



STATE OF MICHIGAN - GOGEBIC COUNTY
RECORDED
GERRY R. PELISSERO - REGISTER OF DEEDS
09/23/2013 12:00:59 PM

\$56.00 RECEIPT# 6546, STATION
EASEMENT



LIBER 561

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**~~DECLARATION OF RESTRICTIVE COVENANT AND~~
GRANT OF ENVIRONMENTAL PROTECTION EASEMENT**

This transfer is exempt from County and State transfer taxes pursuant to MCL 207.505(a) and MCL 207.526(a), respectively.

**Superfund Site: Ironwood Manufactured Gas Plant Site, Gogebic County, Michigan
MDEQ Site ID No. 27000066
U.S. EPA Site No. B5ZC**

This Declaration of Restrictive Covenant and Grant of Environmental Protection Easement ("Restrictive Covenant and Easement") is made on 9/19/13 by the City of Ironwood, the Grantor, whose address is 213 South Marquette Street, Ironwood, Michigan 49938 for the benefit of the Grantee, the Michigan Department of Environmental Quality ("MDEQ"), whose address is P.O. Box 30473, Lansing, Michigan 48909-7926.

RECITALS

- i. The Grantor is the title holder of the real property located in Gogebic County, Michigan and legally described in Exhibit 1 attached hereto ("Property").
- ii. The purpose of this Restrictive Covenant and Easement is to create restrictions that run with the land in the Grantor's real property rights; to protect the public health, safety, and welfare, and the environment; to prohibit or restrict activities that could result in unacceptable exposure to environmental contamination present at the Property; and to grant access to the Grantee, the United States Environmental Protection Agency ("U.S. EPA") as a Third Party Beneficiary, and either agency's representatives to monitor and conduct Response Activities.
- iii. An Action Memorandum dated August 9, 2012, has been issued by the U.S. EPA for the purpose of carrying out the Response Activities selected to address environmental contamination at the Site. The Response Activities summarized below are more fully described in the Action Memorandum and are being implemented by the U.S. EPA.
- iv. The Property is associated with the Ironwood Manufactured Gas Plant Superfund Site (the "Site"), MDEQ Site ID No. 27000066. Hazardous substances, including volatile organic

compounds (VOCs), semivolatile organic compounds (SVOCs) including polyaromatic hydrocarbons and inorganic compounds, have been released and/or disposed of on the Property. The Site is a facility as that term is defined in Section 101(9) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.* ("CERCLA"); and Section 20101(1)(s) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20101 *et seq.* ("NREPA").

v. At the time of recording this Restrictive Covenant and Easement, the U.S. EPA and the MDEQ have determined that the hazardous substances at the Property present a threat to human health through direct contact to subsurface soils and soils in the saturated zone that contain coal tar related materials with levels of inorganic, VOCs and SVOCs that exceed applicable Michigan Department of Environmental Quality's Part 201 Criteria; and that the land use and resource use restrictions set forth below are necessary to prevent unacceptable exposures.

vi. The restrictions contained in this Restrictive Covenant and Easement are based upon information available to the U.S. EPA and the MDEQ at the time the Action Memorandum was issued. Failure of the Response Activities to achieve and maintain the criteria, exposure controls, and requirements specified in the Action Memorandum; future changes in the environmental condition of the Property or changes in the applicable cleanup criteria; the discovery of environmental conditions at the Property that were not accounted for in the Action Memorandum, regardless of the date of the release of hazardous substances contributing to those environmental conditions; or the use of the Property in a manner inconsistent with the restrictions described herein, may result in this Restrictive Covenant and Easement not being protective of public health, safety, and welfare, and the environment. Information pertaining to the environmental conditions at the Property and Response Activities undertaken at the Site is on file with the U.S. EPA and the MDEQ Remediation and Redevelopment Division.

vii. The MDEQ and U.S. EPA recommend that prospective purchasers or users of the Property undertake appropriate due diligence prior to acquiring or using this Property, and undertake appropriate actions to comply with the applicable requirements of Section 20107a of the NREPA.

