if they are encountered during future excavations; (c) a restoration plan to identify how the site will be restored at the conclusion of any redevelopment. Any fill material brought to the site will meet the requirements for the identified site use as set forth in 6 NYCRR Part 375-6.7(d); (d) a groundwater monitoring plan to confirm the effectiveness of the remedy; and (e) an evaluation of the potential for vapor intrusion for any existing or new buildings must be performed upon redevelopment of the site and the evaluation must include provisions for the monitoring or mitigation, if deemed necessary by the Department.

6. The City of Utica or subsequent property owner will provide a periodic certification of institutional and engineering controls for the site, prepared and submitted by a professional engineer or such other expert, acceptable to the Department, until the Department notifies the property owner in writing that this certification is no longer needed. This submittal will: (a) contain certification that the institutional controls and engineering controls put in place are still in place, and are either unchanged from the previous certification or are compliant with Department-approved modifications; (b) allow the Department access to the site; and (c) state 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 the site management plan unless otherwise approved by the Department.

## Exhibit A

### Nature and Extent of Contamination

As described in the RI report, many soil and groundwater samples were collected to characterize the nature and extent of contamination. As summarized in Table 1, the main categories of contaminants that exceed their SCGs are volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs), pesticides, polychlorinated biphenyls (PCBs), and inorganics (metals). For comparison purposes, where applicable, SCGs are provided for each medium.

Chemical concentrations are reported in parts per billion (ppb) for water and parts per million (ppm) for waste, soil, and sediment. Air samples are reported in micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ). The following are the media which were investigated and a summary of the findings of the investigation.

#### Groundwater

Groundwater samples were collected from twenty (20) temporary and permanent overburden monitoring wells to assess groundwater conditions on-site and off-site. The groundwater data indicate that contamination in shallow groundwater exceeds the SCGs for volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs) and metals.

VOCs are the primary groundwater contaminants and consist of trichloroethene, cis-1, 2-dichloroethene, benzene, and toluene. The contamination is isolated in the northern corner of Area 1 (see Figure 2) and appears to be associated with a historical spill or poor waste management practices.

The SVOC contamination is predominantly comprised of polyaromatic hydrocarbons (PAHs) and was found at low levels primarily in one boring in the northwest corner of the site near the railroad tracks. SVOC contamination in the groundwater is limited and is believed to be related to historic fill and not the result of operations at the site.

The inorganic compounds found in groundwater are considered related to the historic fill at the site, but may also be attributed to sample turbidity. Metals in the groundwater were also found in up gradient monitoring wells and are considered to represent site background conditions. Therefore, the metal compounds are not considered site specific contaminants of concern.

A summary of the analytical results and the frequency at which they exceed their SCGs are found in the table below.

Table 1 – Groundwater			
Detected Concentrations	Concentration Range Detected (ppb) <sup>a</sup>	SCG <sup>b</sup> (ppb)	Frequency Exceeding SCG
VOCs			
Vinyl Chloride	1 – 5	2	1 of 20
cis-1,2-Dichloroethene	2 – 200	5	3 of 20
Trichloroethene	4 – 120	5	5 of 20

Table 1 – Groundwater			
Detected Concentrations	Concentration Range Detected (ppb) <sup>a</sup>	SCG <sup>b</sup> (ppb)	Frequency Exceeding SCG
Benzene	11 – 43	1	3 of 20
Toluene	3 – 23	5	3 of 20
Ethylbenzene	3 – 73	5	1 of 20
Xylenes (total)	2 – 66	5	1 of 20
Isopropylbenzene	1 – 21	5	1 of 20
n-Propylbenzene	7	5	1 of 20
1,3,5-Trimethylbenzene	29	5	1 of 20
1,2,4-Trimethylbenzene	3 – 120	5	1 of 20
Naphthalene	5 – 1,100	10	1 of 20
SVOCs			
Benzo(a)anthracene	ND – 6 J	0.002	1 of 12
Chrysene	ND – 6 J	0.002	2 of 12
Benzo(b)fluoranthene	ND – 6 J	0.002	1 of 12
Benzo(k)fluoranthene	ND – 3 J	0.002	1 of 12
Benzo(a)pyrene	ND – 4 J	ND	1 of 12
Indeno(1,2,3-cd)pyrene	ND – 3 J	0.002	1 of 12
METALS			
Arsenic	1.7 – 618	25	6 of 37
Barium	30.7 – 6430	1000	4 of 37
Beryllium	0.15 – 27.7	3	5 of 37
Cadmium	0.13 – 47.8	5	5 of 37
Chromium	0.49 – 2600	50	5 of 37
Copper	6.4 – 4190	200	5 of 37

Detected Concentrations	Concentration Range Detected (ppb) <sup>a</sup>	SCG <sup>b</sup> (ppb)	Frequency Exceeding SCG
Lead	0.62 – 2250	25	8 of 37
Manganese	3.1 – 95900	300	26 of 37
Total Mercury	0.068 – 8.6	0.7	5 of 37
Nickel	1.4 – 3810	100	7 of 37
Selenium	1.5 – 72.7	10	2 of 37
Zinc	4.8 – 7680	2000	3 of 37

a - ppb: parts per billion, which is equivalent to micrograms per liter, ug/L, in water.

b- SCG: Standard Criteria or Guidance - Ambient Water Quality Standards and Guidance Values (TOGs 1.1.1), 6 NYCRR Part 703, Surface water and Groundwater Quality Standards, and Part 5 of the New York State Sanitary Code (10 NYCRR Part 5).

J- Estimated values

Based on the findings of the RI, the disposal of hazardous waste has resulted in the contamination of groundwater. The site contaminants that are considered to be the primary contaminants of concern are: trichloroethene, cis-1, 2-dichloroethene, benzene, and toluene. The area of VOC contaminated groundwater is in the vicinity of B-18 and MW-2 (see Figure 3). PAH's found in groundwater were associated with historic fill and is predominately with Well No. B-1 near the north side of the site, adjacent to Water Street and the railroad tracks. Chrysene was detected at 1 ppb (estimated concentration) in monitoring well B-7.

### Surface Soil

Surface soil samples were collected at the site during the RI to assess the potential for direct human exposure. Samples were collected from a depth of 0-2 inches below grade. The results indicate that soils at the site exceed the unrestricted SCOs for semi-volatile organics, pesticides, polychlorinated biphenyls, and metals.

A summary of the analytical results and the frequency at which they exceed their SCOs are found in the table below.

