



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

Mitchell E. Daniels, Jr.
Governor

Thomas W. Easterly
Commissioner

100 North Senate Avenue
Indianapolis, Indiana 46204
(317) 232-8603
Toll Free (800) 451-6027
www.idem.IN.gov

August 10, 2011

Ms. Jennifer Hershberger
Trustee
JDH Revocable Trust
675 Waterlily Way
Carmel, Indiana 46032

Dear Ms. Hershberger:

Re: **No Further Action Approval
Determination Pursuant to
Risk Integrated System of Closure
Swifty #175
1909 South Memorial Drive
New Castle, Henry County, IN 47362
FID# 257
LUST# 200210507**

Indiana Department of Environmental Management (IDEM) staff received your No Further Action request for the Swifty #175 located at 1909 South Memorial Drive in New Castle, Indiana for LUST incident number 200210507.

IDEM reviewed the following documents:

- *Quarterly Groundwater Monitoring Report*, prepared by Ellis-Ostman Corporation, dated January 12, 2010; and
- *Environmental Restrictive Covenant*, prepared by Swifty Oil Company, Inc., dated July 18, 2011.

The following is a summary of the current conditions at the Site for the subject release:

- Soils were sampled for total petroleum hydrocarbons (TPH) gasoline range organics (GRO) and diesel range organics (DRO), benzene, toluene, ethylbenzene, xylene (BTEX), and methyl-tertiary-butyl-ether (MTBE). All soil samples were below the Risk Integrated System of Closure (RISC) residential direct contact levels.

Ms. Jennifer Hershberger

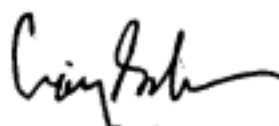
Page 3 of 3

- Completed "Record of Water Well" State Form 35680 for each well (monitoring and treatment wells) signed by the licensed Well Driller.
- Map showing well identifiers and locations.
- Table including well identifier, depth and diameter.

Failure to submit the report may result in a referral to the IDNR Division of Water for follow-up compliance and potential revocation of this NFA determination.

If you have any questions, please contact at Dawn Andershock (317) 233-6539 or toll free from within Indiana at (800) 451-6027. She may also be reached via email at: dandersh@idem.IN.gov.

Sincerely,



Craig Schroer, Section Chief
Leaking Underground Storage Tank Section
Office of Land Quality

Enclosure included with IDEM file copy only

ecopy: IDEM File

Sonja Ison, Swifty Oil Company, Inc.

If you would like to provide IDEM with feedback on our job performance, please go to www.IN.gov/idem/5681.htm and complete our "Remediation Program Customer Satisfaction Survey". Your responses are anonymous and we appreciate the feedback on what we are doing well, and what we need to improve.

257
RECEIVED

AUG 09 2011

DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT
OFFICE OF LAND QUALITY

201103793 ENVIR DISC \$27.00
07/26/2011 02:03:21P 9 PGS
Susie Hufford
Henry County Recorder IN
Recorded as Presented



F10 257

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 18th day of July, 2011, by JDH Revocable Trust, 675 Waterlily Way, Carmel, Indiana, 46032.

WHEREAS: Owner is the fee owner of certain real estate in the County of Henry, Indiana, which is located at 1909 South Memorial Drive, New Castle, Indiana, 47362, and more particularly described in the attached Exhibit "A" ("Real Estate"), which is hereby incorporated and made a part hereof. This Real Estate was acquired by deed on March 22nd, 2001, and recorded on April 1, 2001, as Deed Record 20012539, in the Office of the Recorder of Henry County, Indiana. The Real Estate consists of approximately .382 acres and has also been identified by the county as parcel identification number 33-12-21-220-173.000-016.

WHEREAS: Corrective action was implemented in accordance with IC 13-23 and other applicable Indiana law as a result of a release of petroleum relating to the Swifty Station #175. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 200210507, and the relevant facility identification number is 257.

WHEREAS: Certain contaminants of concern ("COCs") remain in the groundwater of the Real Estate following completion of corrective action. The Department has determined that the COCs will not pose an unacceptable risk to human health at the remaining concentrations, provided that the land use restrictions contained herein are implemented to protect human health and the environment. The known COCs remaining are listed in Exhibit C, which is attached hereto and incorporated herein.

WHEREAS: Environmental investigation reports and other related documents are hereby incorporated by reference and may be examined at the offices of the Department, which is located in the Indiana Government Center North building at 100 N. Senate Avenue, Indianapolis, Indiana. The documents may also be viewed electronically in the Department's Virtual File Cabinet by accessing the Department's Web Site (currently www.in.gov/idem/).

