

RESOLUTION R-75-06
RESOLUTION APPROVING TIER APPROACH CORRECTIONS
OBJECTIVES AGREEMENT
EQUILON ENTERPRISES, L.L.C. d/b/a SHELL OIL PRODUCTS, U.S.

WHEREAS, Equilon Enterprises, L.L.C. d/b/a Shell Oil Products, U.S. has requested the City of Wheaton's approval of a Tiered Approach to Corrective Objectives Agreement (hereinafter "TACO Agreement"); and

WHEREAS, 35 ILL. Admin. Code Section 742.1020, provides for TACO Agreements; and

WHEREAS, the Corporate Authorities of the City of Wheaton, deem it in the best interest of the public safety, health and welfare to approve TACO Agreements where an engineered barrier protects the public from contaminants and where there is no intent to remove the engineered barriers; and


WHEREAS, the TACO Agreement provides for the removal and proper disposal of the contaminants if the engineered barrier is removed or opened; and

WHEREAS, the TACO Agreement establishes prima facie liability for the deposit of contaminants and places the monetary obligation for the removal and proper disposal of the contaminants on an owner/operator if the engineered barrier is removed.

NOW, THEREFORE, be it Resolved by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, that the Mayor is hereby authorized to sign, and the City Clerk is hereby directed to attest, to that certain TACO Agreement between the City of Wheaton and Equilon Enterprises, L.L.C. d/b/a Shell Oil Products, U.S. attached hereto and incorporated herein as Exhibit A, subject to those revisions made by the City Attorney to make the Agreement consistent, as applicable, with the TACO Agreement with Equilon Enterprises L.L.C.

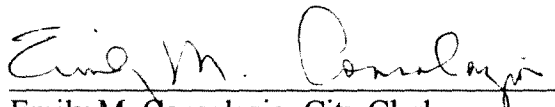
Resolution R-75-06

ADOPTED this 16th day of October, 2006.



Mayor C. James Carr,
City of Wheaton

ATTEST:



Emily M. Consolazio, City Clerk
City of Wheaton

Ayes:

Roll Call Vote:
Councilman Mouhelis
Councilman Suess
Councilman Bolds
Councilwoman Corry
Councilman Johnson
Mayor Carr

Nays:

None

Absent:

Councilman Levine

Motion Carried Unanimously

TIERED APPROACH TO CORRECTIVE-ACTION OBJECTIVES AGREEMENT

This Agreement is entered into this 16th day of October, 2006 between Equilon Enterprises, L.L.C., d/b/a Shell Oil Products US ("Owner") and the City of Wheaton ("City"), pursuant to 35 Ill. Admin. Code Section 742.1020 as follows:

1. The Consideration for this Agreement shall be Owner not having to immediately undertake soil remediation for property owned by the City associated with incident #990426.

2. This Agreement shall not be binding upon the City until it is approved by the Corporate Authorities of the City of Wheaton, by resolution or ordinance, executed by the Mayor, and attested to by the City Clerk. A copy of the approving ordinance shall be attached hereto and incorporated herein as a fully set forth Exhibit A.

3.a. Owner is pursuing a correction action of a Site and of the right-of-way adjacent to the boundary of the Site located at 325 South Main Street (the northeast corner of the intersection of Main Street and Illinois Street), Wheaton, Illinois (the "Site").

3.b. Attached as Figure 1 and Figure 2 are site maps prepared by Owner which show where soil and groundwater were sampled by Owner in the right-of-way. Also shown in Exhibit A are tables prepared by Owner showing the concentration of contaminants of concern, hereafter "Contaminants," in soil and/or groundwater within the right-of-way and which shows the applicable Tier 1 soil remediation objectives for residential property and Tier 1 objectives for groundwater of the Illinois Pollution Control Board ("IPCB") which are exceeded in those samples taken in the right-of-way adjacent to the Site. The right-of-way, and only the right-of-way, as described in Exhibit B, hereinafter the "Right-of-Way," adjacent to the site is subject to this Agreement. As the drawings in the Exhibits are not surveyed plats, the boundary of the Right-of-Way in the Exhibits may be an approximation of the actual right-of-way lines. The

Right-of-Way has been sampled, and the parties believe that the Right-of-Way is adequate to encompass soil and/or groundwater within the Right-of-Way possibly impacted with Contaminants from a release at the Site.

