



**Department of
Environmental
Conservation**

Brownfield Cleanup Program

Citizen Participation Plan for 1585 Hertel Avenue Site

May 2018

Site # C915328
1585 Hertel Avenue
City of Buffalo
Erie County, New York

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Note: The information presented in this Citizen Participation Plan was current as of the date of its approval by the New York State Department of Environmental Conservation. Portions of this Citizen Participation Plan may be revised during the site's investigation and cleanup process.

Applicant: **1585 Hertel LLC (“Applicant”)**
Site Name: **1585 Hertel Avenue Site (“Site”)**
Site Address: **1585 Hertel Avenue**
Site County: **Erie County**
Site Number: **C915328**

1. What is New York’s Brownfield Cleanup Program?

New York’s Brownfield Cleanup Program (BCP) works with private developers to encourage the voluntary cleanup of contaminated properties known as “brownfields” so that they can be reused and developed. These uses include recreation, housing, and business.

A *brownfield* is any real property that is difficult to reuse or redevelop because of the presence or potential presence of contamination. A brownfield typically is a former industrial or commercial property where operations may have resulted in environmental contamination. A brownfield can pose environmental, legal, and financial burdens on a community. If a brownfield is not addressed, it can reduce property values in the area and affect economic development of nearby properties.

The BCP is administered by the New York State Department of Environmental Conservation (NYSDEC) which oversees Applicants who conduct brownfield site investigation and cleanup activities. An Applicant is a person who has requested to participate in the BCP and has been accepted by NYSDEC. The BCP contains investigation and cleanup requirements, ensuring that cleanups protect public health and the environment. When NYSDEC certifies that these requirements have been met, the property can be reused or redeveloped for the intended use.

For more information about the BCP, go online at:
<http://www.dec.ny.gov/chemical/8450.html> .

2. Citizen Participation Activities

Why NYSDEC Involves the Public and Why It Is Important

NYSDEC involves the public to improve the process of investigating and cleaning up contaminated sites, and to enable citizens to participate more fully in decisions that affect their health, environment, and social well-being. NYSDEC provides opportunities for citizen involvement and encourages early two-way communication with citizens before decision makers form or adopt final positions.

Involving citizens affected and interested in site investigation and cleanup programs is important for many reasons. These include:

- Promoting the development of timely, effective site investigation and cleanup programs that protect public health and the environment
- Improving public access to, and understanding of, issues and information related to a particular site and that site's investigation and cleanup process
- Providing citizens with early and continuing opportunities to participate in NYSDEC's site investigation and cleanup process
- Ensuring that NYSDEC makes site investigation and cleanup decisions that benefit from input that reflects the interests and perspectives found within the affected community
- Encouraging dialogue to promote the exchange of information among the affected/interested public, State agencies, and other interested parties that strengthens trust among the parties, increases understanding of site and community issues and concerns, and improves decision making.

This Citizen Participation (CP) Plan provides information about how NYSDEC will inform and involve the public during the investigation and cleanup of the site identified above. The public information and involvement program will be carried out with assistance, as appropriate, from the Applicant.

Project Contacts

Appendix A identifies NYSDEC project contact(s) to whom the public should address questions or request information about the site's investigation and cleanup program. The public's suggestions about this CP Plan and the CP program for the site are always welcome. Interested people are encouraged to share their ideas and suggestions with the project contacts at any time.

Locations of Reports and Information

The locations of the reports and information related to the site's investigation and cleanup program also are identified in Appendix A. These locations provide convenient access to important project documents for public review and comment. Some documents may be placed on the NYSDEC web site. If this occurs, NYSDEC will inform the public in fact sheets distributed about the site and by other means, as appropriate.

Site Contact List

Appendix B contains the site contact list. This list has been developed to keep the community informed about, and involved in, the site's investigation and cleanup process. The site contact list will be used periodically to distribute fact sheets that provide updates about the status of the project. These will include notifications of upcoming activities at the site (such as fieldwork), as well as availability of project documents and announcements about public comment periods.

The site contact list includes, at a minimum:

- chief executive officer and planning board chairperson of each county, city, town and village in which the site is located;
- residents, owners, and occupants of the site and properties adjacent to the site;
- the public water supplier which services the area in which the site is located;
- any person who has requested to be placed on the site contact list;
- the administrator of any school or day care facility located on or near the site for purposes of posting and/or dissemination of information at the facility;
- location(s) of reports and information.