NOW THEREFORE, JDH Revocable Trust subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

I. RESTRICTIONS

1. Restrictions. The Owner: JDH Revocable Trust

- (a) Shall not use or allow the use of the Real Estate for residential purposes, including, but not limited to, daily child care facilities or educational facilities for children (e.g., daycare centers or K-12 schools).

- (b) Shall not use or allow the use or extraction of groundwater at the Real Estate for any purpose, including, but not limited to: human or animal consumption, gardening, industrial processes, or agriculture, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities.

II. GENERAL PROVISIONS

- 2. Restrictions to Run with the Land. The restrictions and other requirements described in this Covenant shall run with the land and be binding upon, and inure to the benefit of the Owner of the Real Estate and the Owner's successors, assignees, heirs and lessees and their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control (hereinafter "Related Parties") and shall continue as a servitude running in perpetuity with the Real Estate. No transfer, mortgage, lease, license, easement, or other conveyance of any interest in or right to occupancy in all or any part of the Real Estate by any person shall affect the restrictions set forth herein. This Covenant is imposed upon the entire Real Estate unless expressly stated as applicable only to a specific portion thereof.
- 3. Binding upon Future Owners. By taking title to an interest in or occupancy of the Real Estate, any subsequent Owner or Related Party agrees to comply with all of the restrictions set forth in paragraph 1 above and with all other terms of this Covenant.
- 4. Access for Department. The Owner shall grant to the Department and its designated representatives the right to enter upon the Real Estate at reasonable times for the purpose of monitoring compliance with this Covenant and ensuring its protectiveness; this right includes the right to take samples and inspect records
- 5. Written Notice of the Presence of Contamination. Owner agrees to include in any instrument conveying any interest in any portion of the Real Estate, including but not limited to deeds, leases and subleases (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances), the following notice provision (with blanks to be filled in):

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED 7-18 2011, RECORDED IN THE OFFICE OF THE RECORDER OF HENRY COUNTY ON 07-26-11, 2011; INSTRUMENT NUMBER (or other identifying reference) 201103793 IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

- 6. Notice to Department of the Conveyance of Property. Owner agrees to provide notice to the Department of any conveyance (voluntary or involuntary) of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide the Department with the notice within

thirty (30) days of the conveyance and: (a) include a certified copy of the instrument conveying any interest in any portion of the Real Estate, and (b) if it has been recorded, its recording reference, and (c) the name and business address of the transferee.

- 7. Indiana Law. This Covenant shall be governed by, and shall be construed and enforced according to, the laws of the State of Indiana.

III. ENFORCEMENT

- 8. Enforcement. Pursuant to IC 13-14-2-6 and other applicable law, the Department may proceed in court by appropriate action to enforce this Covenant. Damages alone are insufficient to compensate IDEM if any owner of the Real Estate or its Related Parties breach this Covenant or otherwise default hereunder. As a result, if any owner of the Real Estate, or any owner's Related Parties, breach this Covenant or otherwise default hereunder, IDEM shall have the right to request specific performance and/or immediate injunctive relief to enforce this Covenant in addition to any other remedies it may have at law or at equity. Owner agrees that the provisions of this Covenant are enforceable and agrees not to challenge the provisions or the appropriate court's jurisdiction.

IV. TERM, MODIFICATION AND TERMINATION

- 9. Term. The restrictions shall apply until the Department determines that the contaminants of concern no longer present an unacceptable risk to the public health, safety, or welfare, or to the environment.
- 10. Modification and Termination. This Covenant shall not be amended, modified, or terminated without the Department's prior written approval. Within thirty (30) days of executing an amendment, modification, or termination of the Covenant, Owner shall record such amendment, modification, or termination with the Office of the Recorder of Henry County and within thirty (30) days after recording, provide a true copy of the recorded amendment, modification, or termination to the Department.

V. MISCELLANEOUS

- 11. Waiver. No failure on the part of the Department at any time to require performance by any person of any term of this Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's right to enforce such term, and no waiver on the part of the Department of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof.
- 12. Conflict of and Compliance with Laws. If any provision of this Covenant is also the subject of any law or regulation established by any federal, state, or local government, the strictest standard or requirement shall apply. Compliance with this Covenant does not relieve the Owner of its obligation to comply with any other applicable laws.