SUMMARY OF RESPONSE ACTIVITIES

Hazardous substances including VOCs, SVOCs, arsenic, cyanide and other inorganic substances from gas manufacturing activities were released and/or disposed of on the Property. Prior to the recording of this Restrictive Covenant and Easement, EPA and the owner took response activities to excavate and remove some of the hazardous substances at the Property; however, contamination remains on the Property and is present beginning approximately three feet below ground surface (bgs). The portion of the Property known to be contaminated is set forth in the survey in Exhibit 2. A barrier consisting of at least three feet of clean soil and vegetation has been placed above the contamination, to prevent direct contact with remaining impacted soils and tar-like materials.

DEFINITIONS

"Grantee" shall mean the MDEQ, its successor entities, and those persons or entities acting on its behalf;

"Grantor" shall mean the title holder of the Property at the time this Restrictive Covenant and Easement is executed or any future title holder of the Property or some relevant sub-portion



of the Property;

"MDEQ" shall mean the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf;

"NREPA" shall mean the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 *et seq.*;

"Part 201" shall mean Part 201, Environmental Remediation, of the NREPA, MCL 324.20101 *et seq.*;

"Property" shall mean the real property legally described in Exhibit 1;

"Response Activities" shall mean, consistent with Section 101(25) of CERCLA, 42 U.S.C. Section 9601(25), such actions as have been or may be necessary to conduct any removal, remedy or remedial action, as those terms are defined in Sections 101(23) and 101(24) of CERCLA, 42 U.S.C. Sections 9601(23) and 9601(24), on the Property and/or at the Site, including enforcement activities related thereto;

"Site" shall mean the Ironwood Manufactured Gas Plant removal site;

"U.S. EPA" shall mean the United States Environmental Protection Agency, its successor entities and those persons or entities acting on its behalf; and

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201; or the Part 201 Administrative Rules ("Part 201 Rules"), 2002 Michigan Register 24, effective December 21, 2002, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA and the Part 201 Rules, as of the date of execution of this Restrictive Covenant and Easement.

NOW THEREFORE,

For valuable consideration of less than \$100.00, the receipt of which is hereby acknowledged, the Grantor, on behalf of itself, its successors and assigns hereby covenants and declares that the Property shall be subject to the restrictions set forth below, for the benefit of the Grantee, and grants and conveys to the Grantee, and its assigns and representatives, the perpetual right to enforce said restrictions. The Grantor further, on behalf of itself, its successors and assigns does grant and convey to the Grantee and its representatives an environmental protection easement of the nature, character, and purposes set forth below with respect to the Property, and the right to enforce said easement.

1. Restrictions on Land Use: The Grantor shall

(a) Prohibit all residential uses of the Property;

(b) Prohibit indoor use on the Property;

(c) The Property may be used for recreational purposes, subject to compliance with all restrictions contained in this document that are necessary to protect the effectiveness and integrity of the Action Memorandum and to prevent unacceptable exposures to the subsurface contamination left at the Property.



2. **Restrictions on Activity:** The Grantor shall:

(a) Prohibit activities that cause existing contamination to migrate beyond the boundaries of the Property, increase the cost of Response Activities, or otherwise exacerbate the existing contamination located on the Property. The term "exacerbation" is more specifically defined in Section 20101(1)(r) of the NREPA, MCL 324.20101(1)(r);

(b) Prohibit and prevent use of the Property in a manner that may interfere with Response Activities at the Property, including interim response, removal action, remedial action, operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the response action;

(c) Prohibit excavation, removal, damage or other interference with the clean soil cover depicted in Exhibit 2, which goes to a depth of three feet bgs on the Property unless conducted pursuant to a U.S. EPA or MDEQ approved plan;

(d) Maintain the elevation and contours of the Property set forth in the survey in Exhibit 2;

(e) Prohibit excavation and modification to the shoreline along the Property boundary along the Montreal River unless conducted pursuant to an U.S. EPA or MDEQ approved plan;

(f) Prohibit any excavation or other activities involving disturbance of soil or other materials below 1472 feet Above Mean Sea Level (AMSL) on the Property unless conducted pursuant to a U.S. EPA or MDEQ approved plan;

