

Brian  
8507  
199301146



Environmental Investigation & Remediation

April 2, 2013

Mr. Brian Pace  
Indiana Department of Environmental Management  
Office of Land Quality – ELTF Technical Section  
100 North Senate Avenue, Room 1101  
Indianapolis, IN 46204-2251

Re: **Environmental Restrictive Covenant**  
**Former Lebanon CITGO**  
**1902 Indianapolis Avenue**  
**Lebanon, Indiana 46052**  
**LUST #199301146**  
**FID #8507**  
**SESCO Site #3647**

RECEIVED

APR 03 2013

DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT  
OFFICE OF LAND QUALITY

Dear Mr. Pace:

Per the request of the Indiana Department of Environmental Management (IDEM), a copy of the recorded environmental restrictive covenant (ERC) for the above-referenced property is attached. This recorded ERC is being submitted per the IDEM *Review of No Further Action Request and IDEM Request for Revised Environmental Restrictive Covenant (ERC)* letter dated November 29, 2012 (**Attachment A**). IDEM technical staff comments were addressed in the recorded ERC. The recorded ERC is included as (**Attachment B**).

Feel free to contact me at (317) 347-9590, Ext. #57 or mmeyer@sescogroup.com with any questions or concerns.

Sincerely,

Handwritten signature of Michael T. Meyer in black ink.

Michael T. Meyer  
Project Manager

Handwritten signature of Carla Gill in black ink.

Carla Gill, CHMM #13243  
Senior Project Manager

Cc: Mr. Mohammed Hanif

**Attachment A**

*Review of No Further Action Request and IDEM Request for Revised Environmental Restrictive Covenant (ERC) letter- November 29, 2012*



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) 232-8803  
Toll Free (800) 451-6027  
www.idem.IN.gov

VIA CERTIFIED MAIL

67-02 bpace  
Eastside Gas & Food, LLC  
441 East Ohio Street  
Indianapolis, IN 46204  
(317) 974-1455  
Attention: Mr. Mohammed Hanif

November 29, 2012

RE: **Review of No Further Action Request and IDEM  
Request for Revised Environmental Restrictive  
Covenant (ERC)**  
Former Lebanon CITGO  
1902 Indianapolis Avenue  
Lebanon, Boone County  
LUST Incidents #199301146 and #200811519deac  
FID #8507

Mr. Hanif:

Technical staff of the Indiana Department of Environmental Management (IDEM) has reviewed the file documentation relating to IDEM LUST Incident #199301146. This review was completed to evaluate the request for a No Further Action (NFA) status for this release.

Based upon this review, the NFA request cannot be approved at this time. Multiple issues were identified with the draft ERC. Address the following issues and submit a revised draft ERC for IDEM review:

1. The full name of the owner and the address of the owner were not included. The owner was listed as Mr. Mohammed Hanif; however, the deed, which was provided upon the request of IDEM and not included in the draft ERC, indicates the owner of the parcel, is Eastside Gas & Food. IDEM understands Mr. Hanif owns Eastside Food & Gas; however, the legal name of the entity that owns the parcel must be present on the ERC. The revised draft ERC should be corrected to indicate the registered owner of the parcel.
2. The deed and Parcel Identification Number (PIN) (06-07-06-000-011.000-002) were absent from the draft ERC. These items must be included in the revised draft ERC.
3. On page 4, item number 8, the Indiana Code referenced should be changed to IC 13-14-2-6.

4. On page 4, item number 10, IDEM recommends changing the time limit from five days to 30 days.
5. On page 5, item 14, IDEM recommends changing the individual notice will be sent to from *Brian Pace*, to *Chief, Leaking Underground Storage Tank Program*.
6. The redaction statement was absent from the draft ERC. This statement must be included following the "This instrument prepared by" information.
7. The restrictions in the ERC appear appropriate; however, the restriction stating a work plan is to be submitted to IDEM prior to an excavation is not necessary and should be removed.
8. The term "affected area" was used in the excavation restriction; however, the "affected area" was not defined. The term "affected area" should be replaced with "Real Estate".
9. The third "Whereas" paragraph on page 2 of the ERC indicates COCs in the soil and groundwater above RDCLs are indicated in Exhibit B; Exhibit B is a site map and does not show soil or groundwater impacts. Exhibit B should be updated, or the reference to the COCs in Exhibit B should be removed.
10. The Site Map in Exhibit B contained colored lines that were not identified in the legend. The colored lines will not be identifiable in the black and white copy that will be retained by the Recorder of Boone County. These lines should be removed, and the property line should have a dashed pattern that will be distinguishable in black and white.
11. The property boundary identified on the Site Map does not agree with the property description on the provided Trustee's Deed or the parcel boundary identified by the Boone County GIS website. The Site Map should be revised to more accurately reflect the property boundary identified by Boone County.