- 13. Change in Law, Policy or Regulation. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, RISC guidelines, or remediation policies (including those concerning environmental restrictive covenants, or institutional or engineering controls) change as to form or content. All statutory references include any successor provisions.
- 14. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other pursuant to this Covenant shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Owner: JDH Revocable Trust
 675 Waterlily Way
 Carmel, Indiana 46032

Lessee: Swifty Oil Co., Inc.
 1515 W. Tipton Street
 P.O. Box 1002
 Seymour, Indiana 47274-1002

To Department:
 IDEM, Office of Land Quality
 100 N. Senate Avenue
 IGCN 1101
 Indianapolis, IN 46204-2251
 Attn: Section Chief, Leaking Underground Storage Tank Program

An Owner may change its address or the individual to whose attention a notice is to be sent by giving written notice via certified mail.

- 15. Severability. If any portion of this Covenant or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions or terms of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.
- 16. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee Owner of the Real Estate or is the authorized representative of the Owner, and further represents and certifies that he or she is duly

invalid had not been included herein.

- 16. Authority to Execute and Record. The undersigned person executing this Covenant represents that he or she is the current fee Owner of the Real Estate or is the authorized representative of the Owner, and further represents and certifies that he or she is duly authorized and fully empowered to execute and record, or have recorded, this Covenant.

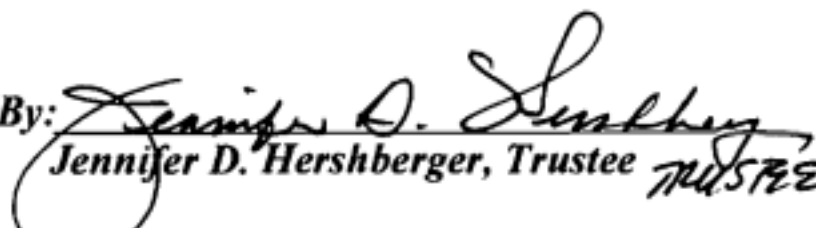
- 17. Amended and Restated Covenant. This Covenant amends, restates and replaces and supersedes in its entirety that certain Environmental Restrictive Covenant executed by Owner, dated October 15, 20010, and recorded November 4, 2010 in the Office of the Recorder of Henry County, Indiana as Instrument No 201006152 (the "Original Covenant"). The Original Covenant erroneously included certain real estate (Parcel Nos. 33-12-21-220-175.000-016 and 33-12-22-110-106.000-016) which were not intended to be subject to the Original Covenant. IDEM has specifically authorized the recording of this Covenant to replace and supersede the Original Covenant.


Owner hereby attests to the accuracy of the statements in this document and all attachments.

IN WITNESS WHEREOF, *JDH Revocable Trust*, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 18 day of JULY, 2011.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, as required by law.

JDH Revocable Trust

By: 
Jennifer D. Hershberger, Trustee *TRUSTEE*

By: 
Susan J. Bock, Trustee

STATE OF INDIANA)
COUNTY OF HAMILTON) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared JENNIFER HEISHGENDER, the TRUSTEE & POA of the Owner, JDH REVOKABLE TRUST, who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 18 day of July, 20 11.

[Handwritten Signature]

DAVID REDLIN, Notary Public

Residing in Indiana County, HAMILTON

My Commission Expires:

12/11/2016

This instrument prepared by:
Sonja K. Ison
Swift Oil Co., Inc.
1515 W. Tipton Street
P.O. Box 1002
Seymour, Indiana 47274-1002



I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law:

James Johnson

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

A part of the Northeast Quarter of Section 21, Township 17 North, Range 10 East, and a part of the Northwest Quarter of Section 22, Township 17 North, Range 10 East, in the City of New Castle, Indiana, more particularly described as follows, to-wit:

Beginning on the East line of the Northeast Quarter of said Section 21, at a point 1164.5 feet South of the Northeast corner thereof, (said East line being assumed in a North-South direction) thence North 90 degrees 00 minutes West 131.9 feet to an iron pin, thence South 00 degrees 00 minutes East 126.5 feet to an iron pin on the North line of Midway Drive, thence South 90 degrees 00 minutes East 84.0 feet along the North line of Midway Drive to a railroad spike on the Westerly right of way of State Highway Number 3, thence North 65 degrees 26 minutes East 45.0 feet along said right of way line to an iron pipe stake, thence North 12 degrees 08 minutes East 110.2 feet along said right of way line to an iron pin, thence North 90 degrees 00 minutes West 16.3 feet to the point of beginning, containing 0.382 acres, more or less.