Detected Constituents	Concentration Range Detected (ppm) <sup>a</sup>	Unrestricted SCO <sup>b</sup> (ppm)	Frequency Exceeding Unrestricted SCO	Commercial SCO <sup>c</sup> (ppm)	Frequency Exceeding Commercial SCO
SVOCs					
Fluoranthene	0.27 – 200	100	1 / 15	500	0 / 15
Pyrene	0.24 – 170	100	1 / 15	500	0 / 15
Benzo(a)anthracene	0.16 – 79	1	9 / 15	5.6	3 / 15

Table 2 – Surface Soils

Detected Constituents	Concentration Range Detected (ppm) <sup>a</sup>	Unrestricted SCO <sup>b</sup> (ppm)	Frequency Exceeding Unrestricted SCO	Commercial SCO <sup>c</sup> (ppm)	Frequency Exceeding Commercial SCO
Chrysene	0.16 – 75	1	10 / 15	56	1 / 15
Benzo(b)fluoranthene	0.26 – 110	1	14 / 15	5.6	5 / 15
Benzo(k)fluoranthene	0.081 – 33	0.8	8 / 15	56	0 / 15
Benzo(a)pyrene	0.15 – 76	1	12 / 15	1	11 / 15
Indeno(1,2,3-cd)pyrene	0.085 – 38	0.5	9 / 15	5.6	1 / 15
Dibenzo(a,h)anthracene	0.073 – 1.4	0.33	3 / 15	0.56	2 / 15
PCBs / PESTICIDES					
4-4' DDD	ND - 0.0078	0.0033	1 / 8	92	0 / 8
4-4' DDE	ND - 0.0051	0.0033	1 / 8	62	0 / 8
4-4' DDT	0.0068 – 0.026	0.0033	6 / 8	47	0 / 8
Polychlorinated biphenyls	0.087 – 0.35	0.1	2 / 8	1.0	0 / 8
METALS					
Copper	9.1 – 397	50	4 / 15	270	1 / 15
Lead	11.2 – 1290	63	13 / 15	1000	1 / 15
Total Mercury	0.063 – 8.9	0.18	9 / 15	2.8	1 / 15
Nickel	4.4 – 39.9	30	1 / 15	310	0 / 15
Zinc	42.7 - 315	109	10 / 15	10000	0 / 15

a - ppm: parts per million, which is equivalent to milligrams per kilogram, mg/kg, in soil;

b - SCO: Part 375-6.8(a), Unrestricted Soil Cleanup Objectives;

c - SCO: Part 375-6.8(b), Commercial Soil Cleanup Objectives for surface soils

Based on the findings of the RI, the sites surface soils are consistent with historic fill and not the disposal of hazardous waste. However, the eastern portion of Area 2 has been impacted by SVOCs and metals above both the unrestricted and commercial SCOs will require remediation and long-term site management (see Figure 4).

### Subsurface Soils

Subsurface soil samples, through the use of soil borings, were collected at the site during the RI to assess the extent of contaminated soils and their impacts on groundwater. Samples were collected from a depth of 2 to 10 feet below grade. Test pitting was also conducted and soils were examined for visual and olfactory evidence of contamination. The results indicate that subsurface soils at the site exceed the unrestricted SCOs for VOCs, SVOCs, pesticides,

PCBs, and metals. Subsurface soil samples identified several areas that are impacted with chlorinated solvents that are likely to be contributing to groundwater contamination.

The primary subsurface soil contamination is PAHs and mercury which appears to be associated with historic fill. One location in Area 1 has been found to be contaminated with chlorinated VOCs. This area appears to be associated with a historical spill and/or poor waste management practices.

Metals and PAHs are the most prevalent contamination in subsurface soil at the site. However, their levels are consistent with background samples collected in the vicinity of the site and are most likely the result of historic fill. Therefore, metal and PAH contamination is not considered site specific contaminants of concern.

A summary of the analytical results and the frequency at which they exceed their SCOs are found in the table below.

<b>Table 3 Subsurface Soil</b>					
Detected Constituents	Concentration Range Detected (ppm) <sup>a</sup>	Unrestricted SCO <sup>b</sup> (ppm)	Frequency Exceeding Unrestricted SCO	Protection of Groundwater SCO <sup>c</sup> (ppm)	Frequency Exceeding Protection of Groundwater SCO
<b>VOCs</b>					
Vinyl Chloride	0.002 – 0.26	0.02	1 / 30	0.02	1 / 30
Methylene Chloride	0.002 – 0.084	0.05	2 / 30	.05	1 / 30
cis-1,2-Dichloroethene	1 – 1.5	0.25	1 / 30	0.25	1 / 30
Trichloroethene	0.002 – 5.7	0.47	1 / 30	0.47	1 / 30
Xylenes	0.003 – 1.6	0.26	1 / 30	1.6	0 / 30
1,2,4-Trimethylbenzene	ND - 3.9	3.6	1 / 30	3.6	1 / 30
<b>SVOCs</b>					
Phenol	1.7 – 1.8	0.33	2 / 30	0.33	2 / 30
Naphthalene	0.05 – 61	12	1 / 30	12	1 / 30
Acenaphthene	0.057 - 36	20	1 / 30	98	0 / 30
Fluorene	0.089 - 50	30	1 / 30	1000	0 / 30
Phenanthrene	0.045 - 410	100	1 / 30	1000	0 / 30
Anthracene	0.053 - 120	100	1 / 30	1000	0 / 30
Fluoranthene	0.057 - 470	100	1 / 30	1000	0 / 30
Pyrene	0.045 - 430	100	1 / 30	1000	0 / 30
Benzo(a)anthracene	0.058 – 200	1	7 / 30	1	7 / 30
Chrysene	0.057 – 210	1	9 / 30	1	9 / 30
Benzo(b)fluoranthene	0.054 – 150	1	9 / 30	1.7	6 / 30
Benzo(k)fluoranthene	0.028 – 91	0.8	6 / 30	1.7	2 / 30
Benzo(a)pyrene	0.044 – 130	1	6 / 30	22	1 / 30
Indeno(1,2,3-cd)pyrene	0.041 – 59	0.5	7 / 30	8.2	1 / 30
Dibenzo(a,h)anthracene	0.054 - 15	0.33	2 / 30	1000	0 / 30
<b>PCBs / PESTICIDES</b>					
4,4' DDD	0.0026 – 0.0053	0.0033	1 / 12	14	0 / 12