The site contact list will be reviewed periodically and updated as appropriate. Individuals and organizations will be added to the site contact list upon request. Such requests should be submitted to the NYSDEC project contact(s) identified in Appendix A. Other additions to the site contact list may be made at the discretion of the NYSDEC project manager, in consultation with other NYSDEC staff as appropriate.

Note: The first site fact sheet (usually related to the draft Remedial Investigation Work Plan) is distributed both by paper mailing through the postal service and through DEC Delivers, its email listserv service. The fact sheet includes instructions for signing up with the appropriate county listserv to receive future notifications about the site. See <http://www.dec.ny.gov/chemical/61092.html> .

Subsequent fact sheets about the site will be distributed exclusively through the listserv, except for households without internet access that have indicated the need to continue to receive site information in paper form. Please advise the NYSDEC site project manager identified in Appendix A if that is the case. Paper mailings may continue during the investigation and cleanup process for some sites, based on public interest and need.

CP Activities

The table at the end of this section identifies the CP activities, at a minimum, that have been and will be conducted during the site's investigation and cleanup program. The flowchart in Appendix D shows how these CP activities integrate with the site investigation and cleanup process. The public is informed about these CP activities through fact sheets and notices distributed at significant points during the program. Elements of the investigation and cleanup process that match up with the CP activities are explained briefly in Section 5.

- **Notices and fact sheets** help the interested and affected public to understand contamination issues related to a site, and the nature and progress of efforts to investigate and clean up a site.
- **Public forums, comment periods and contact with project managers** provide opportunities for the public to contribute information, opinions and perspectives that have potential to influence decisions about a site's investigation and cleanup.

The public is encouraged to contact project staff at any time during the site's investigation and cleanup process with questions, comments, or requests for information.

This CP Plan may be revised due to changes in major issues of public concern identified in Section 3 or in the nature and scope of investigation and cleanup activities. Modifications may include additions to the site contact list and changes in planned citizen participation activities.

Technical Assistance Grant

NYSDEC must determine if the site poses a significant threat to public health or the environment. This determination generally is made using information developed during the investigation of the site, as described in Section 5.

If the site is determined to be a significant threat, a qualifying community group may apply for a Technical Assistance Grant (TAG). The purpose of a TAG is to provide funds to the qualifying group to obtain independent technical assistance. This assistance helps the TAG recipient to interpret and understand existing environmental information about the nature and extent of contamination related to the site and the development/implementation of a remedy.

An eligible community group must certify that its membership represents the interests of the community affected by the site, and that its members' health, economic well-being

or enjoyment of the environment may be affected by a release or threatened release of contamination at the site.

As of the date the declaration (page 2) was signed by the NYSDEC project manager, the significant threat determination for the site had not yet been made.

To verify the significant threat status of the site, the interested public may contact the NYSDEC project manager identified in Appendix A.

For more information about TAGs, go online at <http://www.dec.ny.gov/regulations/2590.html>

Note: The table identifying the citizen participation activities related to the site's investigation and cleanup program follows on the next page:

