

RESOLUTION R- 25-08

**A RESOLUTION AUTHORIZING THE EXECUTION OF A HIGHWAY
AUTHORITY AGREEMENT AND AN INDEMNITY AGREEMENT (EQUILON
ENTERPRISES, LLC D/B/A SHELL OIL PRODUCTS US) – 100 W. GENEVA
ROAD, WHEATON, IL**

WHEREAS, Equilon Enterprises, as Owners of the property at 100 W. Geneva Road (hereinafter "Property") have requested that the Corporate Authorities of the City of Wheaton adopt a Highway Authority Agreement for the "Property"; and

WHEREAS, the Illinois Environmental Protection Agency now requires the use of a standard Highway Authority Agreement; and

WHEREAS, the Corporate Authorities of the City of Wheaton have considered the request but are unwilling to approve the form HAA in absence of the simultaneous execution and adoption of a recordable Indemnity Agreement; and

WHEREAS, Equilon Enterprises, d/b/a as Shell Oil Company, has agreed to execute a recordable Indemnity Agreement to providing protections to the City of Wheaton not contained within the HAA; and

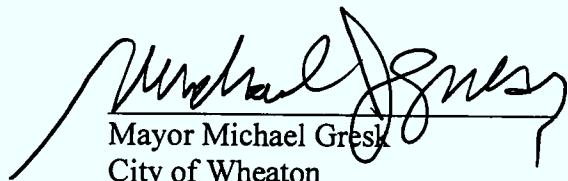
NOW THEREFORE, be it Resolved by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, that the Mayor is hereby authorized to sign, and the Village Clerk is hereby directed to attest, to:

a.) that certain Highway Authority Agreement between the City of Wheaton and Equilon Enterprises attached hereto and incorporated herein as fully set forth as Exhibit A; and

b.) that certain Indemnity Agreement between the City of Wheaton and Equilon Enterprises attached hereto and incorporated herein as fully set forth as Exhibit B.

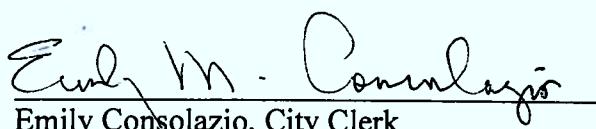
The City Clerk shall record the Indemnity Agreement at the Office of the DuPage
County Recorder of Deeds.

ADOPTED this 21st day of April, 2008.



Mayor Michael Gresk
City of Wheaton

ATTEST:



Emily Consolazio, City Clerk
City of Wheaton

ROLL CALL VOTE:

AYES: Councilman Mouhelis; Councilman Prendiville; Councilman Suess;
Councilwoman Corry; Councilman Johnson; Councilman Levine;
Mayor Gresk

NAYS: None

ABSENT: None

Motion Carried Unanimously

TIERED APPROACH TO CORRECTIVE-ACTION OBJECTIVES
LIMITED INDEMNIFICATION AGREEMENT

This Limited Indemnification Agreement ("Agreement") is entered into this 21st day of April, 2008 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 No. 20030353 and the City's agreement to enter into a Highway Authority Agreement attached hereto as Exhibit A.
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.
3. Owner is pursuing a correction action of a Site and of the right-of-way adjacent to the boundary of the Site (the "Right-of-Way") located at 100 W. Geneva Road (the northeast corner of the intersection of Main Street and Geneva Road), Wheaton, Illinois (the "Site"). The Right-of-Way is depicted on Exhibit B.
4. 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.
5. 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 ("HAA") as defined in 35 Ill. Admin. Code Section 742.1020. Under rules adopted by the Illinois Pollution Control Board ("IPCB"), the HAA must follow the form set forth in Exhibit A.

6. In order to induce the City to enter into the HAA, 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.

7. 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.

8. 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. 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 thirty (30) days written notice, unless there is an immediate threat to the health or safety to any individual or to the public (the "Notice Period"), that it intends to perform a site investigation in the Right-of-Way and remove or dispose of contaminated soil or groundwater to the extent necessary for its work. Failure to give notice is not a violation of this Agreement.