(g) Prohibit the construction of and use of wells or other devices on the Property to extract groundwater for consumption, irrigation, or any other use, except for wells and devices that are necessary for Response Activities or testing and monitoring groundwater contamination levels;

(h) Prohibit construction of buildings and/or enclosed structures on the Property and prohibit use of any buildings and/or enclosed structures. This subparagraph does not prohibit construction or use of open air structures;

(i) Prohibit any activity that disturbs the concrete pads identified in Exhibit 2 unless such activity is conducted in association with appropriate soil characterization and in compliance with applicable state and federal environmental, health, and safety laws and regulations including, but not necessarily limited to, the use of appropriate personal protective equipment;

(j) Prohibit excavation, removal, damage or other interference with existing monitoring wells on the property identified in Exhibit 2;

3. **Permanent Marker:**

The Grantor shall allow the installation of the permanent marker that has been approved by the U.S. EPA and/or the MDEQ within the Property boundaries. The permanent marker is generally depicted in Exhibit 3. The Grantor shall not remove, cover, obscure, or otherwise alter or interfere with any permanent markers placed on the Property at the location generally depicted in Exhibit 3. The Grantor shall keep vegetation and other materials clear of any permanent markers to assure that the markers are readily visible.



4. **Management of Contaminated Soil, Media, and Debris:** The Grantor shall manage all soils, media and/or debris located on the Property in accordance with the applicable requirements of Section 20120c of Part 201, MCL 324.20120c and Part 111, Hazardous Waste Management, of the NREPA, MCL 324.11101 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws and regulations. The Grantor shall repair and maintain the elevation and contours of the Property set forth in the survey in Exhibit 2.

5. **Access:** The Grantor grants the MDEQ and its representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the Action Memorandum and with this Restrictive Covenant and Easement, including the right to take samples, inspect the operation of the Response Activities, and, inspect any records relating thereto; and to perform any actions necessary to maintain compliance with Part 201 and the Action Memorandum.

Nothing in this Restrictive Covenant and Easement shall limit or otherwise affect the MDEQ's right of entry and access, or authorities to take Response Activities as defined in this Restrictive Covenant and Easement, as well as in NREPA, and any successor statutory provisions, or other state or federal law.

6. **Term:** This Restrictive Covenant and Easement shall run with the land and shall be binding on the Grantor, including persons as set forth in Paragraph 13(e), Successors.

7. **Third Party Beneficiary:** The Grantor, on behalf of itself and its successors, transferees, and assigns, hereby agrees that the United States, acting by and through the U.S. EPA, its successors and assigns, shall be a third party beneficiary ("Third Party Beneficiary") of all the benefits and rights set out in the restrictions, covenants, easements, exceptions, notifications, conditions, and agreements herein, and that the Third Party Beneficiary shall have the right to enforce the restrictions described herein as if it was a party hereto. No other rights in third parties are intended by this Restrictive Covenant and Easement, and no other person or entity shall have any rights or authorities hereunder to enforce these restrictions, terms, conditions, or obligations beyond the Grantor, the MDEQ, their successors, assigns, and the Third Party Beneficiary.

8. **Enforcement:** The State of Michigan, through the MDEQ; and the United States of America, through the U.S. EPA as a Third Party Beneficiary, may enforce the restrictions and grant of easement set forth in this Restrictive Covenant and Easement by legal action in a court of competent jurisdiction.

9. **U.S. EPA Entry, Access, and Response Authority:** Nothing in this Restrictive Covenant and Easement shall limit or otherwise affect the U.S. EPA's right of entry and access, or authority to undertake Response Activities as defined in this Restrictive Covenant and Easement, as well as in CERCLA, the National Contingency Plan, 40 Code of Federal Regulations Part 300, and any successor statutory provisions, or other state or federal law. The Grantor consents to officers, employees, contractors, and authorized representatives of the U.S. EPA entering and having continued access to this Property for the purposes described in Paragraph 5, above.