3.c. The Illinois Emergency Management Agency has assigned incident number 990426 to this release at the Site.

3.d. Owner intends to request risk-based, site specific soil and/or groundwater remediation objectives from the Illinois Environmental Protection Agency ("IEPA") under 35 Ill. Admin. Code Part 742.

3.e. Under these rules, use of risk-based, site specific remediation objectives in the Right-of-Way may require the use of a Highway Authority Agreement as defined in 35 Ill. Admin. Code Section 742.1020.

4. The City holds a fee simple interest or a dedication for highway purposes in the Right-of-Way, or the Right-of-Way is a platted street, and has jurisdiction of the Right-of-Way. For purposes of this Agreement, "jurisdiction" means that the City exercises access control over the use of groundwater beneath the Right-of-Way and over access to the soil beneath the Right-of-Way because a permit must be obtained from the City for that access within the Right-of-Way.

5.a. Under 35 Ill. Admin. Code Section 742.1020, this Agreement is intended to be an acceptable "Highway Authority Agreement" to IEPA, as the City is willing to agree that it will not allow the use of groundwater under the highway Right-of-Way as a potable or other domestic supply of water and that it will limit access as described herein to soil under the highway Right-of-Way that is contaminated from the release at levels above residential Tier 1 remediation objectives.

5.b. The IEPA and Illinois Attorney General's office must review and approve this Agreement, and this Agreement shall be referenced in the IEPA's "No Further Remediation" determination in the chain of title for the Site in the county where the Site is located.

5.c. This Agreement shall be null and void as a Highway Authority Agreement should the IEPA or Attorney General not approve it or should it not be referenced in the "No Further Remediation" determination, provided, however, that this Agreement shall be effective between the Owner and the City immediately upon signature by their representatives.

6.a. The City promises IEPA and the Owner that it will prohibit the use of groundwater that is contaminated from the release at the Site at levels above Tier 1 remediation objectives beneath its Right-of-Way as a potable or other domestic supply of water and will limit access to soil as described herein under the Right-of-Way that is contaminated from the release at the Site at levels above Tier 1 remediation objectives. As the pavement in the Right-of-Way may be considered an engineered barrier, the Owner agrees to reimburse the City for maintenance activities requested by Owner in writing in order to maintain it as a barrier. The City does not otherwise agree to perform maintenance of the Right-of-Way, nor does it agree that the highway Right-of-Way will always remain a highway or that it will maintain the Right-of-Way as an engineered barrier.

6.b. The City has informed the Owner that the Right-of-Way is within a Tax Increment Financing District and that all or a portion of the same may be subject to redevelopment at a future date. Nothing in this Agreement shall be construed to place any limitations on the re-development of the Site. Owner agrees that should the City elect at its discretion to re-develop the Right-of-Way in such manner as to require the remediation of contaminants within, under, or along the Right-of-Way, the City shall provide Owner with

written notification at least thirty (30) days in advance of the date on which the City plan(s) to begin Tax Increment Financing re-development ("Development"). Owner shall be responsible for Incremental Increase (as defined below) in costs and expenses, if any, associated with the disposal of contaminated soil and disposal or treatment of contaminated soil and disposal or treatment of contaminated groundwater caused by the former UST system on the Site and encountered during the Development, in accordance with the following guidelines and requirements:

- City's written notification to Owner shall state the dates during which the construction work will be performed and contain detailed work plans;
- During the one (1) month period following the notice, the City and Owner will coordinate and cooperate with each other in planning the simultaneous performance, to the extent reasonably practical, of the Development and removal activities at the Site in such a manner as to minimize cost and time for the City and Owner, including agreeing upon the scope and schedule of the removal activities and the schedule of the transporters and trucks needed for disposal;

Incremental Increases shall mean those costs which are in excess of the amount that the City had reasonably budgeted for the construction work that it would not have had to expend but for the requirement to remove contaminants.

