New York State Department of Environmental Conservation
Division of Environmental Remediation
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Joe Martens
Commissioner

December 16, 2014

Mr. Michael Montante
DNC 250, Inc.
c/o Uniland Development Company
100 Corporate Parkway, Suite 500
Amherst, New York 14226

RE: 250 Delaware Avenue BCP Site
NYSDEC Site No. C915271
City of Buffalo, Erie County
Remedial Work Plan & Decision Document

Dear Mr. Montante:

The New York State Department of Environmental Conservation (Department) and the New York State Department of Health (NYSDOH) have reviewed the Alternative Analysis (AA) portion of the Remedial Investigation-Interim Remedial Measures-Alternative Analysis-Final Engineering Report (RI-IRM-AA-FER) for the 250 Delaware Avenue BCP Site dated December 2014 as prepared by Lender Consulting Services, Inc., on behalf of DNC 250, Inc. The AA portion of this document is hereby approved. Please ensure that a copy of the approved AA is placed in the document repository. The draft plan should be removed.

Enclosed is a copy of the Department's Decision Document for the site. The remedy is to be implemented in accordance with this Decision Document. Please ensure that a copy of the Decision Document is placed in the document repository.

Please contact the Department's Project Manager, Eugene Melnyk, at 716-851-7220 or by email at eugene.melnyk@dec.ny.gov at your earliest convenience to discuss next steps.

Sincerely,

Michael J. Cruden, P.E.
Director
Remedial Bureau E
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DECISION DOCUMENT

250 Delaware Avenue
(f.k.a. 233 South Elmwood Avenue and 234 Delaware Avenue)
Brownfield Cleanup Program
Buffalo, Erie County
Site No. C915271
December 2014

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

DECLARATION STATEMENT - DECISION DOCUMENT

250 Delaware Avenue
(f.k.a. 233 South Elmwood Avenue and 234 Delaware Avenue)
Brownfield Cleanup Program
Buffalo, Erie County
Site No. C915271
December 2014

Statement of Purpose and Basis

This document presents the remedy for the 250 Delaware Avenue site, a brownfield cleanup 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 250 Delaware Avenue site and the public's input to the proposed remedy presented by the Department.

Description of Selected Remedy

During the course of the investigation certain actions, known as interim remedial measures (IRMs), were undertaken at the above referenced site. An IRM is conducted at a site when a source of contamination or exposure pathway can be effectively addressed before completion of the remedial investigation (RI) or alternatives analysis (AA). The IRM undertaken at this site are discussed in Section 6.2.

Based on the implementation of the IRM, the findings of the investigation of this site indicate that the site no longer poses a threat to human health or the environment; therefore No Further Action is the selected remedy. The remedy may include continued operation of a remedial system if one was installed during the IRM and the implementation of any prescribed institutional controls/engineering controls (ICs/ECs) that have been identified as being part of the proposed remedy for the site.

Declaration

The remedy conforms with promulgated standards and criteria that are directly applicable, or that are relevant and appropriate and takes into consideration Department guidance, as appropriate. The remedy is protective of public health and the environment.

Michael J Cruden

Digitally signed by Michael J Cruden
DN: cn=Michael J Cruden, o=DER, ou=RBE, email=mjcruden@gw.dec.state.ny.us, c=US
Date: 2014.12.12 15:56:31 -05'00'

Date

Michael Cruden, Director
Remedial Bureau E

DECISION DOCUMENT

250 Delaware Avenue
(f.k.a. 233 South Elmwood Avenue and 234 Delaware Avenue)
Buffalo, Erie County
Site No. C915271
December 2014

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 resulted in threats to public health and the environment that were addressed by actions known as interim remedial measures (IRMs), which were undertaken at the site. An IRM is conducted at a site when a source of contamination or exposure pathway can be effectively addressed before completion of the remedial investigation (RI) or alternative analysis (AA). The IRM undertaken at this site are discussed in Section 6.2.

Based on the implementation of the IRM, the findings of the investigation of this site indicate that the site no longer poses a threat to human health or the environment. The IRM conducted at the site attained the remediation objectives identified for this site, which are presented in Section 6.5, for the protection of public health and the environment. No Further Action is the selected remedy. A No Further Action remedy may include continued operation of any remedial system installed during the IRM and the implementation of any prescribed controls that have been identified as being part of the remedy for the site. This Decision Document identifies the IRM conducted and discusses the basis for No Further Action.