Citizen Participation Activities	Timing of CP Activity(ies)
Application Process:	
<ul style="list-style-type: none"> • Prepare site contact list • Establish document repository(ies) 	At time of preparation of application to participate in the BCP.
<ul style="list-style-type: none"> • Publish notice in Environmental Notice Bulletin (ENB) announcing receipt of application and 30-day public comment period • Publish above ENB content in local newspaper • Mail above ENB content to site contact list • Conduct 30-day public comment period 	When NYSDEC determines that BCP application is complete. The 30-day public comment period begins on date of publication of notice in ENB. End date of public comment period is as stated in ENB notice. Therefore, ENB notice, newspaper notice, and notice to the site contact list should be provided to the public at the same time.
After Execution of Brownfield Site Cleanup Agreement (BCA):	
<ul style="list-style-type: none"> • Prepare Citizen Participation (CP) Plan 	Before start of Remedial Investigation Note: Applicant must submit CP Plan to NYSDEC for review and approval within 20 days of the effective date of the BCA.
Before NYSDEC Approves Remedial Investigation (RI) Work Plan:	
<ul style="list-style-type: none"> • Distribute fact sheet to site contact list about proposed RI activities and announcing 30-day public comment period about draft RI Work Plan • Conduct 30-day public comment period 	Before NYSDEC approves RI Work Plan. If RI Work Plan is submitted with application, public comment periods will be combined and public notice will include fact sheet. Thirty-day public comment period begins/ends as per dates identified in fact sheet.
After Applicant Completes Remedial Investigation:	
<ul style="list-style-type: none"> • Distribute fact sheet to site contact list that describes RI results 	Before NYSDEC approves RI Report
Before NYSDEC Approves Remedial Work Plan (RWP):	
<ul style="list-style-type: none"> • Distribute fact sheet to site contact list about draft RWP and announcing 45-day public comment period • Public meeting by NYSDEC about proposed RWP (if requested by affected community or at discretion of NYSDEC project manager) • Conduct 45-day public comment period 	Before NYSDEC approves RWP. Forty-five day public comment period begins/ends as per dates identified in fact sheet. Public meeting would be held within the 45-day public comment period.
Before Applicant Starts Cleanup Action:	
<ul style="list-style-type: none"> • Distribute fact sheet to site contact list that describes upcoming cleanup action 	Before the start of cleanup action.
After Applicant Completes Cleanup Action:	
<ul style="list-style-type: none"> • Distribute fact sheet to site contact list that announces that cleanup action has been completed and that NYSDEC is reviewing the Final Engineering Report • Distribute fact sheet to site contact list announcing NYSDEC approval of Final Engineering Report and issuance of Certificate of Completion (COC) 	At the time the cleanup action has been completed. Note: The two fact sheets are combined when possible if there is not a delay in issuing the COC.

3. Major Issues of Public Concern

This section of the CP Plan identifies major issues of public concern that relate to the site. Additional major issues of public concern may be identified during the course of the site's investigation and cleanup process.

1585 Hertel LLC intends to perform the required investigation and remediation to clean up the Site. 1585 Hertel LLC has entered into a Brownfield Cleanup Agreement with the Department dated May 1, 2018.

No major issue of concern have been identified for the Site. However, petroleum contamination associated with the former gas station operations and metals-impacted surface soil/fill are present above the intended reuse proposed for the Site (residential) and intends to remediate the Site to unrestricted soil cleanup objectives.

No portions of the site and/or the immediately surrounding properties are in an Environmental Justice Area. Currently there are no special considerations associated with the outreach of information to the community.

4. Site Information

Appendix C contains a map identifying the location of the site.

Site Description

The 1585 Hertel Avenue Site is owned by 1585 Hertel LLC and located at 1585 Hertel Avenue in the City of Buffalo, Erie County, New York. The site is an approximate 0.18-acre property is comprised of one tax parcel (SBL: 78.74-3-1). There is 1 buildings on the parcel, which will be demolished to make way for the investigation, remediation and redevelopment of the Site. The building has been used for commercial use (gasoline service station) since the 1950s and is currently vacant at this time.

The Site is located on the corner Hertel and Parkside Avenues in a highly developed mixed use commercial and residential area of the City of Buffalo, Erie County, New York. The Site is bordered by Hertel Avenue to the north, Parkside Avenue to the west, and a bank parking lot to the south and east. Appendix C contains a map identifying the location of the site.

History of Site Use, Investigation, and Cleanup

The Site has had a similar configuration for the past 55 years and has been used as a gasoline service station since the 1930s. A limited Phase II Environmental Site Assessment was completed at the Site that identified petroleum contamination associated with historical operations as a gasoline service station. NYSDEC was notified and Spill No. 1706962 was assigned to the Site. Soil/fill is impacted with petroleum-related VOCs and metals exceeding their respective NYSDEC Part 375 Restricted-Residential Use and Commercial Use Soil Cleanup Objectives.

5. Investigation and Cleanup Process

Application

The Applicant has applied for and been accepted into New York's Brownfield Cleanup Program as a Volunteer. This means that the Applicant was not responsible for the disposal or discharge of the contaminants or whose ownership or operation of the site took place after the discharge or disposal of contaminants. The Volunteer must fully characterize the nature and extent of contamination onsite, and must conduct a "qualitative exposure assessment," a process that characterizes the actual or potential exposures of people, fish and wildlife to contaminants on the site and to contamination that has migrated from the site.

The Applicant in its Application proposes that the site will be used for unrestricted purposes.

To achieve this goal, the Applicant will conduct investigation and cleanup activities at the site with oversight provided by NYSDEC. The Brownfield Cleanup Agreement executed by NYSDEC and the Applicant sets forth the responsibilities of each party in conducting these activities at the site.