10. **Modification/Release/Rescission:** The Grantor may request in writing to the U.S. EPA and the MDEQ, at the addresses provided in Paragraph 12, below, modifications to, or release or rescission of, this Restrictive Covenant and Easement. This Restrictive Covenant and Easement may be modified, released, or rescinded only with the written approval of the U.S. EPA and the MDEQ. Any approved modification to, or release or rescission of, this Restrictive Covenant and



Easement shall be filed with the appropriate county Register of Deeds by the Grantor and a certified copy shall be returned to the MDEQ and the U.S. EPA at the addresses provided in Paragraph 12, below.

11. **Transfer of Interest:** The Grantor shall provide notice at the addresses provided in this document to the MDEQ and to the U.S. EPA of the Grantor's intent to transfer any interest in the Property, or any portion thereof, at least fourteen (14) business days prior to consummating the conveyance. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Grantor without adequate and complete provision for compliance with the terms and conditions of this Restrictive Covenant and Easement and the applicable provisions of Section 20116 of the NREPA. The Grantor shall include in any instrument conveying any interest in any portion of the Property, including, but not limited to, deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF RESTRICTIVE COVENANT AND ENVIRONMENTAL PROTECTION EASEMENT, DATED [month, day, year], AND RECORDED WITH THE GOGEBIC COUNTY REGISTER OF DEEDS, LIBER _____, PAGE _____.

12. **Notices:** Any notice, demand, request, consent, approval, or communication that is required to be made or obtained under this Restrictive Covenant and Easement shall be made in writing; include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant and Easement; include the MDEQ Site ID number; and shall be served either personally, or sent via first class mail, postage prepaid, as follows:

For the U.S. EPA:

Director
Superfund Division (SR-6J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

with a copy to:

Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

For the MDEQ:

Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926



For the Grantor, City of Ironwood

City Manager
Memorial Building
213 S. Marquette St.
Ironwood, MI 49938

13. **Miscellaneous:**

(a) **Controlling Law.** The interpretation and performance of this Restrictive Covenant and Easement shall be governed by the laws of the United States as to the obligations referred to in the Action Memorandum and by the laws and regulations of the State of Michigan for all other purposes hereunder (without reference to choice of laws and principles thereof). The right to enforce the conditions and restrictions in this Restrictive Covenant and Easement are in addition to other rights and remedies that may be available, including, but not limited to, administrative and judicial remedies under CERCLA or Part 201 of the NREPA.

(b) **Construction.** Any general rule of construction to the contrary notwithstanding, this Restrictive Covenant and Easement shall be liberally construed to achieve the purpose of this Restrictive Covenant and Easement and the policy and purpose of CERCLA and the land use restrictions and prospective use limitations required by Part 201. If any provision of this Restrictive Covenant and Easement is found to be ambiguous, an interpretation consistent with the purpose of this Restrictive Covenant and Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) **Severability.** If any provision of this Restrictive Covenant and Easement is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provision hereof, and all other provisions shall continue unimpaired and in full force and effect.

(d) **Entire Agreement.** This Restrictive Covenant and Easement and its attachments and appendices supersedes all prior discussions, negotiations, understandings, or agreements between the undersigned relating to the matters addressed herein, all of which are merged herein.

(e) **Successors.** The covenants, terms, conditions, and restrictions of this Restrictive Covenant and Easement shall be binding upon; and inure to the benefit of, the Grantor and Grantee and their agents, successors, lessees, and assigns and any subsequent title holders, occupants or other persons acquiring an interest in the Property or a relevant sub-portion of the Property, and their respective agents, successors and assigns. The rights, but not the obligations or authorities, of the U.S. EPA are freely assignable to any public entity, subject to the notice to the Grantor, its successors and assigns, as their interests appear in the public title records kept and maintained by the Gogebic County Register of Deeds.

14. **Exhibits:** The following exhibits are incorporated into this Restrictive Covenant and Easement:

Exhibit 1 – Legal Description of the Property

Exhibit 2 – Survey of the Property



Exhibit 3 – Permanent Marker

15. **Easement Holders:** None. The Property is free and clear of encumbrances.
16. **Authority to Execute Restrictive Covenant and Easement:** The undersigned person executing this Restrictive Covenant and Easement represents and certifies that he or she is duly authorized and has been empowered to execute this Restrictive Covenant and Easement.