4,4' DDE	0.0034 – 0.0096	0.0033	3 / 12	17	0 / 12
4,4' DDT	0.0046 – 0.044	0.0033	5 / 12	136	0 / 12
Dibenzofuran	0.061 - 36	7	1 / 30	210	0 / 30
<b>METALS</b>					
Arsenic	3.0 – 16.7	13	1 / 12	16	1 / 12
Barium	15.3 – 884	350	1 / 12	820	1 / 12
Copper	20.7 - 180	50	2 / 12	1720	0 / 12
Lead	7.1 – 314	63	3 / 12	450	0 / 12
Total Mercury	0.16 – 12.4	0.18	6 / 12	0.73	1 / 12
Nickel	10.8 – 551	30	2 / 12	130	1 / 12
Zinc	46.1 - 639	109	2 / 12	2480	0 / 12

a - ppm: parts per million, which is equivalent to milligrams per kilogram, mg/kg, in soil;

b - SCG: Part 375-6.8(a), Unrestricted Soil Cleanup Objectives;

c - SCG: Part 375-6.8(b), Protection of Groundwater Soil Cleanup Objectives

Based on the findings of the Remedial Investigation, the disposal of hazardous waste has resulted in the contamination of soil. The site contaminants identified in soil which are considered to be the primary contaminants of concern, to be addressed by the remedy selection process are, trichloroethene, cis-1,2-dichloroethene, , vinyl chloride, xylene, 1,2,4-trimethylbenze and naphthalene. Three (3) areas of concern have been identified on-site which exceed SCOs for the protection of groundwater and will require remediation. Subsurface soils in the vicinity of B-18 and B-3 have been impacted by chlorinated VOCs above the protection of groundwater SCO. Subsurface soils in the vicinity of MW-6 have been impacted by petroleum based VOCs above the protection of groundwater SCOs (see Figure 4).

## **Exhibit B**

### **SUMMARY OF THE REMEDIATION OBJECTIVES**

The objectives for the remedial program have been established through the remedy selection process stated in 6 NYCRR Part 375. The goal for the remedial program is to restore the site to pre-disposal conditions to the extent feasible. At a minimum, the remedy shall eliminate or mitigate all significant threats to public health and the environment presented by the contamination identified at the site through the proper application of scientific and engineering principles.

The remedial action objectives (RAOs) for this site are:

#### **Groundwater**

##### **RAOs for Public Health Protection**

- Prevent ingestion of groundwater with contaminant levels exceeding drinking water standards.
- Prevent contact with, or inhalation of volatiles, from contaminated groundwater.

##### **RAOs for Environmental Protection**

- Restore ground water aquifer to pre-disposal/pre-release conditions, to the extent practicable.
- Remove the source of ground or surface water contamination.

#### **Soil**

##### **RAOs for Public Health Protection**

- Prevent ingestion/direct contact with contaminated soil.
- Prevent inhalation of or exposure from contaminants volatilizing from contaminants in soil

##### **RAOs for Environmental Protection**

- Prevent migration of contaminants that would result in groundwater contamination.

#### **Soil Vapor**

##### **RAOs for Public Health Protection**

- Mitigate impacts to public health resulting from existing, or the potential for, soil vapor intrusion into buildings at a site

**Exhibit C**

**Description of Remedial Alternatives**

The following alternatives were considered based on the remedial action objectives (see Exhibit B) to address the contaminated media identified at the site as described in Exhibit A:

**Alternative 1: No Action**

The No Action Alternative is evaluated as a procedural requirement and as a basis for comparison. This alternative leaves the site in its present condition and does not provide any additional protection to public health and the environment.

**Alternative 2: No Action with Long-Term Monitoring**

This alternative provides no active remediation and relies solely on natural attenuation for remediation of contaminated soil. Long term monitoring of the overburden groundwater using existing groundwater monitoring wells would be performed for a period of 30 years or more. This alternative would also include a soil vapor investigation to determine if future building construction would require a soil vapor intrusion evaluation to be performed. An environmental easement would be placed on the property to ensure future use/control of the site that would protect human health and the environment.

Present Worth: .....	\$95,000
Capital Cost: .....	\$14,000
Annual Costs: .....	\$5,000

**Alternative 3: Pavement Cap with Long-Term Monitoring**

This alternative would include placement of a 12 inch impermeable asphalt or concrete cover over the entire site. The cap would consist of 6 inches gravel sub-base with a 6 inch thick asphalt or concrete cap to mitigate contact with and erosion of contaminated soil. Long term monitoring of the overburden groundwater using existing groundwater monitoring wells would be performed for a period of 30 years or more. This alternative would also include a soil vapor investigation to determine if future building construction would require a soil vapor intrusion evaluation to be performed. An environmental easement would be placed on the property to ensure future use/control (restricted commercial) of the site that would protect human health and the environment.

Present Worth: .....	\$501,000
Capital Cost: .....	\$265,000
Annual Costs: .....	\$14,000

**Alternative 4: Hot Spot Removal Meeting Commercial Use SCOs for all Contaminants  
Including PAHs and Permeable Cover with Monitoring**

This alternative would include excavation of surface and subsurface soils with contaminant concentrations exceeding Part 375-6.8(b) Commercial Use Soil Cleanup Objectives (SCOs) for off-site disposal, backfilling with clean material, and placement of a 12 inch permeable soil cover not exceeding the commercial use SCOs. A short term groundwater monitoring program would be implemented to evaluate the effectiveness of the remedial program.

Under this alternative, remaining soils would be left in place and managed under a Site Management Plan (SMP). This alternative would also include a soil vapor investigation to determine if future building construction would require a soil vapor intrusion evaluation to be performed. An environmental easement would be placed on the property to ensure future use/control of the site that would protect human health and the environment.

Present Worth: .....	\$636,000
Capital Cost: .....	\$598,000
Annual Costs:.....	\$14,000

**Alternative 5: Removal Meeting SCOs for  
VOCs and Institutional Controls**

This alternative would include excavation and off-site disposal of approximately 1300 cubic yards of subsurface soils with contaminant concentrations exceeding Part 375-6.8(b) SCOs for the protection of groundwater. The excavation would then be backfilled with clean material. A soil cover would be installed over any areas not meeting the commercial SCOs in the top 2 feet. This cover would consist of buildings, pavement/sidewalks or soil. If a soil cover is used it must consist of a minimum of twelve inches of soil, meeting the commercial requirements for cover material set forth in 6 NYCRR Part 375-6.8(d) and must be placed over a demarcation layer. The upper six inches of the soil would be of sufficient quality to maintain a vegetation layer. A site management plan (SMP) would be developed to address future use, soil excavation and handling and site cover requirements. An environmental easement would be placed on the property to ensure future use/control (restricted commercial) of the site that would protect human health and the environment. The SMP would also require that either a soil vapor investigation be conducted with any new building construction. A groundwater monitoring program would be implemented to evaluate the effectiveness of the remedial program.

Present Worth: .....	\$267,000
Capital Cost: .....	\$228,200
Annual Costs (For 3 years-Post Closure Monitoring):.....	\$14,000

**Alternative 6: Removal Meeting SCOs for all Contaminants,  
Cover System with Monitoring**

This alternative would include excavation of soils with contaminant concentrations exceeding Part 375-6.8(b) Protection of Groundwater SCOs for off-site disposal, backfilling with clean material, and placement of a 12 inch soil cover. Under this alternative, remaining soils would be left in place and managed under a Site Management Plan (SMP). A groundwater monitoring program would be implemented to evaluate the effectiveness of the remedial program. This alternative would also include a soil vapor investigation to determine if future building construction would require a soil vapor intrusion evaluation to be performed. An environmental easement would be placed on the property to ensure future use/control of the site that would protect human health and the environment.