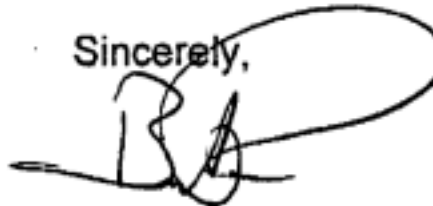
This determination has been based upon the review of the documentation presented to IDEM and made available to the reviewers. If additional information or documentation is subsequently provided that alters the current understanding of site conditions, IDEM reserves the right to modify or change this determination as the situation may warrant. Address the above issues and submit the requested revised draft ERC to the following address by March 1, 2013:

67-02 bdavis  
Indiana Department of Environmental Management  
Office of Land Quality - ELTF Technical Section  
100 North Senate Avenue, Room 1101  
Indianapolis, Indiana 46204-2251

IDEM requests that in addition to the required hardcopy reports, that all future sampling results are submitted electronically to [olqdata@idem.in.gov](mailto:olqdata@idem.in.gov). Guidance on formatting sampling results is posted at <http://www.in.gov/idem/5064.htm>. At this time, IDEM is not requiring the electronic submittal of data, but is encouraging electronic submission to improve the quality and timeliness of reviews. Additionally, for information on the minimum documentation of analytical quality assurance/quality control required by IDEM, please refer to <http://www.in.gov/idem/5056.htm>.

If you have any questions, contact me at (317) 232-7179. To expedite a timely response, have the site facility and incident numbers available when you call.

Sincerely,



Brian A. Pace  
Senior Environmental Manager  
Excess Liability Trust Fund Technical Section  
Office of Land Quality

cc: SESCO – Attention: Ms. Carla Gill  
Good Oil Company – Attention: Mr. Dean Good  
File

If you would like to provide IDEM with feedback on our job performance, please go to <http://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.

**Attachment B**

**Recorded ERC**

10  
29.00  
+ 2 NON  
+ 1 CROSS  
CARLA J. GILL

**Environmental Restrictive Covenant**

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 5<sup>th</sup> day of February, 2013, by Eastside Gas & Food, LLC ("Owner").

WHEREAS: Owner owns certain real estate in the County of Boone, Indiana, which is commonly known as 1902 Indianapolis Avenue, Lebanon, Indiana 46052 and is more particularly described in the legal description in the deed attached as Exhibit "A" hereto ("Real Estate"), which Real Estate was acquired by deed on 10/30/2007, and recorded on 11/21/2007, as Deed Record 200700011818, in the Office of the Recorder of Boone County, Indiana. The Real Estate to which this Covenant applies is depicted on a map attached hereto to Exhibit "B". The Real Estate consists of approximately 1.08 acres and has also been identified by the county as parcel identification number(s) 06-07-06-000-011.000-002.

WHEREAS: A portion of the Real Estate has been utilized as a retail automotive fueling station. Historically, the Site stored and dispensed gasoline, diesel and kerosene fuels. In January of 1993, a release of petroleum related constituents of concern (COCs) was reported to the Indiana Department of Environmental Management ("IDEM") and was assigned Leaking Underground Storage Tank (LUST) Site No. 1993-01-146.

WHEREAS: Corrective action was implemented in accordance with IC 13-23 and other applicable Indiana law as a result of a release of petroleum. Certain contaminants of concern (COCs) will remain in the groundwater and in the soil of the Real Estate and requires land use restrictions that must be maintained to ensure the protection of public health, safety, or welfare, and the environment. The Department has determined that the COCs will not pose an unacceptable risk to human health at the remaining concentrations. Residual concentrations of total petroleum hydrocarbons ("TPH") gasoline range organics ("GRO") and diesel range organics (DRO), benzene, toluene, ethylbenzene, xylenes (BTEX) methyl tertiary butyl ether (MtBE) and naphthalene remain above the IDEM's Risk Integrated System of Closure ("RISC") default residential closure standards for soil and groundwater impacts.

WHEREAS: The environmental reports and other documents related to LUST Site No. 1993-01-146, may be examined by searching IDEM's Virtual File Cabinet on its Web site (www.in.gov/idem/) using the Real Estate address, or by reviewing the relevant files at IDEM's offices at Indiana Government Center North, 100 N. Senate Avenue, Indianapolis, IN 46204.