Investigation

The Applicant will conduct an investigation of the site officially called a “remedial investigation” (RI). This investigation will be performed with NYSDEC oversight. The Applicant must develop a remedial investigation workplan, which is subject to public comment.

The site investigation has several goals:

- 1) define the nature and extent of contamination in soil, surface water, groundwater and any other parts of the environment that may be affected;
- 2) identify the source(s) of the contamination;
- 3) assess the impact of the contamination on public health and the environment; and
- 4) provide information to support the development of a proposed remedy to address the contamination or the determination that cleanup is not necessary.

The Applicant submits a draft “Remedial Investigation Work Plan” to NYSDEC for review and approval. NYSDEC makes the draft plan available to the public review during a 30-day public comment period.

When the investigation is complete, the Applicant will prepare and submit a report that summarizes the results. This report also will recommend whether cleanup action is needed to address site-related contamination. The investigation report is subject to review and approval by NYSDEC.

NYSDEC will use the information in the investigation report to determine if the site poses a significant threat to public health or the environment. If the site is a “significant threat,” it must be cleaned up using a remedy selected by NYSDEC from an analysis of alternatives prepared by the Applicant and approved by NYSDEC. If the site does not pose a significant threat, the Applicant may select the remedy from the approved analysis of alternatives.

Interim Remedial Measures

An Interim Remedial Measure (IRM) is an action that can be undertaken at a site when a source of contamination or exposure pathway can be effectively addressed before the site investigation and analysis of alternatives are completed. If an IRM is likely to represent all or a significant part of the final remedy, NYSDEC will require a 30-day public comment period.

Remedy Selection

When the investigation of the site has been determined to be complete, the project likely would proceed in one of two directions:

1. The Applicant may recommend in its investigation report that no action is necessary at the site. In this case, NYSDEC would make the investigation report available for public comment for 45 days. NYSDEC then would complete its review, make any necessary revisions, and, if appropriate, approve the investigation report. NYSDEC would then issue a “Certificate of Completion” (described below) to the Applicant.

or

2. The Applicant may recommend in its investigation report that action needs to be taken to address site contamination. After NYSDEC approves the investigation report, the Applicant may then develop a cleanup plan, officially called a “Remedial Work Plan”. The Remedial Work Plan describes the Applicant’s proposed remedy for addressing contamination related to the site.

When the Applicant submits a draft Remedial Work Plan for approval, NYSDEC would announce the availability of the draft plan for public review during a 45-day public comment period.

Cleanup Action

NYSDEC will consider public comments, and revise the draft cleanup plan if necessary, before approving the proposed remedy. The New York State Department of Health (NYSDOH) must concur with the proposed remedy. After approval, the proposed remedy becomes the selected remedy. The selected remedy is formalized in the site Decision Document.

The Applicant may then design and perform the cleanup action to address the site contamination. NYSDEC and NYSDOH oversee the activities. When the Applicant completes cleanup activities, it will prepare a final engineering report that certifies that cleanup requirements have been achieved or will be achieved within a specific time frame. NYSDEC will review the report to be certain that the cleanup is protective of public health and the environment for the intended use of the site.

Certificate of Completion

When NYSDEC is satisfied that cleanup requirements have been achieved or will be achieved for the site, it will approve the final engineering report. NYSDEC then will issue a Certificate of Completion (COC) to the Applicant. The COC states that cleanup goals

have been achieved, and relieves the Applicant from future liability for site-related contamination, subject to certain conditions. The Applicant would be eligible to redevelop the site after it receives a COC.

Site Management

The purpose of site management is to ensure the safe reuse of the property if contamination will remain in place. Site management is the last phase of the site cleanup program. This phase begins when the COC is issued. Site management incorporates any institutional and engineering controls required to ensure that the remedy implemented for the site remains protective of public health and the environment. All significant activities are detailed in a Site Management Plan.

An *institutional control* is a non-physical restriction on use of the site, such as a deed restriction that would prevent or restrict certain uses of the property. An institutional control may be used when the cleanup action leaves some contamination that makes the site suitable for some, but not all uses.

An *engineering control* is a physical barrier or method to manage contamination. Examples include: caps, covers, barriers, fences, and treatment of water supplies.

Site management also may include the operation and maintenance of a component of the remedy, such as a system that pumps and treats groundwater. Site management continues until NYSDEC determines that it is no longer needed.