Present Worth: .....	\$700,000
Capital Cost: .....	\$662,000
Annual Costs:.....	\$14,000

Alternative 7: Excavation and Off Site Disposal Meeting Unrestricted Use SCOs  
for all Contaminants Except PAHs, and Monitoring

This alternative would include excavation of soils with contaminant concentrations exceeding Part 375-6.8(a) Unrestricted Use SCGs except for PAHs for off-site disposal, and backfilling with clean material. Under this alternative, remaining PAH contaminated soils would be left in place and managed under a Site Management Plan (SMP). A short term groundwater monitoring program would be implemented using existing groundwater monitoring wells for a minimum of 3 years. This alternative would also include a soil vapor investigation to determine if future building construction would require a soil vapor intrusion evaluation to be performed. An environmental easement would be placed on the property to ensure future use/control of the site that would protect human health and the environment.

Present Worth: ..... \$893,000  
Capital Cost: ..... \$882,000  
Annual Costs: ..... \$14,000

Alternative 8: Restoration to Pre-Disposal or Unrestricted SCOs

This alternative achieves all of the SCGs discussed in Section 6.1.1 and soil meets the unrestricted soil clean objectives listed in Part 375-6.8 (a). This alternative would include removal of soils with site related contaminants exceeding Part 375-6.8(a) unrestricted SCOs, disposal off-site of the contaminated soils, backfilling with clean material meeting 6 NYCRR 375-6.8(d), and site restoration with 6" of top soil with grass seeding and mulching.

Capital Cost: ..... \$950,000

## Exhibit D

### Remedial Alternative Costs

Remedial Alternatives	Capital Cost (\$)	Annual Costs (\$)	Present Worth Cost (\$)
1. No Action	0	0	0
2. No Action, Long-Term Monitoring	13,500	5,000	95,000
3. Pavement Cap, Long-Term Monitoring	265,000	14,000	501,000
4. Hot Spot and surface soil removal above commercial SCOs including PAHs Short-Term Monitoring	598,000	14,000	636,000
5. Hot Spot Removal, Except PAHs, Protect Groundwater SCOs, Short-Term Monitoring	228,000	14,000	267,000
6. Hot Spot Removal, Including PAHs, Protect Groundwater SCOs, Cover, Short-Term Monitoring	662,000	14,000	700,000
7. Excavation, Off Site Disposal, Unrestricted Use SCOs, Except PAHs, Short-Term Monitoring	882,000	4,000	893,000
8. Unrestricted	950,000	0	950,000

## **Exhibit E**

### **SUMMARY OF THE PROPOSED REMEDY**

The Department is proposing Alternative 5 Hot Spot Removal Meeting the Protection of Groundwater SCOs for VOCs and Institutional Controls, as the remedy for this site. The elements of this remedy are described at the end of this section.

#### **Basis for Selection**

The proposed remedy is based on the results of the RI and the evaluation of alternatives.

Alternative 5 (Hot Spot Removal Meeting the Protection of Groundwater SCOs for VOCs and Institutional Controls) is being proposed because, as described below, it satisfies the threshold criteria and provides the best balance of the balancing criterion described in Section 7.2. It would achieve the remediation goals for the site by removing contaminated soils which are causing contraventions of groundwater SCGs and which may cause exceedances of indoor soil vapor concentration in buildings constructed in the future. Alternative 5 addresses the most significant threat to public health and the environment, and it creates the conditions necessary to restore groundwater quality to the extent practical. This alternative is effective at removing major source of contamination, yet recognizes that the wide spread SVOCs and metal contamination associated with historic fill can be managed through a site management plan and an environmental easement.

Alternative 1 (No Action) does not provide any protection to public health and the environment and will not be evaluated further. Alternative 8, by removing all soil contaminated above the "unrestricted" soil cleanup objective, meets the threshold criteria. Alternatives 4, 5, 6, and 7 also comply with this criterion but to a lesser degree because the removal is not to unrestricted SCOs. Alternatives 2 and 3 leave the site in the current condition with monitoring and/or capping. Because all the Alternatives, except for 1, satisfy the threshold criteria, the remaining criteria are particularly important in selecting a final remedy for the site.

Alternatives 3 through 8 all have short-term impacts which could easily be controlled, however, Alternative 2 would have the smallest impact because monitoring is the only remedial activity to be conducted. The time needed to achieve the implement the remedy is the shortest for Alternative 2 and longest for Alternative 8. Besides Alternative 8, alternatives 3, 4, 5, 6, and 7 take the longest to implement the remedy.

Long-term effectiveness is best accomplished by those alternatives involving excavation of the contaminated overburden soils (Alternatives 4 through 8). Since most of the contamination of concern is associated with the chlorinated solvent found in the vicinity of B-18, Alternative 5 results in removal of almost all of the chemical contamination associated with the greatest threat to human health and the environment. Alternatives 4, 6, 7, and 8 remove contaminants associated with urban fill found throughout this area. The long-term effectiveness of these alternatives is greater than alternative 5; however the overall impacts to human health and the environment are not greatly improved.

Alternative 2 and 3 would control potential exposures with institutional controls and/or capping but will not reduce the toxicity, mobility or volume of contaminants remaining. Alternatives 4 though 7 include excavation and off-site disposal, thereby reducing the toxicity, mobility and volume of on-site waste by transferring the material to an approved off-site location. Only Alternative 8 would eliminate the toxicity, mobility and volume of contaminants through excavation of soils to meet the unrestricted SOCs.