6.c. Except for emergency situations or non-Development work, the City shall notify Owner at least ten (10) business days in advance of excavation of any soils at the Site. Owner

will collect representative soil samples for BTEX analyses from the Site. Soil with BTEX levels below the applicable State cleanup standards use will be considered "clean". Soil determined to be "clean" may be used by the City for back-filing or other Development purposes at the Site. The City shall, at its cost and expense, remove and properly dispose of any such "clean" soil should the City decide not use such clean soil for back-filling or other development purposes so long as the "clean" soil can be disposed of at a non-special handling treatment, storage or disposal facility or landfill. Any soil that must disposed of at a special handling treatment, storage or disposal facility or landfill, or soil with BTEX readings in excess of the applicable state clean-up standards will be considered "contaminated". The City, with the cooperation of the Owner, shall segregate any such contaminated soil from clean soil and place the contaminated soil in trucks provided by the Owner at the Owner's sole cost and expense. Owner shall, at sole cost and expense, transport and properly dispose of any such contaminated soil off site at a special handling treatment, storage or disposal facility or any other facility legally capable of accepting such soil. Whether such soils must be transported and disposed of at a permitted treatment, storage or disposal facility or any other facility legally capable of accepting such soils shall be subject solely to the determination of an environmental engineer retained by the City who is reasonably acceptable to Owner at the Owner's reasonable expense. If the City would not have used the soil so removed for backfill on the Site, the City shall reimburse Owner for the reasonable trucking and disposal cost it would have paid for the removal of the soil to a non special waste facility;

6.d. Except for emergency or non-Development work, the City shall notify Owner at least ten (10) business days in advance of the removal of any liquids at the Site. Liquids with BTEX levels below the applicable State clean-up standards will be considered "clean" unless

such liquids must be transported and disposed of at a special handling treatment, storage or disposal facility. Such "clean" liquids may remain at the Site in the City's discretion. If the liquids do not require transport and disposal at a special handling treatment, storage or disposal facility, the City may remove such liquids at its sole cost and expense. Any liquids requiring transport and disposal at a special handling treatment, storage or disposal facility shall be considered contaminated and shall be transported and properly disposed of off-site at a special handling treatment, storage or disposal facility at the Owner's sole cost and expense. Whether such liquids shall be removed, transported and disposed of shall be subject to the determination of an environmental engineer retained by the City who is reasonably acceptable to Owner at the Owner's reasonable expense.

7. The Owner agrees to indemnify and hold harmless the City, and other highway authorities, if any, maintaining the highway Right-of-Way by an agreement with the City, and the City's agents, contractors or employees for all obligations asserted against or costs incurred by them, including attorney's fees and court costs, associated with the release of Contaminants from the Site.

8. As an additional consideration, Owner agrees to reimburse the City for the reasonable costs it has incurred prior to the date of this Agreement in protecting human health and the environment, including, but not limited to, identifying, investigating, handling, storing and disposing of contaminated soil and groundwater in the Right-of-Way as a result of the release of contaminants at this Site.

9. Even though the Owner shall remain obligated under the terms and conditions of this Agreement upon transfer of title, it shall be binding upon all successors and interest to the Owner. A successor in the interest of the City shall include any entity or person to which the

City would transfer jurisdiction of the Right-of-Way. A successor in interest of the City would include a highway authority to which the City would transfer jurisdiction of the highway.

10. Violation of the terms of this Agreement by Owner, or their successors in interest, may be grounds for voidance of this Agreement as a Highway Authority Agreement. Violation of the terms of this Agreement by the City will not void this Agreement, unless the IEPA has determined that the violation is grounds for voiding this Agreement as a Highway Authority Agreement and the City has not cured the violation within such time as IEPA has granted to cure the violation.

11. This Agreement shall continue in effect from the date of this Agreement until the Right-of-Way is demonstrated to be suitable for unrestricted use and there is no longer a need for this Agreement as a Highway Authority Agreement, and the IEPA has, upon written request to the IEPA by the Owner and notice to the City, amended the notice in the chain of title of the Site to reflect unencumbered future use of that highway Right-of-Way.

12. This Agreement is in settlement of claims the City may have arising from the release of Contaminants into the Right-of-Way associated with incident number 990426.