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EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY



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Survey Description

Restricted Area

Lots 1-6, Block 5, the vacated Hemlock Street, and part of Water Street, Canal Company's Addition to the City of Ironwood, in part of the Southeast Quarter of the Southeast Quarter (SE1/4-SE1/4), Section 21, Township 47 North, Range 47 West, City of Ironwood, Gogebic County, Michigan, described by metes and bounds as:

Beginning at the northeast corner of Lot 1, Block 5; thence N72°20'20"E, 5.33 feet; thence S27°47'09"E, 13.43 feet; thence S16°54'31"E, 23.72 feet; thence S05°15'11"E, 46.73 feet; thence S01°50'07"W, 23.83 feet; thence S18°52'07"W, 76.87 feet; thence S11°19'18"W, 21.38 feet; thence S77°01'08"W, 5.09 feet; thence N85°55'46"W, 25.84 feet; thence S88°53'34"W, 29.57 feet; thence N86°52'27"W, 24.45 feet; thence S86°00'53"W, 24.67 feet; thence S86°34'16"W, 28.66 feet; thence S74°16'56"W, 21.80 feet; thence S16°48'32"W, 14.42 feet to the South right-of-way of Water Street; thence N88°27'20"W along the South right-of-way of Water Street, 132 feet, more or less to the Montreal River; thence north along the Montreal River, 119 feet, more or less to the North line of Lot 6; thence N72°20'20"E along the north line of Lots 1-6, 322 feet, more or less, to the Point of Beginning.

Prepared by: Coleman Engineering Company
200 East Ayer Street
Ironwood, Michigan 49938