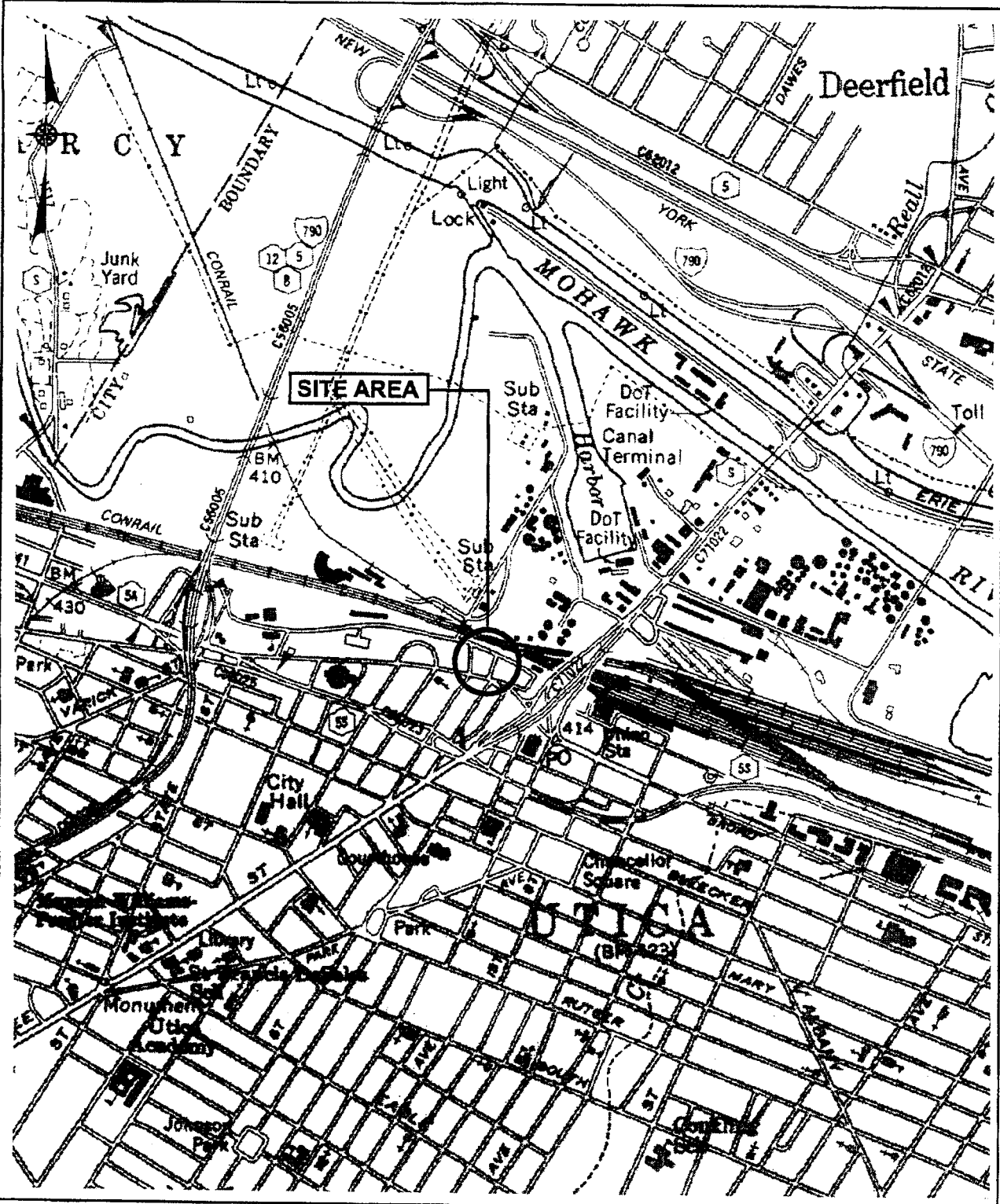
Alternatives 2 and 8 are all readily implementable. Standard techniques are used for each of the alternatives. No special equipment and/or techniques are needed for monitoring, capping and/or excavation.

The costs of the alternatives vary significantly. Alternative 2 has the lowest cost, but the contaminated soil would not be addressed other than by institutional controls. Alternative 5 has the second lowest cost with the source removal and institutional controls. Alternative 3, which paves the whole site, is the third most costly. With its large volume of soil to be handled, Alternatives 7 and 8 (excavation and off-site disposal) would have the highest present work cost. Alternatives 4 and 6 are less costly than Alternatives 8 and 9 and range in price from \$636,000 to \$700,000.

Since the anticipated use of the site is commercial, Alternatives 7 and 8 would be less desirable because the cleanup exceeds the future use criterion for the site. Alternatives 4 through 6 would address the known sources of contamination and properly manage the residual contamination with engineering and/or institutional controls. Alternatives 7 and 8 would address the known sources of contamination be protective of public health and the environment but at a greater cost (3 times the cost of Alternative 5) without an incremental benefit to the environment or public health.

The estimated present worth cost to implement the remedy is \$217,000. The cost to construct the remedy is estimated to be \$178,000 and the estimated average annual costs for \$14,000 for three years to conduct performance monitoring of the remedial action.