9. 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 activities noted in 8 above, in accordance with the following guidelines and requirements:

- City's written notification to Owner shall state the dates during which work will be performed and the notification shall contain detailed work plans;
- During the Notice Period, the City and Owner will coordinate and cooperate with each other in planning the simultaneous performance, to the extent reasonably practical, of the work 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.

10. Except for emergency situations, during the Notice Period, Owner will collect representative soil and groundwater samples for BTEX analyses from the Right-of-Way.

11. 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-filling or other work. 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 work 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 its 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 in the Right-of-Way or if the soils so removed were removed solely for the purpose of reaching contaminated soils, 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;

12. Groundwater 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 Right-of-Way 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 by Owner at the Owner's sole cost and expense. Whether such liquids must be transported and disposed of at a permitted

treatment, storage or disposal facility or any other facility legally capable of accepting such liquids 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.

13. There is a rebuttable presumption that the Contaminants found in the highway Right-of-Way arose from the release of Contaminants from the Site.

14. 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 (20) working days by making payment, or may seek to enjoin that result.

15. This Agreement shall continue in effect from the date of this Agreement until the HAA is no longer required as set forth in said HAA.

16. 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.

17. 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 20030353.

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

If to Owner:

Name:	John Robbins
Company:	Equilon Enterprises LLC dba 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

19. The City's sole responsibility under this Agreement shall be to comply with the HAA and the provisions set forth herein.

20. 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. This obligation shall include the requirement to appear, defend, and indemnify the City from any claim by the IEPA that it has violated any term of the HAA.

21. 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.

22. 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 remediating 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.

23. In the event the City wishes to record this Agreement, it shall be recorded against the property identified in Exhibit C.

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
John Robbins
Project Manager

DATE: 4/7/08

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

City of Wheaton

BY:
ITS:

Michael J. Gries

MAJOR

DATE: 5/12/08

EXHIBIT A

HIGHWAY AUTHORITY AGREEMENT

AS ATTACHED

HIGHWAY AUTHORITY AGREEMENT

This Agreement is entered into this 21 day of April, 2008 pursuant to 35 Ill. Adm. Code 742.1020 by and between the Equilon Enterprises LLC d/b/a Shell Oil Products US ("Owner/Operator") and the City of Wheaton, Illinois ("Highway Authority"), collectively known as the "Parties."

WHEREAS, Owner/Operator is the owner or operator of one or more leaking underground storage tanks presently or formerly located at common address or description of Site location 100 W. Geneva, Wheaton, Illinois ("the Site");

WHEREAS, as a result of one or more releases of contaminants at the above referenced Site "the Release(s)", soil and/or groundwater contamination at the Site exceeds the Tier I residential remediation objectives of 35 Ill. Adm. Code 742:

WHEREAS, the soil and/or groundwater contamination exceeding Tier 1 residential remediation objectives extends or may extend into the Highway Authority's right-of-way:

WHEREAS, the Owner/Operator is conducting corrective action in response to the Release(s);

WHEREAS, the Parties desire to prevent groundwater beneath the Highway Authority's right-of-way that exceeds Tier I remediation objectives from use as a supply of potable or domestic water and to limit access to soil within the right-of-way that exceeds Tier I residential remediation objectives so that human health and the environment are protected during and after any access;

NOW, THEREFORE, the Parties agree as follows:

1. The recitals set forth above are incorporated by reference as if fully set forth herein
2. The Illinois Emergency Management Agency has assigned incident number 20030353 to the Release.
3. Attached as Group Exhibit A is/are a scaled map(s) prepared by the Owner/Operator that shows the Site and surrounding area and delineates the current and estimated future extent of soil and groundwater contamination above the applicable Tier I residential remediation objectives as a result of the Release(s).
4. Attached as Group Exhibit B is/are a table(s) prepared by the Owner/Operator that lists each contaminant of concern that exceeds its Tier I residential remediation objective, its Tier I residential remediation objective and its concentrations within the zone where Tier I residential remediation objectives are exceeded. The locations of the concentrations listed in Group Exhibit B are identified on the map(s) in Exhibit A.
5. Attached as Exhibit C is a scaled map prepared by the Owner/Operator showing the

area of the Highway Authority's right-of-way that is governed by this agreement ("Right-of-Way"). Because Exhibit C is not a surveyed plat, the Right-of-Way boundary may be an approximation of the actual Right-of-Way lines. Because the collection of samples within the Right-of-Way is not practical, the Parties stipulate that, based on modeling, soil and groundwater contamination exceeding Tier I residential remediation objectives does not and will not extend beyond the boundaries of the Right-of-Way.

