

RECEIVED

FEB 21 2014

IDEM-OLQ
EXCESS LIABIL.

Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 14th day of February, 2014, by Swifty Transportation, Inc., 1515 West Tipton Street, Seymour, Indiana, 47274.

WHEREAS: Owner is the fee owner of certain real estate in the County of Marion, Indiana, which is located at 8525 East 10th Street, Indianapolis, Indiana, 46219 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 July 1, 1999, and recorded on July 8, 1999, as Deed Record 1999-0130162, in the Office of the Recorder of Marion County, Indiana. The Real Estate consists of approximately .459 acres and has also been identified by the county as parcel identification numbers 49-09-06-111-175.000-700 and 49-09-06-111-176.000-700.

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 Swifty Station #165,(FID#250). The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 199609524, and the relevant facility identification number is 250.

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. These COCs remaining above residential land use are benzene and ethylbenzene. These known COC's remaining are listed in Exhibit B and their areas of impact are illustrated on figures included in Exhibit B, which are 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, Swifty Transportation, Inc., subjects the Real Estate to the following restrictions and provisions, which shall be binding on the current Owner and all future Owners:

A201400013045

02/14/2014 10:26 AM

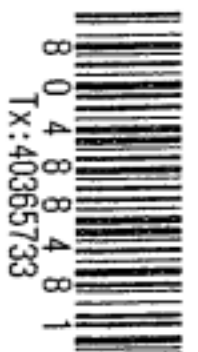
JULIE L. VOORHIES

MARION COUNTY IN RECORDER

FEE: \$ 52.50

PAGES: 14

By: KB



KB (14)

I. RESTRICTIONS

1. Restrictions. The Owner

- (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.
- (c) Shall not use the Real Estate for any agricultural use.
- (d) Shall restore soil disturbed as a result of excavation and construction activities in such a manner that the remaining contaminant concentrations do not present a threat to human health or the environment. This determination shall be made using the Department's Risk Integrated System of Closure ("RISC") Technical Resource Guidance Document. Upon the Department's request, the Owner shall provide the Department written evidence (including sampling data) showing the excavated and restored area, and any other area affected by the excavation, does not represent such a threat. Contaminated soils that are excavated must be managed in accordance with all applicable federal and state laws; and disposal of such soils must also be done in accordance with all applicable federal and state laws.
- (e) Shall maintain the integrity of the existing Facility pavement, which is depicted on Exhibit A, Site Map via; this asphalt and concrete area serves as an engineered barrier to prevent direct contact with the underlying soils and must not be excavated, removed, disturbed, demolished, or allowed to fall into disrepair.

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 February 14th 2014, RECORDED IN THE OFFICE OF THE RECORDER OF Marion COUNTY ON February 14th, 2014, INSTRUMENT NUMBER (or other identifying reference) A201400013045 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 Marion 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:
President
Swift Transportation, Inc.
1515 West Tipton Street
P.O. Box 1002
Seymour, Indiana 47274

To Department:
IDEM, Office of Land Quality
100 N. Senate Avenue
IGCN 1101
Indianapolis, IN 46204-2251
Attn: 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 authorized and fully empowered to execute and record, or have recorded, this Covenant.

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

IN WITNESS WHEREOF, **William Klinger President**, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 13th day of February, 2014.


William Klinger President

STATE OF INDIANA)
) SS:
COUNTY OF JACKSON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared William Klinger, the President of the Owner, Swifty Transportation Inc., who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 13th day of February, 2014.

Bridget Smith

BRIDGET SMITH, Notary Public

Residing in Jackson County,

7/16/2020

My Commission Expires:

This instrument prepared by:

[insert name and address]

GORDON BAYS

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:

[insert name and address]

MICHAEL BOLTINGHOUSE

②

#165

②

MARTIN A. WOMACKS

183738 JUL-98

SUBJECT TO PUBLIC SALE
FOR TRANSFER

Attachment
Warranty Deed

This indenture witnesseth that Donald W. Myers, Sr., a/k/a Don W. Myers, Sr., of Jackson County, Indiana, Conveys and Warrants to Swifty Transportation, Inc., an Indiana corporation, as a contribution by Grantor to Grantee, which Grantee is wholly owned by Grantor, the following described real estate in Marion County, Indiana:

Lots 174 and 175 in Wm. L. Elder's Washington Place Heights, First Section, an Addition to the City of Indianapolis, the plat of which is recorded in Plat Book 16, page 184, in the Office of the Recorder of Marion County, Indiana but subject to all municipal and zoning ordinances, right-of-ways, covenants, restrictions, and building restrictions of record.

This conveyance is made subject to all leases, whether of record or otherwise, which leases are hereby assigned to Swifty Transportation, Inc.

This conveyance is further subject to an option to purchase granted by the Grantor to Swifty Oil Co., Inc.

Tax Agreement: Grantee agrees to pay and discharge all real estate taxes which become payable after the date of this deed.

Address of Property: 8525 East 10th St.
Indianapolis, IN 46219

Send Tax Statements to: Swifty Transportation, Inc.
P. O. Box 1002
Seymour, IN 47274

In Witness Whereof, Donald W. Myers, Sr., a/k/a Don W. Myers, Sr., has set his hand and seal, this st day of July, 1999.

Donald W. Myers, Sr. (seal)
Donald W. Myers, Sr.,
a/k/a Don W. Myers, Sr.