26-28 WHITESBORO STREET SITE  
CITY OF UTICA, NEW YORK

SITE LOCATION MAP

Figure 1

DATE: APR 24, 2001 04:58 P. T.MCC. FN19091909-1ADWG

JUL 7, 2005 SCP C:\1905\Whitesboro SEP SR bosc.dwg

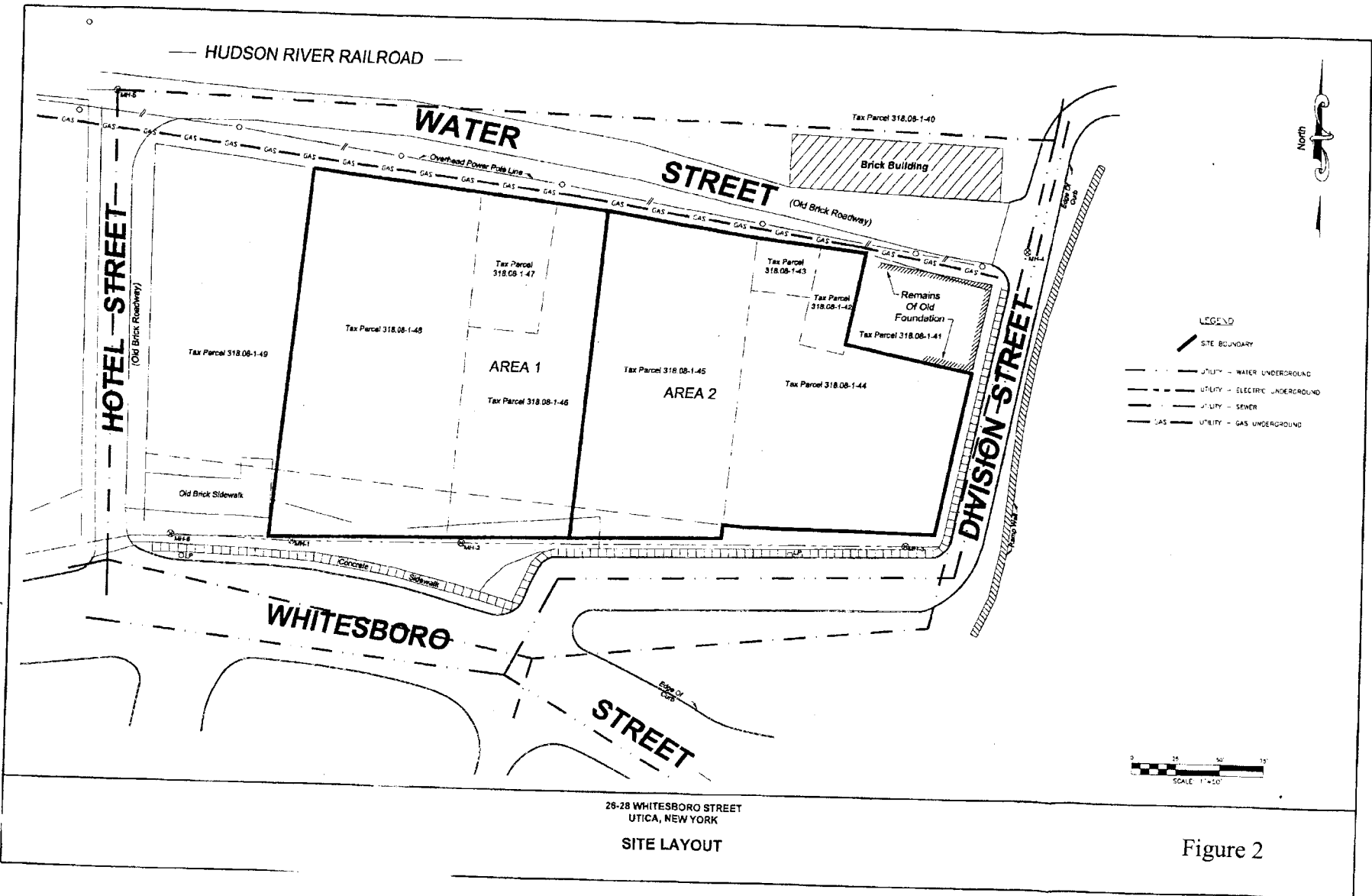


Figure 2

AUG 1, 2005 SEP C:\1998\Whitesboro SEP SIR Issue.dwg

**db** Dirka and Bartucci  
Consulting Engineers  
A Division of William F. Casulini Associates, P.C.

26-28 WHITESBORO STREET  
UTICA, NEW YORK  
**ISOCONTOUR MAP  
SUBSURFACE SOIL - TCE**

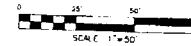
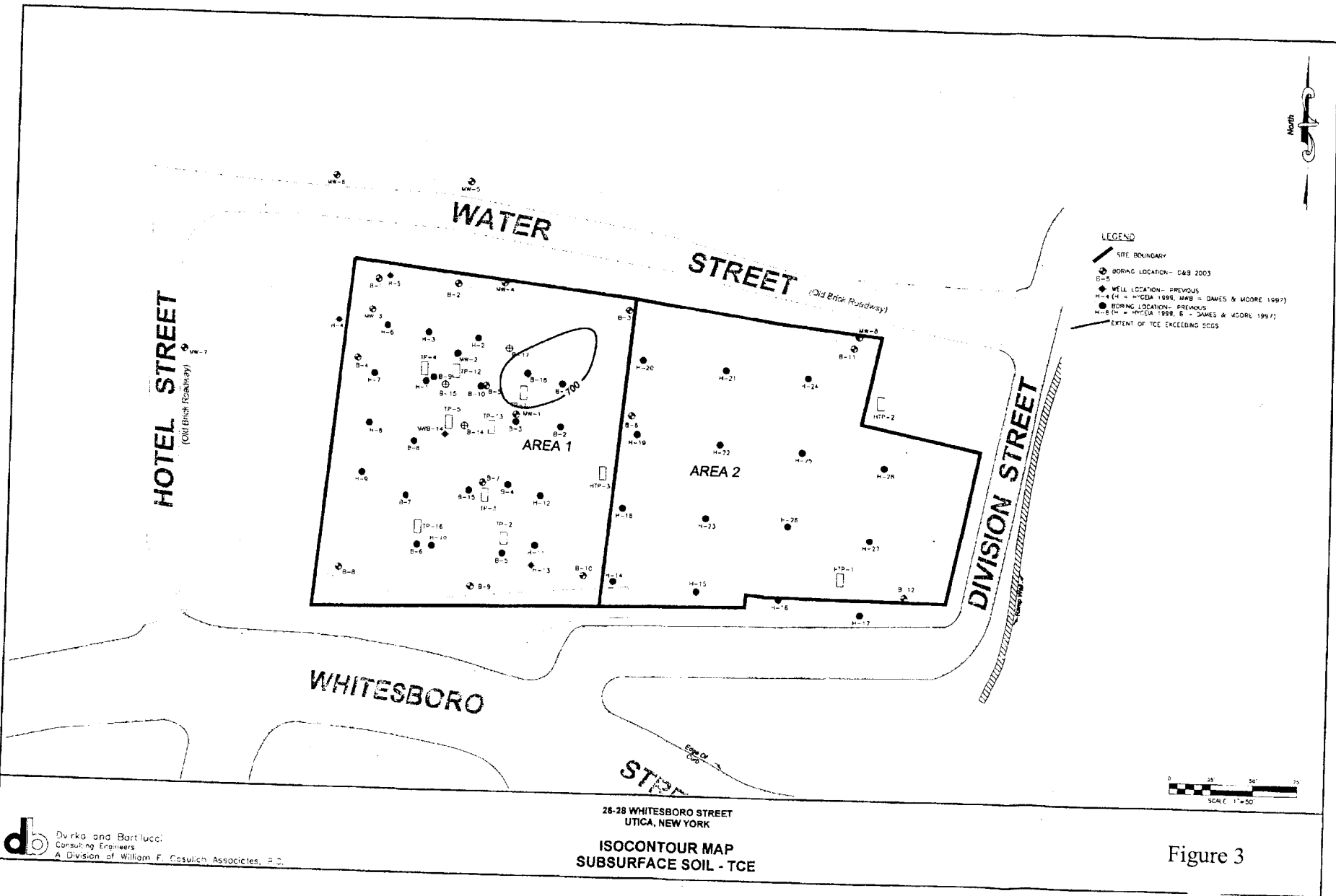