Project # : SI-13269
Date: August 1, 2013
amm



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EXHIBIT 2

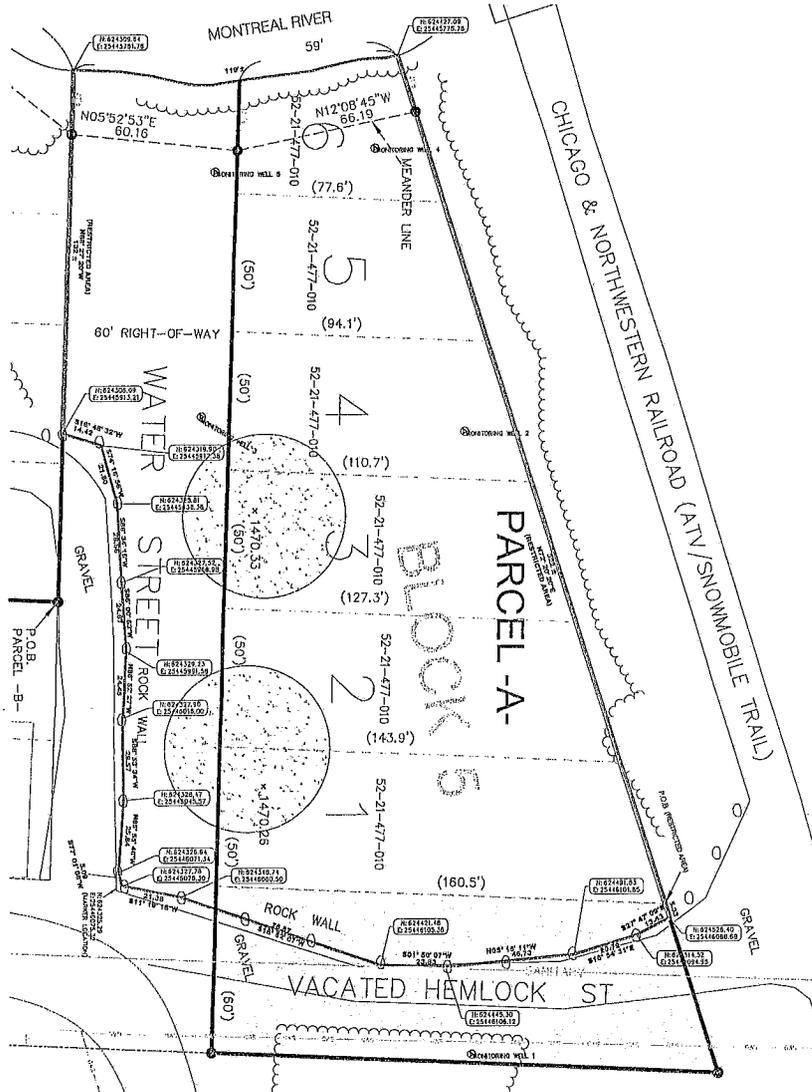
SURVEY OF THE PROPERTY



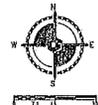
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**RESTRICTED AREA DETAIL
IRONWOOD MGP SITE**



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HORIZONTAL DATUM BASED ON MICHIGAN
STATE PLANE COORDINATE NORTH ZONE
VERTICAL DATUM BASED ON NAVD83

NOTE: ALL DIMENSIONS ARE IN INTERNATIONAL FEET.

DRAWN BY: A. MOHR DATE: 08/03/13 PLOT #1 SHEET 92 OF 92 REVISED: 07/1/2013	COLEMAN ENGINEERING COMPANY ENGINEERING-SURVEYING-GEOTECHNICAL 10000 E. 14th Ave. Greenwood, IL 60030 Phone: (815) 853-5848 Fax: (815) 853-5811 www.coleman-engineering.com
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EXHIBIT 3
PERMANENT MARKER



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The photograph on this marker depicts the Ironwood Gas Works, a manufactured gas plant that operated on this property from about 1911 to 1950. The circular concrete structures seen on the property today are the foundations for the steel tanks in the photograph, which were used to store the manufactured gas. Manufactured gas, similar to natural gas, was used for cooking and heating in Ironwood and Hurley throughout the first half of the 20th Century. The photograph was taken in 1927 from the railroad bridge over the Montreal River, looking east toward Hemlock Street.

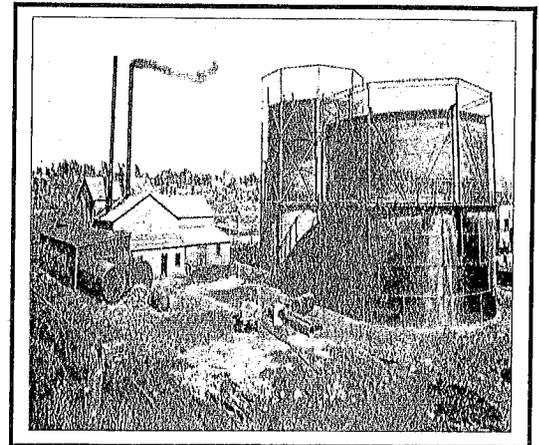


Photo courtesy of "Like It Usta Was" a historical account of the City of Ironwood written by Earle G. Sell.

In 2012, the U.S. Environmental Protection Agency and the City of Ironwood removed and disposed of more than 15,000 tons of waste that was buried up to 10 feet below grade. Wastes removed from the property included debris, coal tar, oily residue, contaminated soil, buried piping, vats and other buried containers. Removal of these buried wastes will result in improvements to the Montreal River and groundwater quality.

The property was restored in an environmentally beneficial manner by backfilling the excavation with clean soil, restoring the flood plain, and using soil cover to establish an exposure barrier. The following activities are prohibited on the property unless they are performed in accordance with the constraints of a restrictive covenant for the property:

1. Drinking or otherwise contacting the groundwater.
2. Excavation or removal of, or damage to the 3 feet of soil cover, which establishes a barrier between the ground surface and subsurface contaminants.
3. Excavation and modification of the Montreal River shoreline along the property boundary.
4. Excavation or removal of, or damage to existing monitoring wells on the property.

The restricted property is depicted on the map to the right. Additional information related to specific restrictions for the property is available in the Restrictive Covenant recorded with Gogebic County Register of Deeds.