**THIS DOCUMENT IS NOT OF
GOOD QUALITY FOR FILMING
OR IMAGE PROCESSING.**

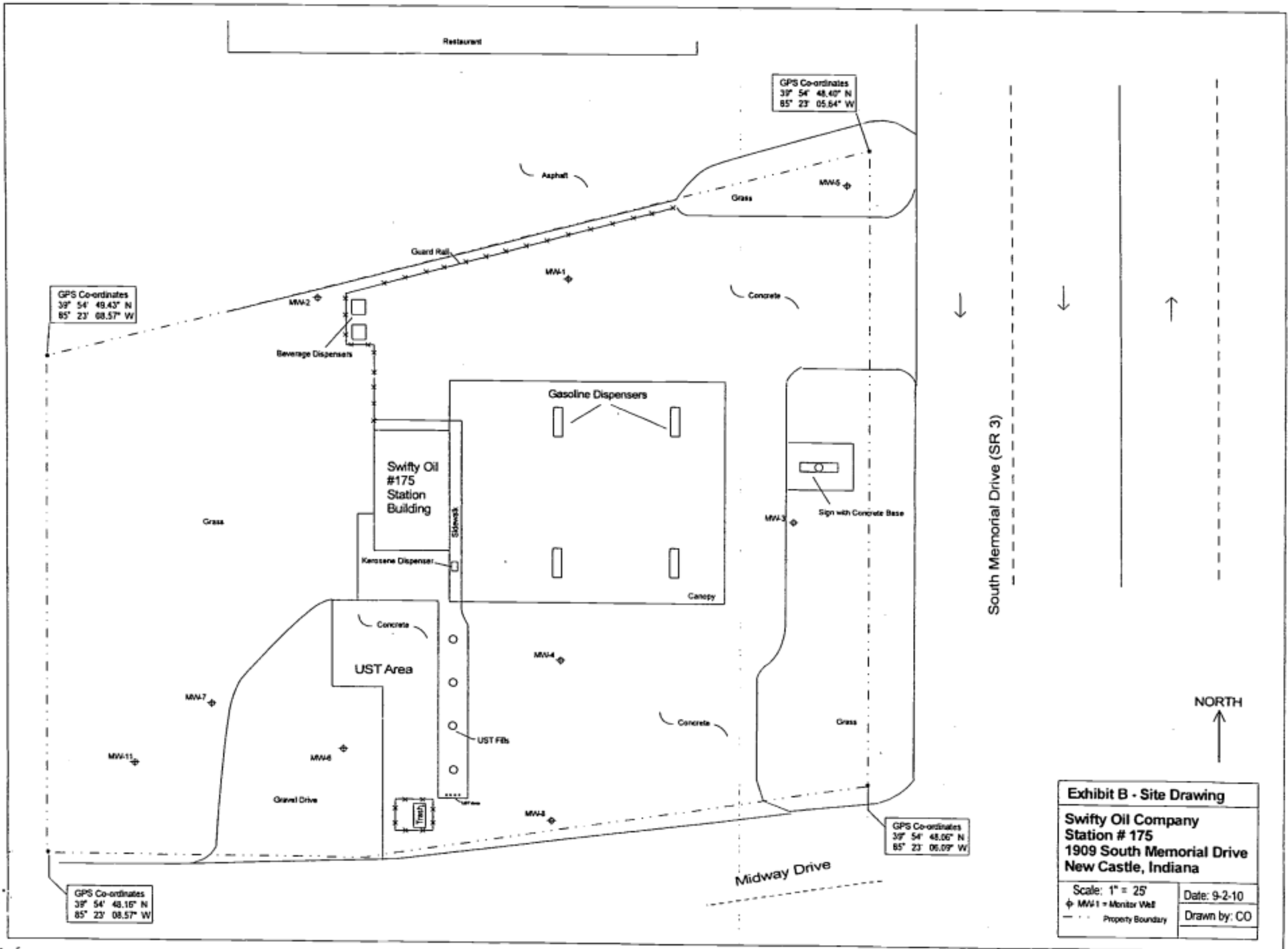


Exhibit B - Site Drawing	
Swifty Oil Company Station # 175 1909 South Memorial Drive New Castle, Indiana	
Scale: 1" = 25'	Date: 9-2-10
⊕ MW 1 = Monitor Well	Drawn by: CO
- - - Property Boundary	