**Appendix A -
Project Contacts and Locations of Reports and Information**

Project Contacts

For information about the site's investigation and cleanup program, the public may contact any of the following project staff:

New York State Department of Environmental Conservation (NYSDEC):

Mr. Daminanos Skaros Project Manager NYSDEC Region 9 Division of Environmental Remediation 270 Michigan Avenue Buffalo, New York 14203 (716) 851-7220	Citizen Participation Specialist NYSDEC Region 9 270 Michigan Avenue Buffalo, New York 14203 (716) 851-7220
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New York State Department of Health (NYSDOH):

Arunesh Ghosh
Project Manager
NYSDOH
Empire State Plaza, Corning Tower,
Room 1787
Albany, New York 12237

Locations of Reports and Information

The facilities identified below are being used to provide the public with convenient access to important project documents: **{Instruction to preparer: add additional location(s) if appropriate.}**

Buffalo & Erie County Public Library North Park Branch 975 Hertel Avenue Buffalo, New York 14216 Phone: (716) 875-3748 Hours: Mon. & Sat., 10:00pm-6:00pm Wed., Thur., Friday, 12:00am-8:00pm Tues. & Sun., Closed	NYSDEC Region 9 270 Michigan Avenue Attn: Mr. Daminaos Skaros Phone: (716) 851-7000 Hours: 8:30 AM to 4:30 PM Monday through Friday (call for appointment)
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Appendix B - Site Contact List

Erie County Contacts:

Honorable Mark Poloncarz
Erie County Executive
95 Franklin Street
Buffalo, NY 14202

Mr. Peter J. Savage, III
District 3 Erie County Legislator
790 East Delavan
Buffalo, NY 14215

Commissioner Thomas R. Hershey, Jr.
Erie Co. Environment & Plan.
95 Franklin Street
Buffalo, NY 14202

Mr. Paul Kranz
Erie Co. Environment & Plan.
95 Franklin Street
Buffalo, NY 14202

Karen M. McCarthy
Erie County Legislature Clerk
25 Delaware Avenue
Buffalo, NY 14202

Mr. Steve Weathers
ECIDA
95 Perry Street
Buffalo, NY 14203

Commissioner Gale Burstein
Erie Co. Health Dept.
95 Franklin Street, Room 931
Buffalo, NY 14202

Commissioner Daniel Neaverth, Jr.
Erie County Local Emergency
45 Elm Street
Buffalo, NY 14203

City of Buffalo Contacts:

Byron Brown, Mayor
City of Buffalo
65 Niagara Square
Buffalo, NY 14219

Joel P. Feroletto
Niagara District Councilmember
1504 City Hall
Buffalo, NY 14202

James A. Morrell, Chairman
City of Buffalo
Planning Board
901 City Hall
Buffalo, NY 14219

Supplier of Potable Water:

Buffalo Water Authority
281 Exchange Street
Buffalo, NY 14204

Other Interested Parties:

WNY Director
Citizens Env. Coalition
543 Franklin Street
Buffalo, NY 14202-1109

Document Repository:

North Park Branch Director
Buffalo & Erie County Public Library
975 Hertel Avenue
Buffalo, NY 14216

Local News Media:

Buffalo News
ATTN: Mr. Aaron Besecker
1 News Plaza
Buffalo, NY 14240

WGRZ TV - Ch. 2
ATTN: Environmental News Desk
259 Delaware Avenue
Buffalo, NY 14202

WIVB - Ch. 4
ATTN: Environmental News Desk
2077 Elmwood Avenue
Buffalo, NY 14207

WKBW News Channel 7
ATTN: Mr. Rob Heverling
7 Broadcast Plaza
Buffalo, NY 14202

WJYE
ATTN: Environmental News Desk
1700 Rand Building
Buffalo, NY 14203

Business First
ATTN: Tracey Drury
465 Main Street
Buffalo, NY 14203-1793

WBEN News Radio 930
Entercom Radio of Buffalo
500 Corporate Pkwy, Ste 200
Buffalo, NY 14226

WNED, Environmental News Desk
ATTN: Mr. Michael Desmond
P.O. Box 1263, Horizons Plaza
Buffalo, NY 14240

Nearby Schools:

Director
EduKids Early Childhood Education
Center
1350 Hertel Avenue
Buffalo, NY 14216