The New York State Brownfield Cleanup Program (BCP) is a voluntary program. The goal of the BCP is to enhance private-sector cleanups of brownfields and to reduce development pressure on "greenfields." A brownfield site is real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of a contaminant.

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: CITIZEN PARTICIPATION

The Department seeks input from the community on all remedies. A public comment period was held, during which the public was encouraged to submit comment on the proposed remedy. All comments on the remedy received during the comment period were considered by the Department in selecting a remedy for the site. Site-related reports and documents were made

available for review by the public at the following document repository:

Buffalo & Erie County Public Library
1 Lafayette Square
Buffalo, NY 14203
Phone: 716-858-8900

Receive Site Citizen Participation Information By Email

Please note that the Department's Division of Environmental Remediation (DER) is "going paperless" relative to citizen participation information. The ultimate goal is to distribute citizen participation information about contaminated sites electronically by way of county email listservs. Information will be distributed for all sites that are being investigated and cleaned up in a particular county under the State Superfund Program, Environmental Restoration Program, Brownfield Cleanup Program, Voluntary Cleanup Program, and Resource Conservation and Recovery Act Program. We encourage the public to sign up for one or more county listservs at http://www.dec.ny.gov/chemical/61092.html

SECTION 3: SITE DESCRIPTION AND HISTORY

Location: The site is located at 250 Delaware Avenue in the City of Buffalo. The address for the BCP site parcel has been renumbered by the City to 250 Delaware Street. The site encompasses an area the length of a city block along the north side of West Chippewa Street extending from Delaware Avenue to South Elmwood Avenue.

Site Features: The site is located in a highly developed urban area and is situated in a popular entertainment district. The site occupies approximately 1.96 acres in area on the north side of West Chippewa Street, and is bounded by South Elmwood Avenue to the west, Delaware Avenue to the east and commercial properties to the north. Local topography of the area is generally flat with a gentle slope toward the Buffalo River/Lake Erie typical of the Buffalo metro area. The site currently has no buildings, but steel framing and floor decking for a 12 story mixed use commercial building has recently been completed.

Current Zoning and Land Use: The site is zoned for commercial use in City of Buffalo Downtown Opportunity (DO) zone. Previous use and future use following redevelopment will be commercial.

Past Use of the Site: The development history dates back to the late 1800s. The site and surrounding area was historically used for commercial and residential uses. The eastern portion of the site contained the Delaware Court building which was utilized as a mixed-use commercial building since its construction in 1925. An area behind the Delaware Court building used for surface parking had been previously used for gasoline retail as early as the 1930s.

Westward from the Delaware Court building, three residential structures occupied lots fronting Chippewa Street. These structures were eventually demolished. Two of the residential lots were subsequently used for surface parking. The remaining former residential lot at the corner of West Chippewa and South Elmwood was used as a retail gasoline filling station with a one story convenience store. The former residential lots and commercial use lots were eventually combined into a single parcel with the Delaware Court Building lot.

Just north of this gasoline station, records show that the parking lot area contained another gasoline

filling station for a period of time. A tire service operation was present on-site from approximately 1931 and 1936, and a service station was identified on the project site from 1982 and 1987 suggesting historic on-site automotive repair operations. Municipal records indicate the installation and removal of several underground storage tanks on this side of the project site.

North of the former gasoline station, a former commercial building occupied the area fronting South Elmwood. This building was demolished in the mid-2000s. Prior to demolition, a locksmith occupied the building. Records for this building indicate several uses including a paint shop and a pipe/hardware shop.

In 2003, the site owner at that time entered into stipulation agreement with the NYSDEC to investigate and remediate a petroleum spill discovered at the site. A petroleum recovery system was installed in 2003 and was operated until 2004. Approximately 4,300 gallons of petroleum product was extracted from the impacted area.

Measures to treat groundwater impacted with dissolved petroleum contamination were implemented by the site previous owner in 2004 and 2006. Ongoing monitoring revealed continued dissolved phase petroleum impacts to groundwater. The site owner sold the site to the BCP applicant in 2012 and the site was admitted to the BCP in early 2013.

The BCP applicant demolished the gas station/convenience store during early summer 2013. The Delaware Court Building was demolished during winter 2013-2014. The site is currently being redeveloped with the construction of a 12 story mixed commercial use building in the area formerly occupied by the Delaware Court Building and a 4 story parking ramp.