Figure 3



F:\1809\dwg\1809 FIGURES.dwg, FIG 3-4, 2/11/2008 3:25:43 PM, P:\M\scorp

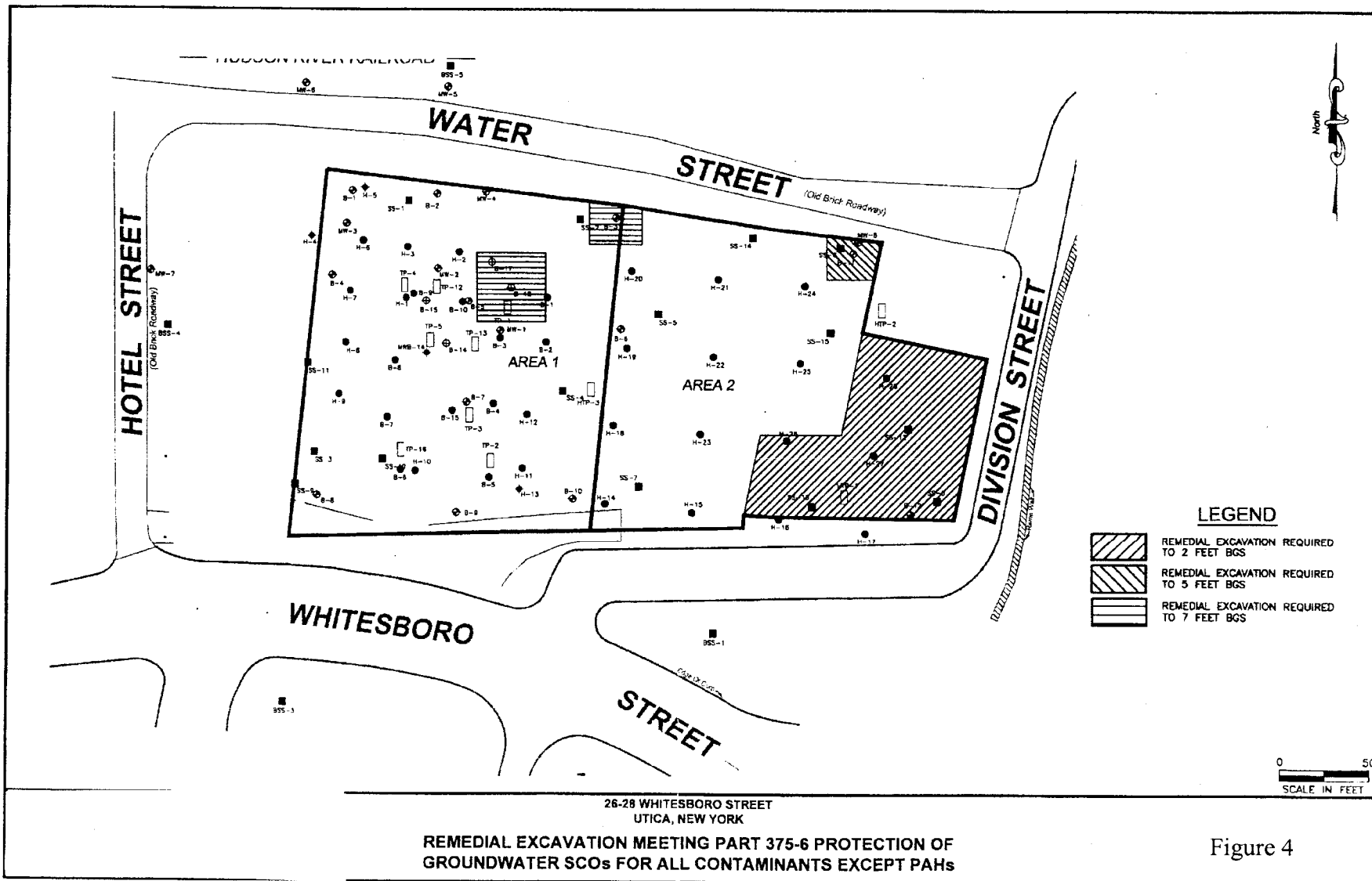


Figure 4

# **APPENDIX A**

## **Responsiveness Summary**

# RESPONSIVENESS SUMMARY

**26-28 Whitesboro Street  
Environmental Restoration Project  
Utica, Oneida County, New York  
Site No. B00063**

The Proposed Remedial Action Plan (PRAP) for the 26-28 Whitesboro Street site was prepared by the New York State Department of Environmental Conservation (the Department) in consultation with the New York State Department of Health (NYSDOH) and was issued to the document repositories on February 3, 2011. The PRAP outlined the remedial measure proposed for the contaminated soil and groundwater at the 26-28 Whitesboro Street site.

The release of the PRAP was announced by sending a notice to the public contact list, informing the public of the opportunity to comment on the proposed remedy.

A public meeting was held on March 3, 2011, which included a presentation of the remedial investigation/alternative analysis (RI/AA) for the 26-28 Whitesboro Street site, as well as a discussion of the proposed remedy. The meeting provided an opportunity for citizens to discuss their concerns, ask questions and comment on the proposed remedy. These comments have become part of the Administrative Record for this site. The public comment period for the PRAP ended on March 23, 2011.

This responsiveness summary responds to all questions and comments raised during the public comment period. The following are the comments received, with the Department's responses:

**COMMENT 1:** Where will the money come from for the cleanup?

**RESPONSE 1:** The source of funding for the cleanup is unknown. It is noted that in an effort to spur the cleanup and redevelopment of brownfields, New Yorkers approved a \$200 million Environmental Restoration Fund as part of the \$1.75 billion Clean Water/Clean Air Bond Act of 1996 (Bond Act). Under the Environmental Restoration Program, the State provides grants to municipalities to reimburse up to 90 percent of on-site eligible costs and 100% of off-site eligible costs for site investigation and remediation activities. Currently, requests for funding exceed the \$200 million authorized under the 1996 Clean Water/Clean Air Bond Act for the ERP. Applications have not been approved since 2008 and new applications are not being accepted due to lack of funding.

# **APPENDIX B**

## **Administrative Record**

# **Administrative Record**

**26-28 Whitesboro Street  
Environmental Restoration Project  
Utica, Oneida County, New York  
Site No. B00063**

Proposed Remedial Action Plan for the 26-28 Whitesboro Street site, dated February 2011, prepared by the Department.

Site Investigation and Remedial Alternatives Report Work Plan, dated June 2002, prepared by Dvirka and Bartilucci Consulting Engineers.

Site Investigation Report, dated December 2008, prepared by Dvirka and Bartilucci Consulting Engineers.

Remedial Alternatives Report, dated December 2009, prepared by Dvirka and Bartilucci Consulting Engineers.



CITY TAX DEED

005785

This Indenture, Made the 17TH day of FEBRUARY 1993 between Louis A. Barile as City Comptroller of the City of Utica, party of the first part, and the City of Utica party of the second part.

Witnesseth, as follows:

Whereas, the real estate hereinafter described was assessed to CAJUM REALTY CORPORATION on the assessment roll(s) of the City of Utica for the year(s) 1990, and the

1989-90 CITY TAX	100.00
INTEREST	18.00
ADVERTISING FEE	16.00

TOTAL 134.00

RECORDED  
MAR 17 AM 2:14

thereon remained unpaid for said year(s), and said real estate was duly advertised for sale as required by Section 5, Article V of Chapter 658 of the Laws of 1923, as amended, and as said real estate was on the JUNE 30TH 1990 sold by the City Comptroller of said City of Utica to the Utica for the total sum of ONE HUNDRED THIRTY-FOUR AND 00/100 dollars and the certificate(s) of sale was duly executed and delivered to such purchaser, and

Whereas, the said certificate of the sale was thereafter duly assigned to, and

Whereas, the said purchaser, his legal representatives or assigns, have duly given and served notice to redeem said real estate and have exhibited such notice with the proof of service thereof to the said City Comptroller prior hereto, as required by section 7, Article V of Chapter 658 of the laws of 1923, and the time for such redemption has expired and real estate has not been redeemed.