NOW THEREFORE, Owner, hereby, in consideration for the promises contained herein and other good and valuable consideration imposes restrictions on the Real Estate and covenants and agrees that:

I. GENERAL PROVISIONS

1. Property Conveyance - Continuance of Provisions. The Owner shall prevent any conveyance of title, easement, or other interest in the Real Estate from being consummated without prevention of exposure to contaminants of concern as described in paragraph 7, below.

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 or their authorized agents, employees, contractors, representatives, agents, lessees, licensees, invitees, guests, or persons acting under their direction or control 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 all or any part of the Real Estate by any person shall limit 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 the Real Estate, any subsequent owner agrees to comply with these restrictions and the terms of this Covenant.
4. Site Access. IDEM (or any successor governmental agency) and Owner and its respective designated representatives shall have the right to enter the Real Estate at reasonable times for the purpose of determining and monitoring compliance with this Covenant.
5. Written Notice of the Presence of Hazardous Substances. 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:

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED 2/5 2013, RECORDED IN THE OFFICE OF THE RECORDER OF BOONE COUNTY ON 2/5, 2013, INSTRUMENT NUMBER (or other identifying reference) # 20130001541 IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.**

6. Notice to IDEM of the Conveyance of Property. Owner agrees to provide notice to the IDEM no later than thirty days after any conveyance of any ownership interest in the Real Estate (excluding mortgages, liens, similar financing interests, and other non-possessory encumbrances). Owner must provide IDEM with a certified copy of the instrument conveying any interest in any portion of the Real Estate and, if it has been recorded, its recording reference. Such notice shall also include the name and business address of the transferee.

## II. RESTRICTIONS AND OBLIGATIONS

7. The Owner shall:
  - a) Not use the Real Estate for residential purposes, including, but not limited to, residences, daily child care or educational facilities for children (e.g., daycare centers for children, schools and senior citizen facilities).

- b) Not use the Real Estate for agricultural purposes.
- c) Neither engage in nor allow the installation or use of drinking water wells on the Real Estate. There shall be no consumptive, extractive or other use of the groundwater underlying the Real Estate that could cause exposure of humans or animals to the groundwater underlying the Real Estate, other than for site investigation and/or remediation purposes, without prior IDEM approval.
- d) Prior to any excavation activities, Owner shall notify the company conducting the excavation activities of the residual impacts in the Real Estate. Any removal, excavation or disturbance of soil from or within the Real Estate must be conducted in accordance with all applicable requirements of IOSHA/OSHA, and soil that is removed, excavated or disturbed from the Real Estate must be managed and disposed of in accordance with all applicable federal and state laws and regulations.
- e) Notify the IDEM if there is a change in the land use and/or any zoning changes that affect the Real Estate.

### III. ENFORCEMENT

- 8. Enforcement. Pursuant to IC 13-14-2-6, the IDEM may proceed in court, by appropriate action to enforce this Covenant. Owner agrees that the restrictions are enforceable, and agrees not to challenge the appropriate court's jurisdiction.

### IV. TERM, MODIFICATION AND TERMINATION

- 9. Term. The restrictions shall apply until the IDEM 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 except by written instrument executed between the IDEM and the owner of the Real Estate at the time of the proposed amendment, modification, or termination. Within 30 days of executing an amendment, modification, or termination of the Covenant, such amendment, modification, or termination shall be recorded with the Office of the Recorder of Boone County and within five days after recording, a true copy of the recorded amendment, modification, or termination shall be presented to the IDEM.

### V. MISCELLANEOUS

- 11. Waiver. No failure on the part of the IDEM 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 IDEM's right to enforce such term, and no waiver on the part of the IDEM 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 from complying with any other applicable laws.
13. Change in Law or Regulation. In the event that the RISC is adopted by rule in Indiana, or in the event of any other change in applicable law or regulations, this Covenant shall be interpreted so as to ensure the continuing validity and enforceability of the restrictions listed in paragraph 7, above. In no event shall this Covenant be rendered unenforceable if Indiana's laws, regulations, RISC guidelines, or policies for 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:  
Eastside Gas & Food, LLC  
Attn.: Mohammed Hanif  
441 East Ohio Street  
Indianapolis, IN 46204

To IDEM:  
IDEM, Office of Land Quality  
IGCN-Suite 1154  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
Attn: Chief, Leaking Underground Storage Tank Program