6. The Highway Authority stipulates it has jurisdiction over the Right-of-Way that gives it sole control over the use of the groundwater and access to the soil located within or beneath the Right-of-Way.
7. The Highway Authority agrees to prohibit within the Right-of-Way all potable and domestic uses of groundwater exceeding Tier I residential remediation objectives.
8. The Highway Authority further agrees to limit access by itself and others to soil within the Right-of Way exceeding Tier I residential remediation objectives. Access shall be allowed only if human health (including worker safety) and the environment are protected during and after any access. The Highway Authority may construct, reconstruct, improve, repair, maintain and operate a highway upon the Right-of-Way, or allow others to do the same by permit. In addition, the Highway Authority and others using or working in the Right-of-Way under permit have the right to remove soil or groundwater from the Right-of-Way and dispose of the same in accordance with applicable environmental laws and regulations. The Highway Authority agrees to issue all permits for work in the Right-of-Way, and make all existing permits for work in the Right-of-Way, subject to the following or a substantially similar condition:

"As a condition of this permit the permittee shall request the office issuing this permit to identify sites in the Right-of-Way where a Highway Authority Agreement governs access to soil that exceeds the Tier I residential remediation objectives of 35 Ill. Adm. Code 742. The permittee shall take all measures necessary to protect human health (including worker safety) and the environment during and after any access to such soil."

9. This agreement shall be referenced in the Agency's no further remediation determination issued for the Release(s).
10. The Agency shall be notified of any transfer of jurisdiction over the Right-of-Way at least 30 days prior to the date the transfer takes effect. This agreement shall be null and void upon the transfer unless the transferee agrees to be bound by this agreement as if the transferee were an original party to this agreement. The transferee's agreement to be bound by the terms of this agreement shall be memorialized at the time of transfer in a writing ("Rider") that references this Highway Authority Agreement and is signed by the Highway Authority, or subsequent transferor, and the

transferee.

11. This agreement shall become effective on the date the Agency issues a no further remediation determination for the Release(s). It shall remain effective until the Right-of-Way is demonstrated to be suitable for unrestricted use and the Agency issues a new no further remediation determination to reflect there is no longer need for this agreement, or until the agreement is otherwise terminated or voided.
12. In addition to any other remedies that may be available, the Agency may bring suit to enforce the terms of this agreement or may, in its sole discretion, declare this agreement null and void if any of the Parties or any transferee violates any term of this agreement. The Parties or transferee shall be notified in writing of any such declaration.
13. This agreement shall be null and void if a court of competent jurisdiction strikes down any part or provision of the agreement.
14. This agreement supersedes any prior written or oral agreements or understandings between the Parties on the subject matter addressed herein. It may be altered, modified or amended only upon the written consent and agreement of the Parties.
15. Any notices or other correspondence regarding this agreement shall be sent to the Parties at following addresses:

Illinois Environmental Protection Agency

Owner Operator

Manager, Division of Remediation Management
Bureau of Land
Illinois Environmental Protection Agency
P.O. Box 19276
Springfield, IL 62974-9276

HSE Environmental
Equilon Enterprises LLC d/b/a
Shell Oil Products US
603 Diehl Rd., Suite 103
Naperville, IL 60563

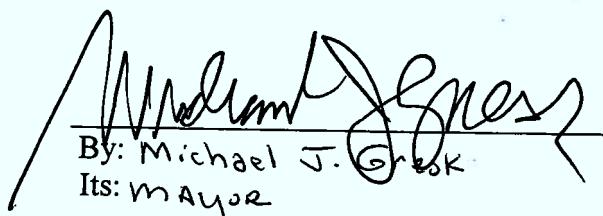
If to Highway Authority:

Paul Redman, Director
Engineering Department
303 West Wesley Street
Wheaton, IL 60187

IN WITNESS WHEREOF, the Parties have caused this agreement to be signed by their duly authorized representatives.