Site Geology/Hydrogeology:

Overburden: Following the recent interim remedial measure (IRM), the surficial site geology has been altered. The surface and upper zone in the former parking lot area consists of crushed limestone backfill of varying thickness. The petroleum excavation area was backfilled with crushed limestone ranging in depth from 15 to 20 feet in depth, and historic fill area contains crushed limestone from 2 to 6 feet in depth. Below the crushed limestone fill layer, native soils consists of mostly a fine sand with some interbedded thin lenses of a silty/clayey soil ranging from 41 to 46 feet in depth. The sandy soil layer progressively becomes siltier moving northward along the site. The predominantly sandy soil is likely a part of a lake-laid sandy ridge deposit that is unique in this locality of the city. The soil beneath the basement of former Delaware Court Building consists of the fine sandy soil.

Bedrock: Limestone bedrock varies from 41 to 46 feet below ground surface.

Hydrogeology: Unconfined groundwater was encountered within the native soils and recent backfill at depths of approximately 10 to 12 feet below ground surface. Site groundwater flow gradient appears to flow in a south/southwest direction. Regional groundwater likely flows west/southwest toward Lake Erie and confluence of the Buffalo River.

A site location map is attached as Figure 1. A site plan showing the BCP site boundary is presented in Figure 2.

SECTION 4: 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, an alternative which allows for unrestricted use of the site was evaluated.

A comparison of the results of the investigation against unrestricted use standards, criteria and guidance values (SCGs) for the site contaminants is available in the Remedial Investigation (RI) Report.

SECTION 5: ENFORCEMENT STATUS

The Applicant under the Brownfield Cleanup Agreement is a Volunteer. The Applicant does not have an obligation to address off-site contamination. However, the Department has determined that this site does not pose a significant threat to public health or the environment; accordingly, no enforcement actions are necessary.

SECTION 6: SITE CONTAMINATION

6.1: Summary of the Remedial Investigation

A remedial investigation (RI) serves as the mechanism for collecting data to:

- characterize site conditions;
- determine the nature of the contamination; and
- assess risk to human health and the environment.

The RI is intended to identify the nature (or type) of contamination which may be present at a site and the extent of that contamination in the environment on the site, or leaving the site. The RI reports on data gathered to determine if the soil, groundwater, soil vapor, indoor air, surface water or sediments may have been contaminated. Monitoring wells are installed to assess groundwater and soil borings or test pits are installed to sample soil and/or waste(s) identified. If other natural resources are present, such as surface water bodies or wetlands, the water and sediment may be sampled as well. Based on the presence of contaminants in soil and groundwater, soil vapor will also be sampled for the presence of contamination. Data collected in the RI influence the development of remedial alternatives. The RI report is available for review in the site document repository and the results are summarized in section 6.3.

The analytical data collected on this site includes data for:

- groundwater
- soil
- soil vapor

6.1.1: 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. For a full listing of all SCGs see: http://www.dec.ny.gov/regulations/61794.html

6.1.2: RI Results

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 below. Additionally, the RI Report contains a full discussion of the data.
The contaminants of concern identified at this site are:

benzene
toluene
xylene (mixed)
1,2,4-trimethylbenzene
1,3,5-trimethylbenzene
naphthalene
ethylbenzene
n-propylbenzene
methyl-tert-butyl ether (MTBE)
benz(a)anthracene
benzo(a)pyrene
benzo(b)fluoranthene
benzo(b)fluoranthene
benzo[k]fluoranthene
chrysene
dibenz[a,h]anthracene
indeno(1,2,3-cd)pyrene
cadmium
lead

Based on the investigation results, comparison to the SCGs, and the potential public health and environmental exposure routes, certain media and areas of the site required remediation. These media were addressed by the IRM described in Section 6.2. More complete information can be found in the RI-IRM-AAR-Final Engineering Report.

6.2: 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 Decision Document.

The following IRM has been completed at this site based on conditions observed during the RI.

Soil Removal

An Interim Remedial Measure ("IRM") was implemented to remove all petroleum impacted soil and impacted fill to remediate the site to Unrestricted Use SCOs. The IRM completed at the site consisted of:

- removal of petroleum contaminated soil down to unrestricted use levels, and
- removal of service station impacted soil and impacted fill underlying the asphalt paved portions of the site down to unrestricted use levels

The petroleum excavation area was excavated to a depth ranging from 15 to 20 feet below ground surface (bgs). The impacted fill removal areas were generally excavated to a depth between 4 to

6 feet bgs until verified meeting cleanup requirements. All asphalt pavement was also removed during the IRM.

All petroleum impacted soil was excavated and disposed at a landfill or permitted facility to treat petroleum impacted soil. All on-site impacted fill above the native material was excavated and disposed at a landfill. The soil removal IRM was initiated in September 2013 and completed in June 2014.