Now, therefore, the said party of the first part pursuant to the provisions of Section 8, Article V of Chapter 658 of the Laws of 1923, in consideration of the premises and the said total sum of ONE HUNDRED THIRTY-FOUR AND 00/100 dollars doth hereby grant and convey to the said party of the second part the following described premises situated in said City of Utica, County of Oneida and State of New York .

viz:-

DESCRIPTION  
Book 3 Map 68 Block 04 Lot 005  
26 28 WHITESBORO ST, Utica, New York 13502 Ward 01 Key 006920

To have and to hold the above granted premises unto the party of the second part, its successors and assigns forever.

IN Witness Whereof, said party of the first part hath set his hand and caused these presents to be Attested by the City Clerk of said City and the Seal of the City to be attached thereto the day and the year first above written.

Attest:

*Philomen Talarico*  
City Clerk of the City of Utica

RECEIVED  
STATE  
MAR 17 1993  
TRANSFER  
ONEIDA COUNTY

*Louis A. Barile*  
AS City Comptroller of the City of Utica (L. S.)

FILED  
UTICA NY  
FEB 18 1993

State of New York ) ss:  
County of Oneida

OFFICE OF ASSESSMENT  
& TAXATION

On the 17th day of FEBRUARY 1993, before me personally appeared Louis A. Barile and PHILOMEN TALARICO to me known to be the same persons described in and who executed the foregoing instrument acknowledged the execution thereof, and who being by me severally duly sworn did depose and say, each for himself.

That the said Louis A. Barile is the City Comptroller of the City of Utica, and that the said PHILOMEN TALARICO is the City Clerk of the City of Utica, that he knows the corporate seal of the City of Utica and that the seal affixed to the said seal affixed to the said instrument is said instrument is the corporate seal of the City of Utica, and that the same was thereto affixed and the same signed and executed by said Comptroller attested by said Clerk pursuant to the provisions of Section 8, Article V, of chapter 658 of the laws of 1923.

FILE 2650 PAGE 252

*Deanna Salton*  
Commissioner of Deeds in and for the  
City of Utica, New York. Expr. 12/31/94

Exhibit B  
Legal Description of Site

## Application Appendix 1: Certification of Ownership

To document ownership, the DEC has developed a generic Proof of Ownership letter to be completed by the municipal attorney:

*I* Laura R. Campion, Esq. , being an attorney duly admitted to the practice of law in the State of New York, affirm under the penalties of perjury the following:

1. That I am the attorney for the City of Utica , the Municipality which is the applicant to undertake a New York Works II Environmental Restoration Project known as the " 26-28 Whitesboro Street 26-28 Whitesboro Street " Project;

2. That the Property located at 26-28 Whitesboro Street, Utica, New York 13502 , the subject of the Project and is more particularly described as ERP Site No. B00063 ;

3. That I hereby certify to the Commissioner of Environmental Conservation that I have examined or caused to be examined the title to the Property, and that I have approved the same, and that as of the date of this affirmation a good and marketable title thereto in fee is vested in and may be conveyed by the City of Utica ;

4. That annexed hereto is/are a certified copy/copies of the deed/deeds whereby such title to the Property was conveyed to the City of Utica , and that I hereby certify to the Commissioner of Environmental Conservation that the property title, conveyed by said deed/deeds, is identical to the Property which is the subject of the Project; and,

5. That I make this affirmation to be attached as an exhibit and incorporated by reference into such application.

Dated: November 7 , 2014

  
{attorney/signature}

Exhibit C

**Municipal Resolution**

**City of Utica**  
**Department of Legislation**

In Common Council

Utica, N. Y., .....

Resolution 2. Sponsored by: Councilman Vescera

January 21, 2015

WHEREAS, the City of Utica is seeking funding from the New York State DEC New York Works Round II to remediate the brownfield located at the property known as 26-28 Whitesboro Street, Utica, NY 13502. The estimated cost of cleanup is \$236,127 and the City will be required to pay 10 percent of the total cost. The match will be paid for with the expected funding from the State Dormitory Authority; and

WHEREAS, the City of Utica herein called the "Municipality", after thorough consideration of the various aspects of the problem and study of available data, has hereby determined that certain work, as described in its application and attachments, herein called the "Project", is desirable, is in the public interest, and is required in order to implement the Project; and

WHEREAS, Article 56 of the Environmental Conservation Law authorizes State assistance to municipalities for environmental restoration projects by means of a contract and the Municipality deems it to be in the public interest and benefit under this law to enter into a contract therewith; and

WHEREAS, the enacted Executive Budget for State Fiscal Year 2013-2014 (the "13/14 Budget"), as reflected in Chapter 54, Laws of 2013 (the "Laws of 2013"), provided New York Works II funding for services, expenses, and indirect costs related to various environmental projects including, but not limited to, environmental restoration projects. The Law allows the Department of Environmental Conservation (the "Department") to enter into agreements with municipalities to undertake environmental restoration projects on behalf of a municipality upon request, provided that the municipality shall provide ten percent of the total project costs (hereinafter referred to as "NYWII ERP"); and

NOW, THEREFORE, BE IT RESOLVED THAT:

1. That Mayor, Robert M. Palmieri is the representative authorized to act in behalf of the Municipality's in all matters related to State assistance under ECL Article 56, Title 5. The representative is also authorized to make a request to the Department (by applying for participation in the NYWII ERP) to enter into an agreement to undertake an environmental restoration project on behalf of the Municipality, execute the NYWII ERP Agreement, submit Project documentation, and otherwise act for the Municipality's governing body in all matters related to the Project and to State assistance;
2. That the Municipality agrees that it will fund its portion of the cost of the Project by reimbursing the Department ten percent (10%) of Project costs and that funds will be available to reimburse the Department within ninety (90) days after receipt of an invoice from the Department.
3. That one (1) certified copy of this Authorization be prepared and sent to the Albany office of the New York State Department of Environmental Conservation together with the Application for Participation in NYWII ERP;
4. That this Authorization takes effect immediately.

Yeas: Councilmembers Vescera, Testa, DeSanctis, Marino, McKinsey, Colosimo-Testa, Williamson, LoMedico, Bucciero-9  
Nays: None. Adopted.

STATE OF NEW YORK, CITY OF UTICA

CITY CLERK'S OFFICE

} ss.

I hereby certify that I have compared the foregoing copy of an ordinance of the Common Council with the record of proceedings of the Common Council of said City of Utica, duly made and can file in this office, and that the same is a correct transcript therefrom and of the whole of said ordinance.

IN TESTIMONY WHEREOF, I have hereunto affixed the Corporate Seal of said City, and subscribed my name, this 21st day of January, 2015.

*Patricia A. Lindsay*  
City Clerk.