CITY OF WHEATON

Date: May 12, 2008



Michael J. Gresh

By: Michael J. Gresh
Its: Mayor

Equilon Enterprises LLC, d/b/a
Shell Oil Products US

Date: 4/7, 2008

John Robbins
By: John Robbins
Title: Project Manager

R-25-07

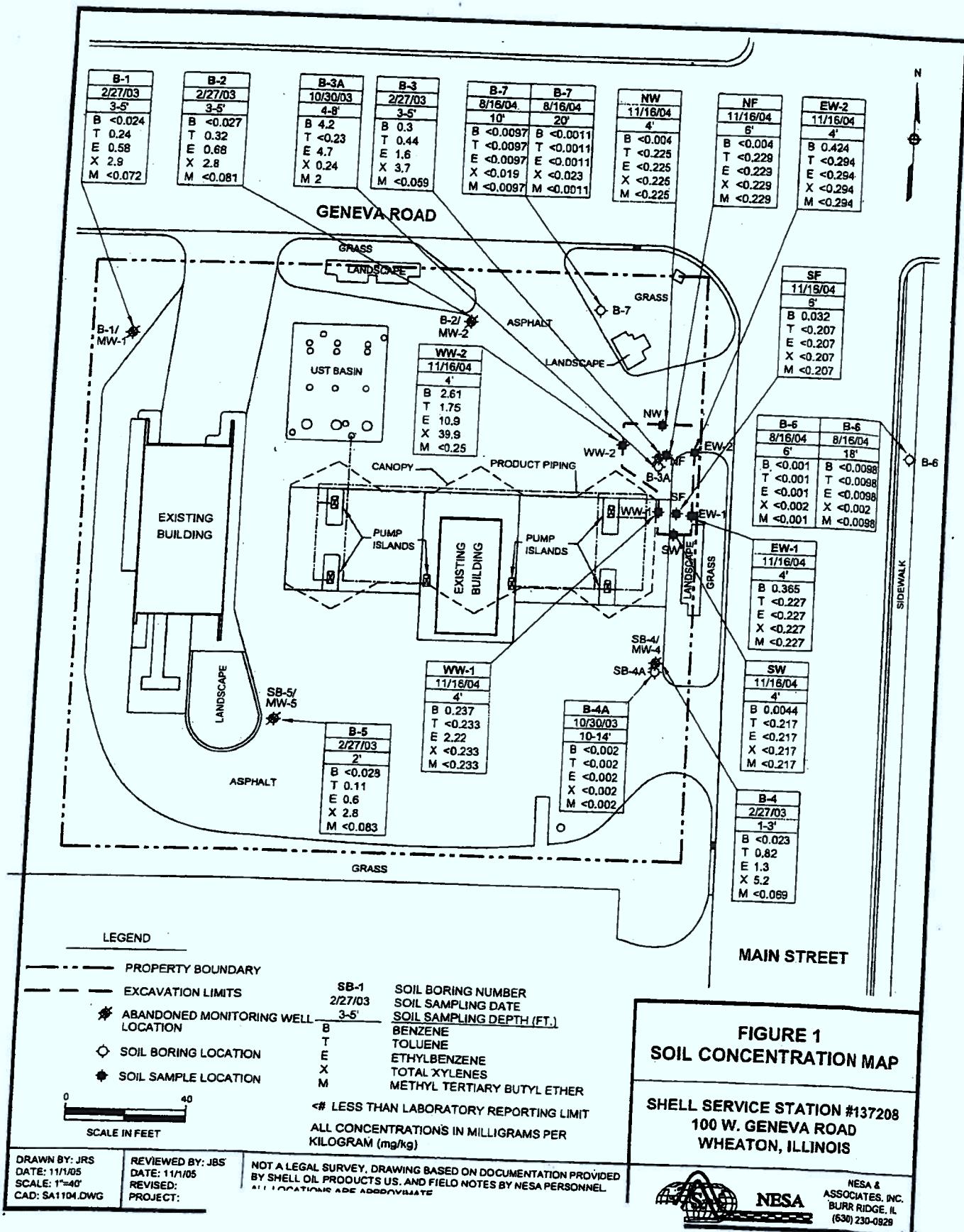


FIGURE 1
SOIL CONCENTRATION MAP

**SHELL SERVICE STATION #137208
100 W. GENEVA ROAD
WHEATON, ILLINOIS**

DRAWN BY: JRS
DATE: 11/1/05
SCALE: 1"=40'
CAD: SA1104.DWG

REVIEWED BY: JBS
DATE: 11/1/05
REVISED:
PROJECT:

NOT A LEGAL SURVEY. DRAWING BASED ON DOCUMENTATION PROVIDED
BY SHELL OIL PRODUCTS US. AND FIELD NOTES BY NESA PERSONNEL
ALL LOCATIONS ARE APPROXIMATE

NESA & ASSOCIATES, INC.

NESA

NESA &
ASSOCIATES, INC.
Burr Ridge, IL
(630) 230-0929

EXHIBIT A

Table 1
Soil Analytical Results
Shell Service Station #137208
100 West Geneva Road, Wheaton, Illinois

Boring #	Date	Depth (Feet)	Benzene (mg/kg)	Toluene (mg/kg)	Ethylbenzene (mg/kg)	Xylenes (mg/kg)	MTBE (mg/kg)
Tier 1 - SRO - Migration to Class I Groundwater			0.03	12	13	150	0.32
Tier 1 SRO - Migration to Groundwater Class II Groundwater			0.17	29	19	150	0.32
Tier 1 - SRO - Residential - Inhalation			0.8	650	400	320	8,800