A total of 24,870 tons or approximately 19,100 cubic yards of petroleum impacted soil were removed from the site. A total of 10,300 tons or approximately 7,900 cubic yards of impacted fill and services station impacted soil were also removed and disposed of in a sanitary landfill. In addition, concrete and asphalt were sent off-site for recycling during the excavation. During the soil removal, two known and two previously unknown closed in-place petroleum underground storage tanks were removed. Once removed, the tank hulks were prepared for transport to a metal recycler for recycling.

Steel sheet piling was installed to facilitate the IRM. In a sheet pile excavation depth limited area, one bottom sample was marginally above the unrestricted use level for xylene. The concentrations of contaminants remaining in the native soils were less than the unrestricted use SCOs.

Following the completion of the petroleum impacted soil and impacted fill removal IRM down to contaminant levels meeting project goals, the excavation areas were backfilled with clean fill consisting of "run-of-crusher" limestone (unwashed and unscreened crushed limestone with crusher fines). The crushed limestone rock backfill met 6 NYCRR Part 375-6.7(d) for fill.

6.3: 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. The RI report presents a detailed discussion of any existing and potential impacts from the site to fish and wildlife receptors.

Pre IRM Remediation:

Soil: Soil in the southwest section of the site was impacted by petroleum compounds significantly above unrestricted use levels. After several preceding remediation measures, the soil was still sufficiently contaminated to a depth of 15 to 18 feet below ground surface with petroleum such that it served as ongoing source of groundwater contamination from petroleum compounds and potential source of volatile petroleum compound soil vapors. The parking lot area of the site was underlain with impacted fill. The impacted fill was contaminated with several metals and semi-volatile organic compounds; however it did not pose an environmental or human health concern as it was contained beneath an asphalt pavement and was not mobile.

Groundwater: Previous efforts to remediate the petroleum spill did not effectively remediate the site from petroleum compounds. Ongoing monitoring indicated continued high levels of dissolved

petroleum impacts to groundwater significantly above water quality standards. Groundwater quality was not impacted elsewhere on the site by petroleum compounds or other contaminants of concern.

Soil Vapor: The soil vapor assessment indicated petroleum vapors in areas beyond the petroleum impacted area. Soil vapor sample results in conjunction with other environmental sampling results did not indicate a need for additional investigation or remedial actions either on or off site for soil vapor.

Post-IRM Remediation

Soil: Verification sampling of bottom and sidewalls was implemented to ensure project cleanup goals were achieved. With the exception of one bottom sample, the concentrations of contaminants remaining in the native soils were less than the unrestricted use SCOs. The bottom sample (bottom no. 15) was situated in a deeper section (18 feet) of the petroleum excavation area adjacent to the sheet piling, where an excavation depth limitation restricted additional excavation depth along the sheet piling. The sample was marginally above the unrestricted level for xylene (1.75 ppm total xylene vs. the 0.260 ppm unrestricted use SCO), but well below the residential use SCO (100 ppm). There is no evidence of offsite migration of contaminants of concern.

Groundwater: A nominal level of benzene (210 ppb in MW-8) remains in an area previously heavily contaminated with petroleum. With the bulk removal of petroleum impacted soils at the site, it is expected that the benzene residual will continue to decrease due to natural attenuation. There is no evidence of significant off-site migration of impacted groundwater.

6.4: 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*.

Remedial activities undertaken at the site have effectively reduced the potential for exposure to site-related contaminants in on-site areas. Some limited soil contamination exists at the property boundary but people are unlikely to contact it as it is at depth. People are not coming into contact with groundwater unless they dig greater than 10 feet below the ground surface. In addition, the City of Buffalo prohibits use of groundwater as a potable source and the area is served by a public water supply.

6.5: 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 for this site are:

Groundwater

RAOs for Public Health Protection

- Prevent contact with volatiles from contaminated groundwater.

Soil

RAOs for Public Health Protection

- Prevent ingestion/direct contact with contaminated soil.

SECTION 7: ELEMENTS OF THE SELECTED REMEDY

Based on the results of the investigations at the site, the IRM that has been performed, and the evaluation presented here, the Department has selected No Further Action as the remedy for the site. On-site groundwater conditions are expected to continue to improve due to the IRM activities that have been completed. No groundwater use restriction is needed because the area is served by public water and local code prohibits potable use of groundwater without prior approval. The Department believes that this remedy is protective of human health and the environment and satisfies the remediation objectives described in Section 6.5.