13. This Agreement shall not limit the City's ability to construct, reconstruct, improve, repair, maintain, vacate or alienate in other way any portion of or all of Right-of-Way upon its property as part of a Tax Increment Financing Redevelopment Ordinance and Project or otherwise. To that extent, the City reserves the right and the right of those using its property under permit to remove contaminated soil or groundwater above Tier 1 residential remediation objectives from its Right-of-Way and to dispose of them as they deem appropriate not inconsistent with applicable environmental regulations so as to avoid causing a further release of the Contaminants and to protect human health and the environment. Subject to the provisions of

this Agreement, the City will first give Owner written notice, unless there is an immediate threat to the health or safety to any individual or to the public, that it intends to perform a site investigation in the Right-of-Way and remove or dispose of contaminated soil or ground to the extent necessary for its work. Failure to give notice is not a violation of this Agreement. There is a presumption that the Contaminants found in the highway Right-of-Way arose from the release of Contaminants from the Site. Should Owner not reimburse the reasonable costs under the conditions set forth herein, this Agreement shall be null and void, at the City's option, upon written notice to Owner by the City that those costs have not been reimbursed. Owner may cure that problem within twenty working days by making payment, or may seek to enjoin that result.

14. Written notice required by this Agreement shall be mailed to the following:

If to Owner:

Name:	John Robbins
Company:	Equilon Enterprises LLC d/b/a Shell Oil Products US
Street:	603 Diehl Road, Suite 103
City, State, Zip:	Naperville, IL 60563

If to City:

Name:	Paul Redman, Director Engineering Department
Street:	303 West Wesley Street
City, State, Zip:	Wheaton, IL 60187

15. The City's sole responsibility under this Agreement with respect to others using the highway Right-of-Way under permit from the City is to include the following, or similar language, in the future standard permit provisions and to make an effort to notify its current permit holders of the following:

As a condition of this permit, the Permittee shall request the City to identify sites in the Right-of-Way where access to contaminated soil or groundwater is governed by Tiered Approach to Corrective-Action

Objectives ("TACO") Agreements. The Permittee shall take measures before, during and after any access to these sites to protect worker safety and human health and the environment. Excavated, contaminated soil should be managed off-site in accordance with all environmental laws.

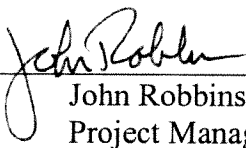
16. No violation of a permit by a third-party shall constitute a breach of this agreement by the City. Owner hereby releases the City from liability for breach of this Agreement by others under permit and indemnifies the City against claims that may arise from others under permit causing a breach of this Agreement. Owner agrees that its personnel, if any, at the Site who are aware of this Agreement will notify anyone they know is excavating the Right-of-Way about this Agreement.

17. Should the City breach this Agreement, Owner's sole remedy shall be an action in the Eighteenth Judicial Circuit Court for specific performance of this Agreement. Any and all claims for damage against the City, its agents, its contractors, its employees or its successor in interest arising anytime for the breach of this Agreement are hereby fully waived and release. Other than an action for specific performance, no other breach by the City, its agents, contractors, employees and its successors in interest of a provision of this Agreement is actionable in either law or equity by Owner against the City or them and Owner hereby releases the City, its agents, contractors, employees and its successors in interest for any cause of action it may have against them, other than as allowed in this paragraph, arising under this Agreement or environmental law, regulation or common law governing the contaminated soil or groundwater in the highway Right-of-Way, Owner may pursue an action under this Agreement against the successors in interest, other than a State agency, in a court of law.

18. This Agreement is entered into by the City in recognition of laws passed by the General Assembly and regulations adopted by the Pollution Control Board which encourage a tiered-approach to re-mediating environmental contamination. This Agreement is entered into by

the City in the spirit of those laws and under its right and obligations as a highway authority. Should any provisions of this Agreement be struck down as beyond the authority of the City, however, this Agreement shall be null and void.


IN WITNESS WHEREOF, Owner, Equilon Enterprises, L.L.C., d/b/a Shell Oil Products US, has caused this Agreement to be signed by its duly authorized representative.

BY: 
John Robbins
Project Manager

DATE: December 5, 2006

IN WITNESS WHEREOF, the City has caused this Agreement to be signed by its duly authorized representative.