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

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 of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.
16. Liability. An Owner's rights and obligations under this instrument terminate upon transfer of the Owner's interest in the Real Estate, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
17. Authority to Execute and Record. The undersigned person executing this Covenant on behalf of the Owner represent and certify that they are duly authorized and have been



**EXHIBIT A**  
**Deed to Real Estate**  
**(To be Attached)**

Requested By: irene 05/17/2012

13  
1700  
1711  
1716  
1717  
First Title of Indiana

200700011818  
Filed for Record in  
BOONE COUNTY, INDIANA  
MARY ALICE "SAM" BALDWIN  
11-21-2007 At 10:59 am.  
DEED 19.00

First Title 119887

TRUSTEE'S DEED

THIS INDENTURE WITNESSETH, That Carrol J. Stencel as trustee of the Norbert J. Stencel Grantor Retained Annuity Trust dated April 8, 1996 ("Grantor") of Boone County, in the State of INDIANA, CONVEY(S) AND DISTRIBUTES to Eastside Gas & Oil, LLC ("Purchaser") of Boone County, in the State of INDIANA, for the sum of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, the following described real estate in Boone County, in the State of Indiana:

See Attached Legal Description Exhibit "A"

Acreeage of subject real estate is solely for the purpose of identifying and describing the insured land and should not be construed as insuring the quantity of land as set forth in said description.

This conveyance is subject to:

1. All easements, rights of way and restrictions of record.
2. All taxes due and payable in 2006, and thereafter.
3. Transfer of this deed satisfies a certain unrecorded Land Contract executed on or about July 21<sup>st</sup>, 2003 by and between Carol J. Stencel as Trustee of the Norbert J. Stencel Grantor Retained Annuity Trust Dated April 8, 1996 (Seller) and Good Oil Company, Inc. an Indiana Corporation, (Purchaser).

IN WITNESS WHEREOF, Grantor has executed this Trustee's Deed this 10/30/2007. The Trustee has full power and authority to convey the above described real estate and no party dealing with the Trustee shall have any duty to inquire into the authority of said Trustee or to see to the proper application by said Trustee of the proceeds of any such transaction.

*Carrol J. Stencel*  
Carrol J. Stencel as trustee

STATE OF Indiana) )SS:  
COUNTY OF Marion)

DULY ENTERED FOR TAXATION  
10/30/07  
SUBJECT TO FINAL ACCEPTANCE  
AUDITOR, BOONE COUNTY

Before me, a Notary Public in and for said County and State, personally appeared Carrol J. Stencel as trustee of the Norbert J. Stencel Grantor Retained Annuity Trust dated April 8, 1996 who acknowledged the execution of the foregoing Trustee's Deed, and who, being duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 10/30/2007.

*Tammy J Shuler*  
Tammy J Shuler, Notary Public

County of Residence: \_\_\_\_\_

Common Address: 1902 Indianapolis Avenue Lebanon, Indiana

NOTARY PUBLIC  
SEAL  
INDIANA  
TAMMY J. SHULER  
Res. of Marion County  
Comm. Exp. 01/29/2015  
Commission No. 550485

This document was prepared by STEPHEN D. MEARS, Attorney at Law  
8395 Keystone Crossing Ste 100 Indianapolis IN 46240

Return to: First Title of Indiana, Inc

Send tax statements to: 441 E. Ohio St. Indianapolis IN 46204

Grantee's address: 441 E. Ohio St. Indianapolis IN 46204

I affirm under penalties of perjury, that I have taken reasonable care to redact Social Security numbers in this document, unless required by law - Stephen D Mears

File No: 119887

EXHIBIT "A" - LEGAL DESCRIPTION

A part of the Northeast Quarter of the Southeast Quarter of Section 6, Township 18 North, Range 1 East of the Second Principal Meridian, situated in Center Township, Boone County, Indiana, and containing 1.08 acres, more or less, and more particularly described as follows:

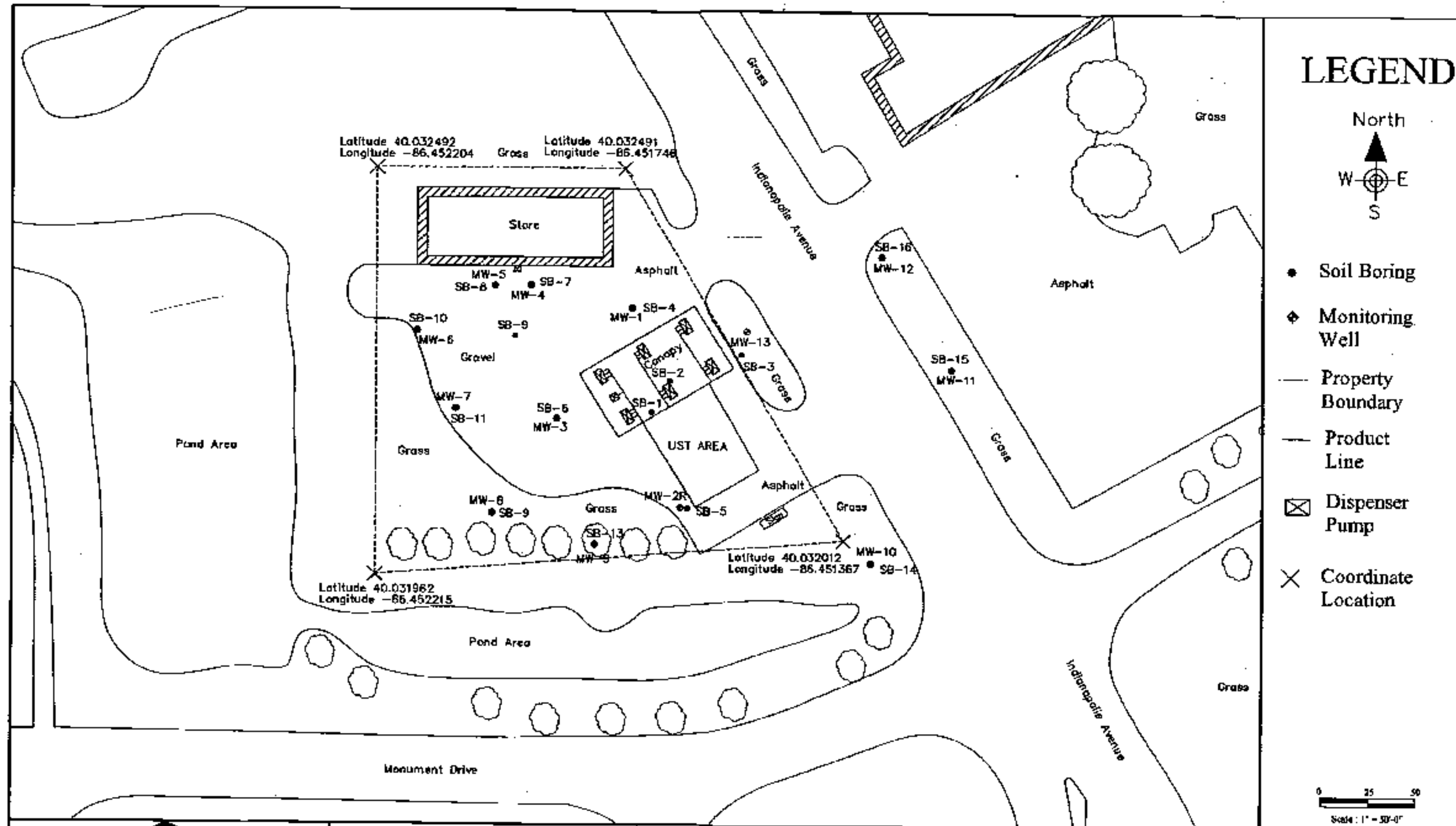
Beginning at a point South 89 degrees 38 minutes 21 seconds East 2268.12 feet from the Northwest corner of the Southeast Quarter of Section 6, Township 18 North, Range 1 East and run thence South 89 degrees 38 minutes 21 minutes East 204.80 feet to the centerline of the County Road (formerly known as U.S. # 52); thence South 31 degrees, 21 minutes, 25 seconds East 191.50 feet following the centerline of County Road (formerly known as U.S. # 52); thence South 83 degrees 20 minutes West 306 feet to an iron pipe; thence North 200 feet to the place of beginning.

Acreage of subject real estate is solely for the purpose of identifying and describing the insured land and should not be construed as insuring the quantity of land as set forth in said description.


**EXHIBIT B**

**Real Estate Map**

**(Attached)**



Attachment  
 201308021541  
 PG  
 10 OF  
 10

 <b>SESCO GROUP</b> <small>Environmental Investigation &amp; Remediation</small>	SESCO Group 1426 West 29th Street Indianapolis, IN 317-347-9590; fax 317-347-9591	Former Lebanon Citgo 1902 Indianapolis Avenue Lebanon, Indiana	<b>Site Map</b>	
			PROJECT #: 3647	FIGURE: 2