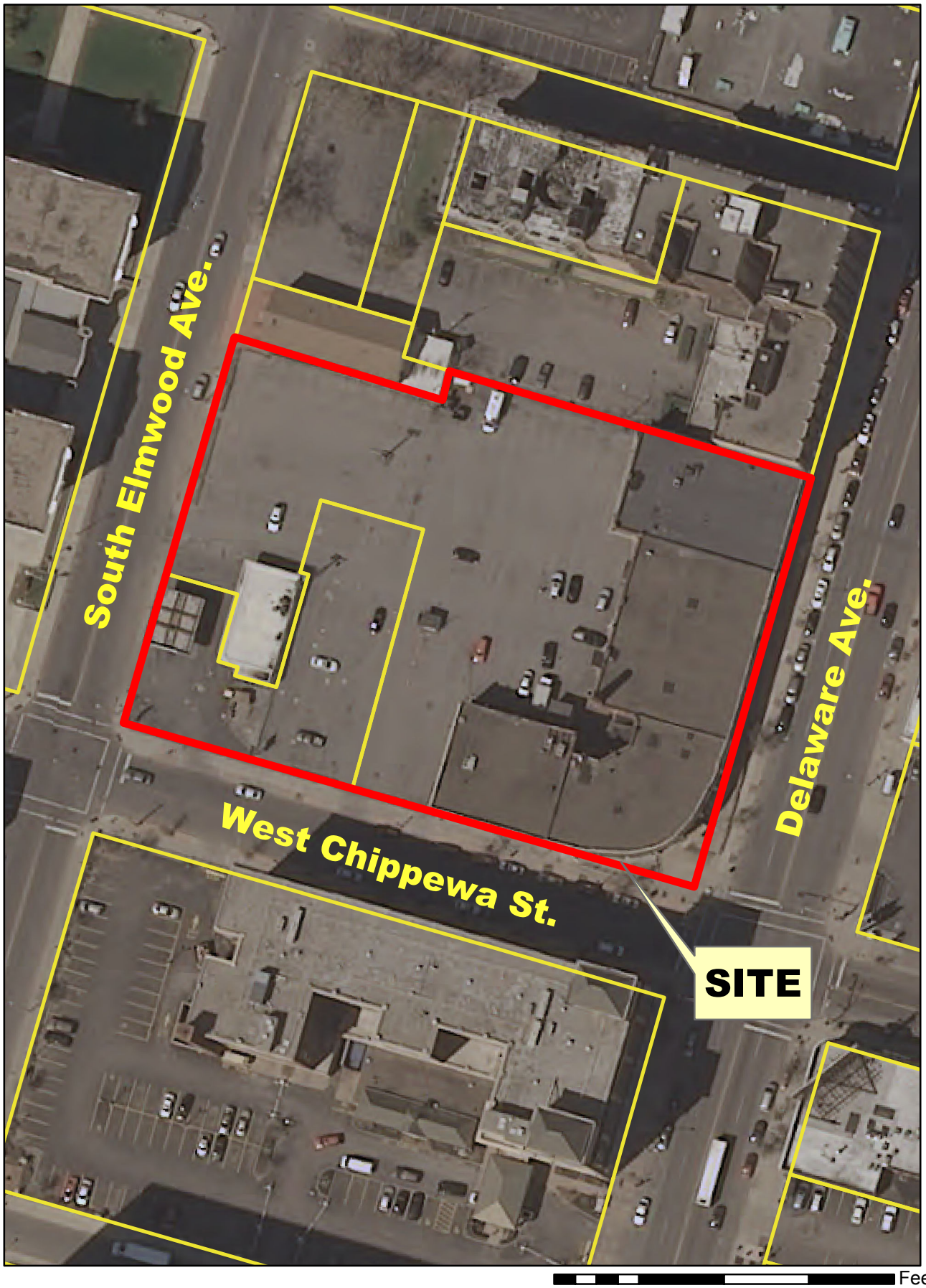
The completed IRM met the requirements for a Track 1 Unrestricted Use cleanup and does not require additional remedial action, including any institutional or engineering controls.

233 So. Elmwood & 234 Delaware Ave Site

NYSDEC BCP No. C915271 **SBL: 111.37-3-5.11**

City of Buffalo, Erie Co.

FIGURE 1



233 So. Elmwood & 234 Delaware Ave Site

NYSDEC BCP No. C915271 **SBL: 111.37-3-5.11**

City of Buffalo, Erie Co. **FIGURE 2**