City of Wheaton

BY: 
C. JAMES CARR

ITS: 

DATE: December 4, 2006

EXHIBIT A ATTACHED

EXHIBIT A

Figures 1 & 2

ATTACHED

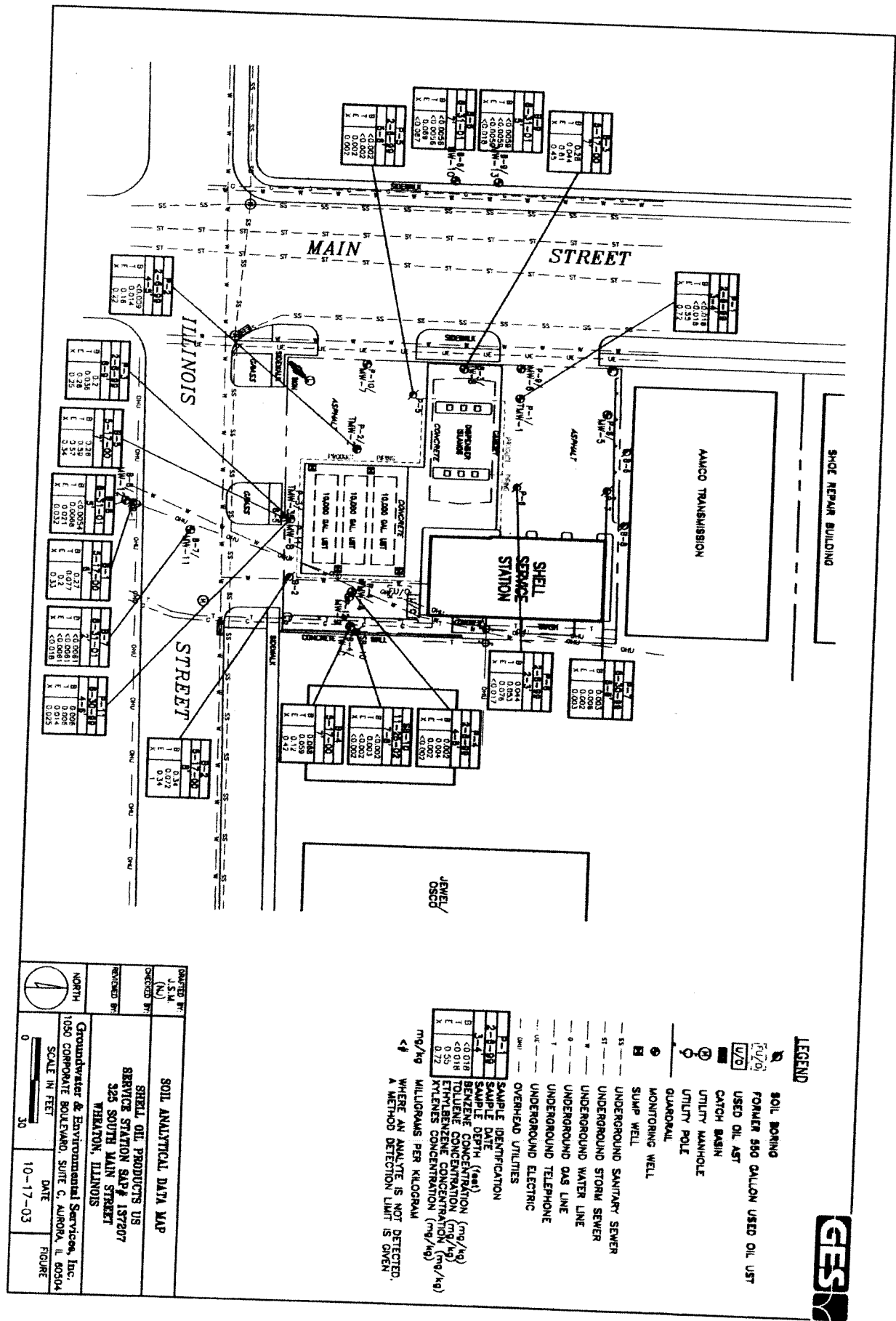


Figure 1

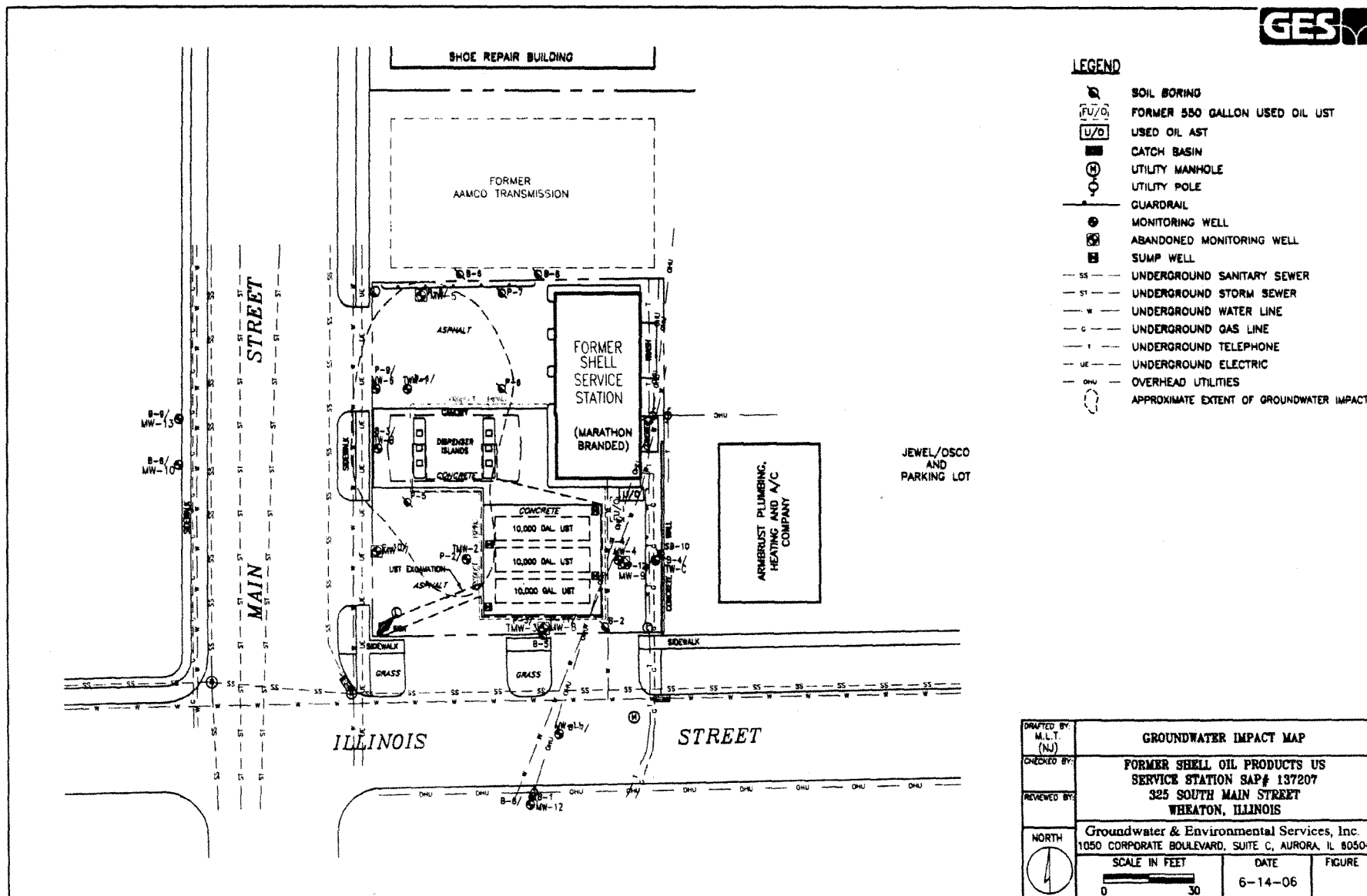


Figure 2

R-15-01

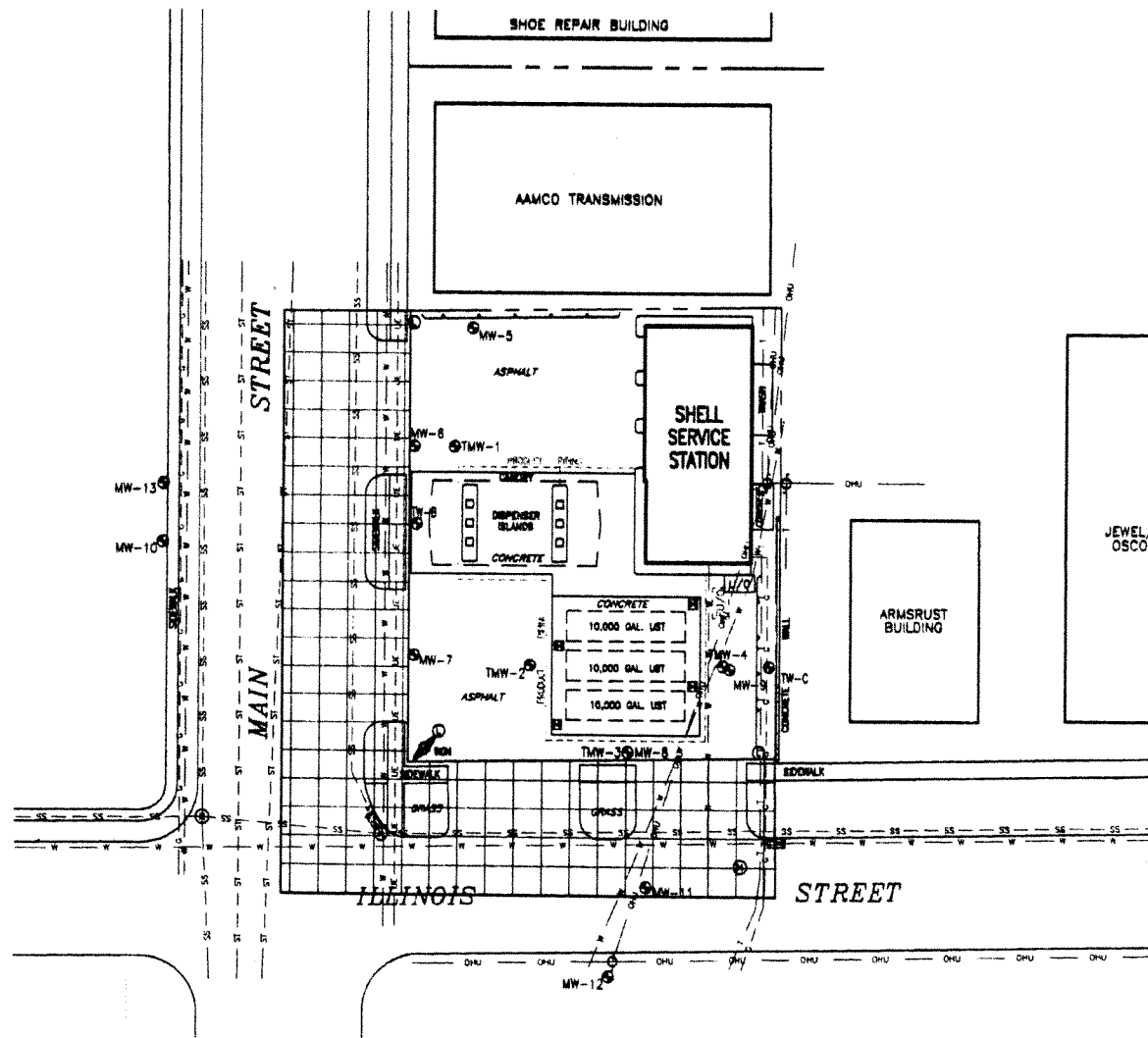
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EXHIBIT B ATTACHED



LEGEND

- FORMER 550 GALLON USED OIL UST
- USED OIL AST
- CATCH BASIN
- UTILITY MANHOLE
- UTILITY POLE
- GUARDRAIL
- MONITORING WELL
- SUMP WELL
- SS UNDERGROUND SANITARY SEWER
- ST UNDERGROUND STORM SEWER
- W UNDERGROUND WATER LINE
- G UNDERGROUND GAS LINE
- T UNDERGROUND TELEPHONE
- UE UNDERGROUND ELECTRIC
- OHU OVERHEAD UTILITIES
- AREA SUBJECT TO VILLAGE OF WHEATON HIGHWAY AUTHORITY AGREEMENT



DRAFTED BY: J.S.M. (NJ)	HIGHWAY AUTHORITY AGREEMENT MAP		
CHECKED BY:	SHELL OIL PRODUCTS US SERVICE STATION SAP# 137207 325 SOUTH MAIN STREET WHEATON, ILLINOIS		
REVIEWED BY:	Groundwater & Environmental Services, Inc. 1050 CORPORATE BOULEVARD, SUITE C, AURORA, IL 60504		
NORTH 	SCALE IN FEET 	DATE 10-17-03	FIGURE
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