Tier 1 - SRO - Residential - Ingestion			12	16,000	7,800	160,000	780
B-1/MW-1	2/27/2003	3-5	<0.024	0.24	0.58	2.9	<0.072
B-2/MW-2	2/27/2003	3-5	<0.027	0.32	0.68	2.8	<0.081
B-4/MW-4	2/26/2003	1-3	<0.023	0.82	1.3	5.2	<0.069
B-5/MW-5	2/26/2003	2	<0.028	0.11	0.6	2.8	<0.083
B-4A	10/30/2003	10-14	<0.002	<0.002	<0.002	<0.002	<0.002
B-6	8/16/2004	6	<0.001	<0.001	<0.001	<0.002	<0.001
B-6	8/16/2004	18	<0.0098	<0.0098	<0.0098	<0.002	<0.0098
B-7	8/16/2004	10	<0.0097	<0.0097	<0.0097	<0.0019	<0.0097
B-7	8/16/2004	20	<0.0011	<0.0011	<0.0011	<0.0023	<0.0011
SW (4)	11/16/2004	4	0.00442	<0.217	<0.217	<0.217	<0.217
WW-1 (4)	11/16/2004	4	0.237	<0.233	2.22	<0.233	<0.233
EW-1 (4)	11/16/2004	4	0.365	<0.227	<0.227	<0.227	<0.227
EW-2 (4)	11/16/2004	4	0.424	<0.294	<0.294	<0.294	<0.294
NW (4)	11/16/2004	4	<0.00449	<0.225	<0.225	<0.225	<0.225
SF (6)	11/16/2004	6	0.032	<0.207	<0.207	<0.207	<0.207
NF (6)	11/16/2004	6	<0.00459	<0.229	<0.229	<0.229	<0.229
WW-2 (4)	11/16/2004	4	2.61	1.75	10.9	39.9	<0.25

Notes:

mg/kg = milligram per kilogram

<0.002 = Concentration not detected above laboratory method limit.