Director
North Park Community Preschool
310 Starin Avenue
Buffalo, NY 14216

Principal
Nichols High School
1250 Amherst Street
Buffalo NY 14216

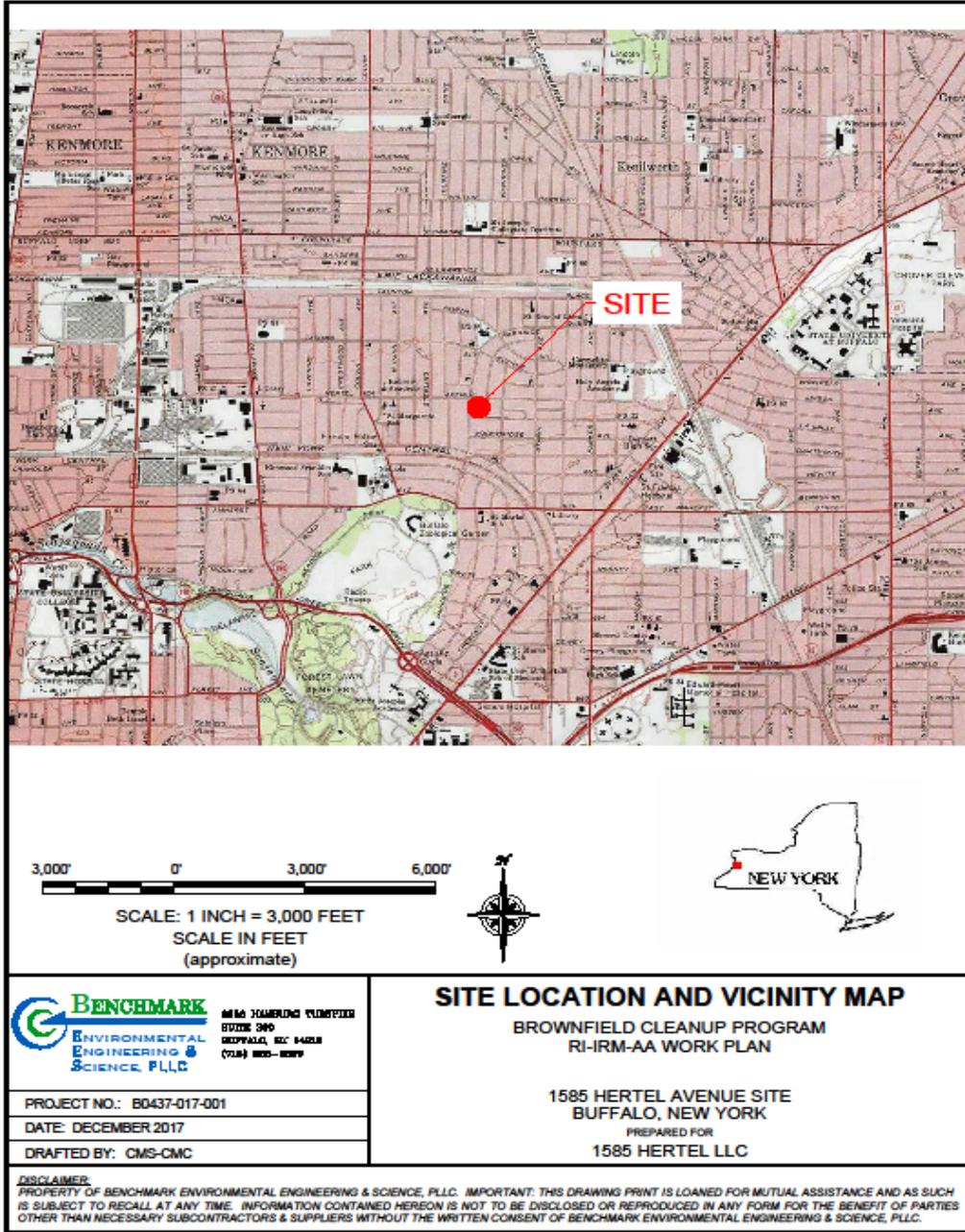
Principal
PS 66 North Park Middle Academy
780 Parkside Avenue
Buffalo, NY 14216