SRO = soil remediation objective

Bold = Analytical result is above the Tier 1 SRO for Class I groundwater

Shading = Excavated on 11/16/04

MTBE = Methyl tertiary Butyl Ether

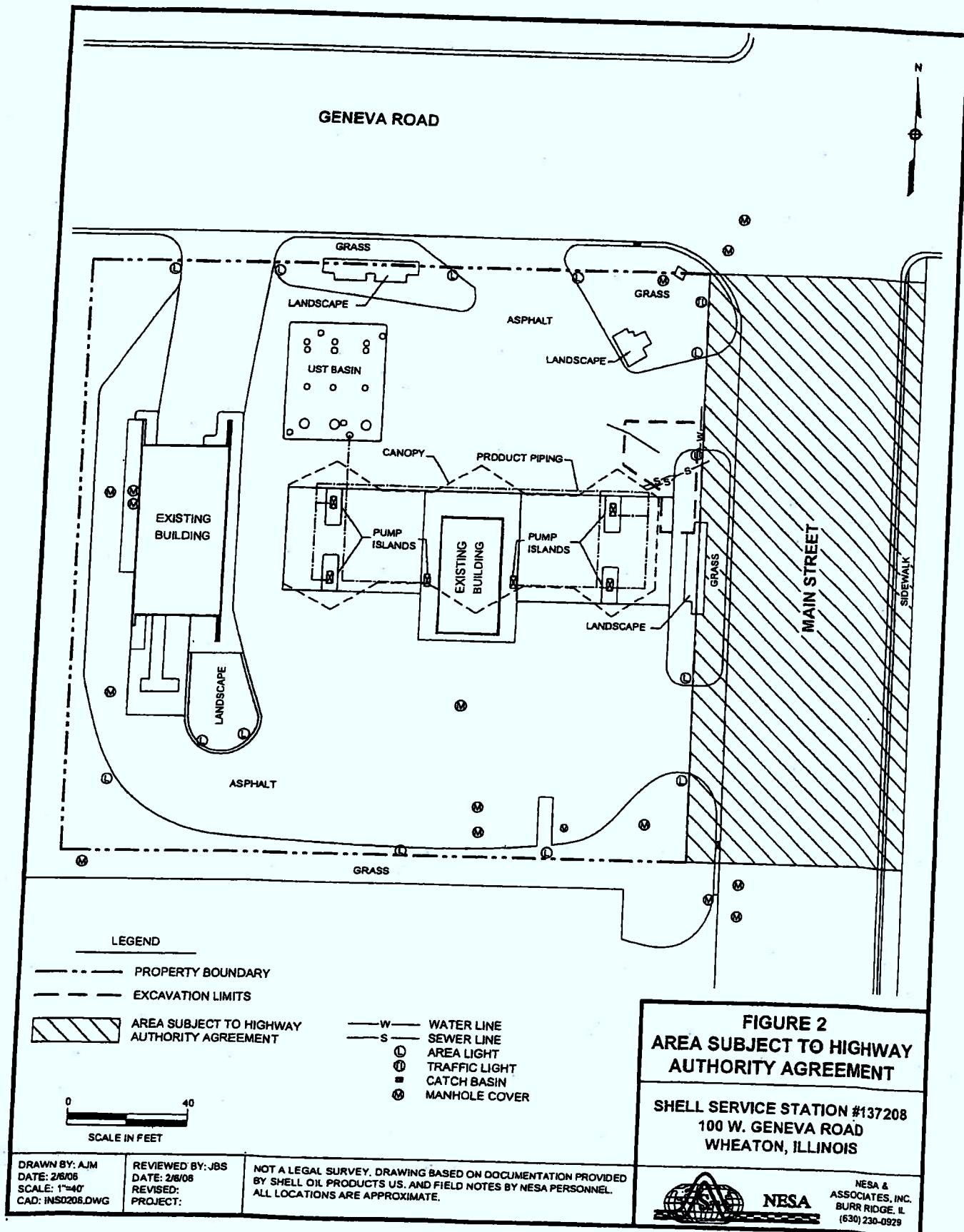


EXHIBIT B

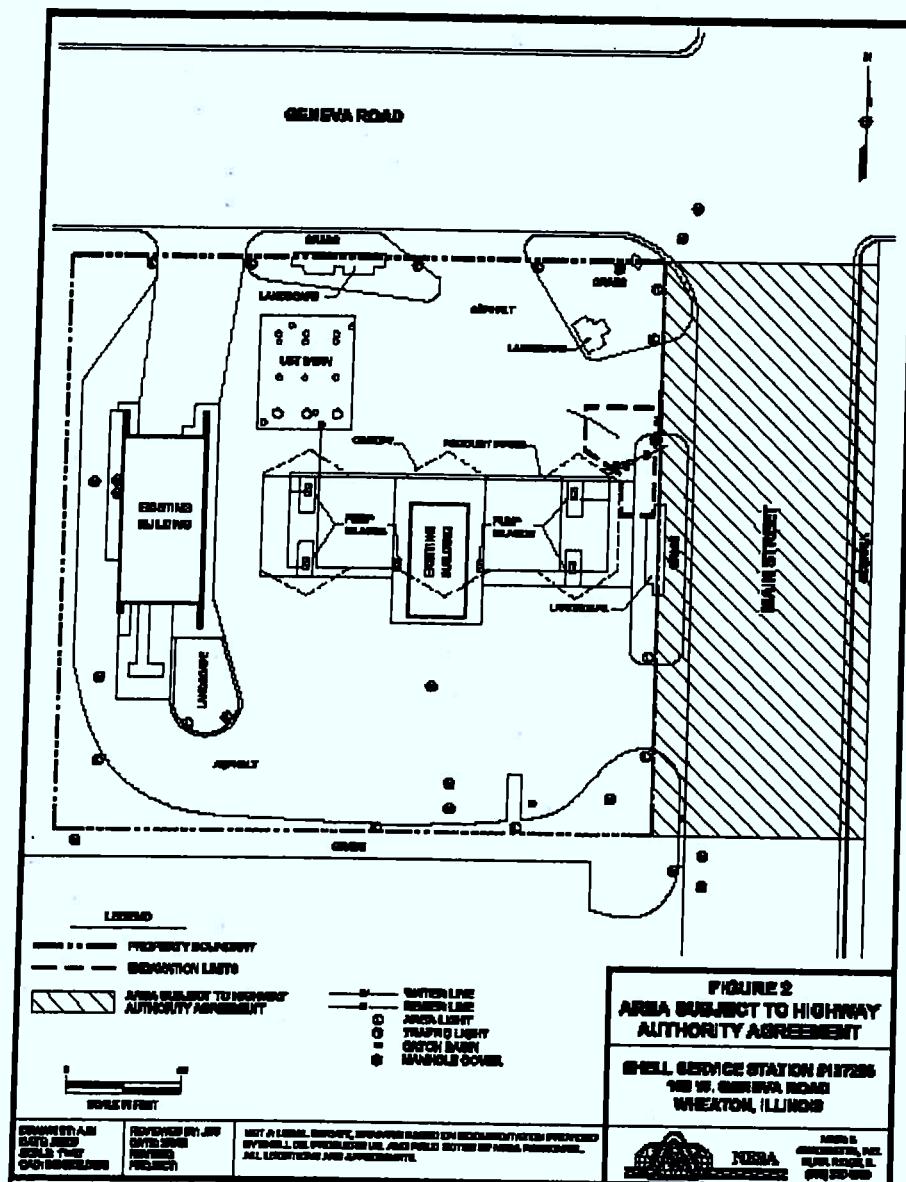


EXHIBIT C**Legal Description of the Site**

The East 207 feet of the South 203 feet of the North 212 feet of Lot 18 in Block 2 in Arthur T. McIntosh and Co's Geneva Road Subdivision, being a subdivision in the Northwest $\frac{1}{4}$ of Section 9, Township 30North, range 10 East of the Third Principal meridian, according to the Plat thereof recorded June 26, 1924 as Document 179449 and Certificate of Correction filed August 5, 1924 as Document 180974 in DuPage County, Illinois.

together with all easements, rights, privileges and appurtenances thereto, all buildings and land improvements and all of Grantor's right, title and interest (if any) in all public ways adjoining the premises conveyed herein.

PIN: 05-09-101-007

Commonly known as 100 W, Geneva Rd. Wheaton, IL