Principal
St. Mark Elementary
399 Woodward Avenue
Buffalo, NY 14214

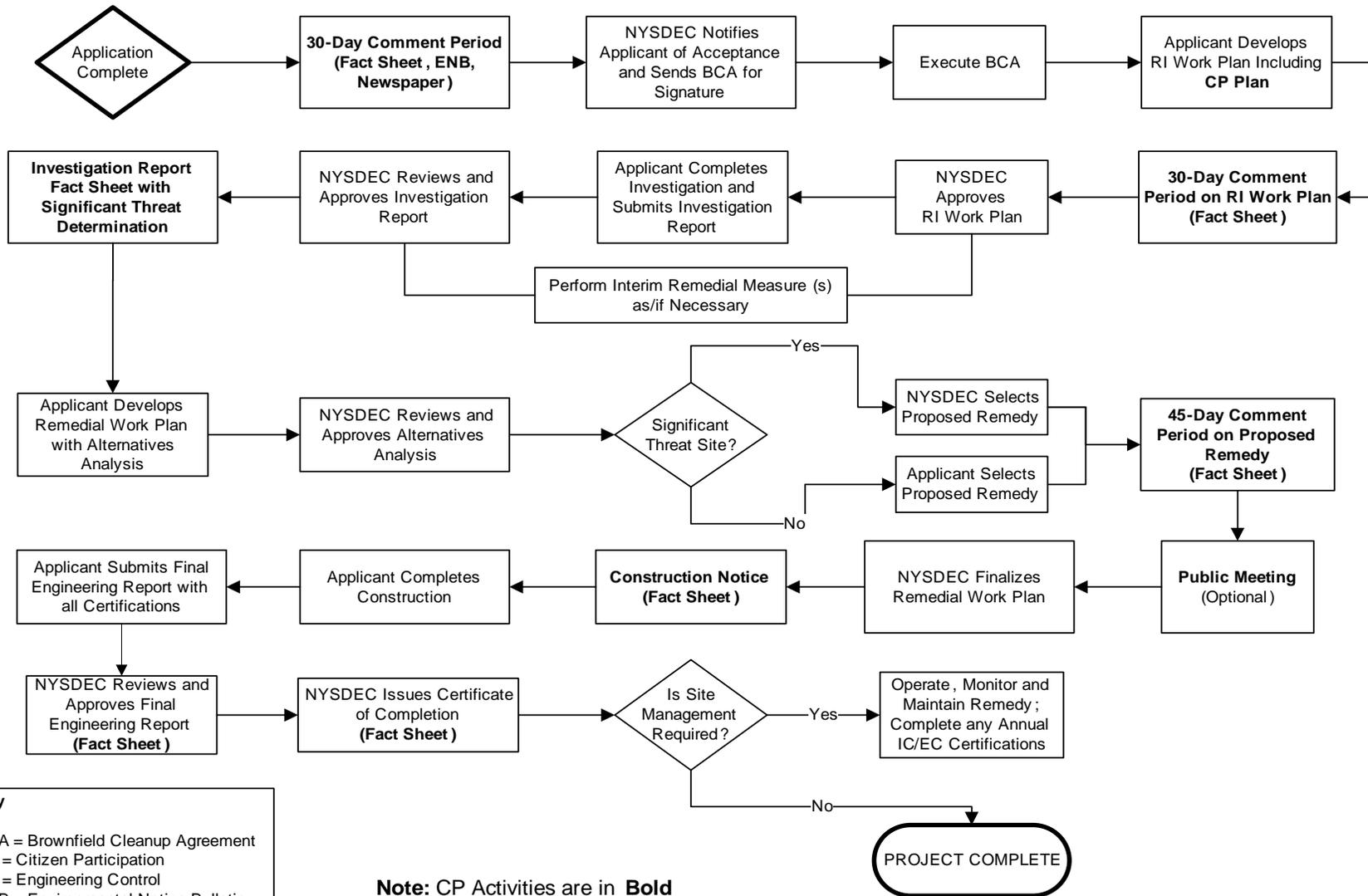
Appendix C - Site Location Map

FIGURE 1

FIGURE 1: BENCHMARK 665 Heritel LLC - RI-IRM-AA Work Plan Figure 1 - Site Location and Vicinity Mapping



Appendix D– Brownfield Cleanup Program Process



Key
 BCA = Brownfield Cleanup Agreement
 CP = Citizen Participation
 EC = Engineering Control
 ENB = Environmental Notice Bulletin
 IC = Institutional Control
 RI = Remedial Investigation

Note: CP Activities are in **Bold**