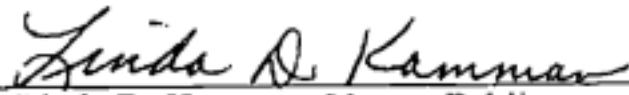
07/08/99 02:48PM WANDA MARTIN MARION CTY RECORDER CAM 12.00 PAGES: 2

Inst # 1999-0130162

STATE OF INDIANA,
JACKSON COUNTY, SS:

Before me, the undersigned, a notary public in and for Jackson County, this 1st day of July, 1999, came Donald W. Myers, Sr., a/k/a Don W. Myers, Sr., and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal.



Linda D. Kamman, Notary Public

My commission expires May 9, 2001
My county of residence is Jackson.

This instrument was prepared by David W. Paugh, Attorney at Law, Attorney No. 6271-36, 308 West Second Street, Seymour, IN.

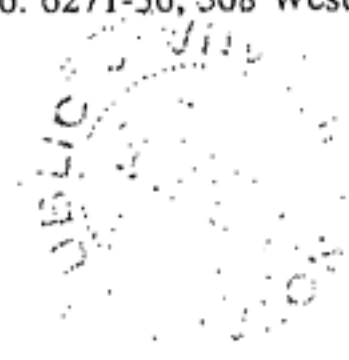
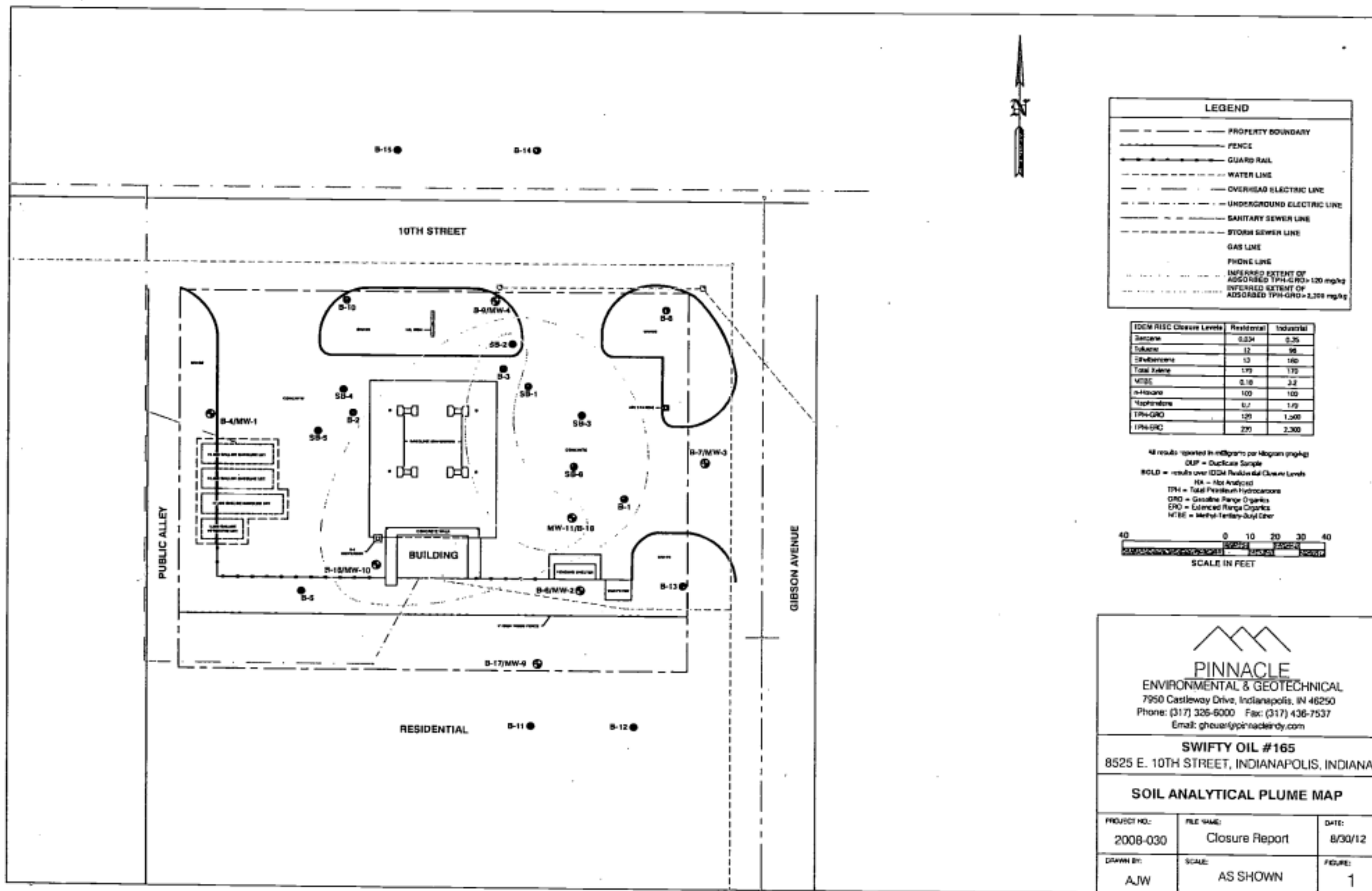


EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

See Attached Deed





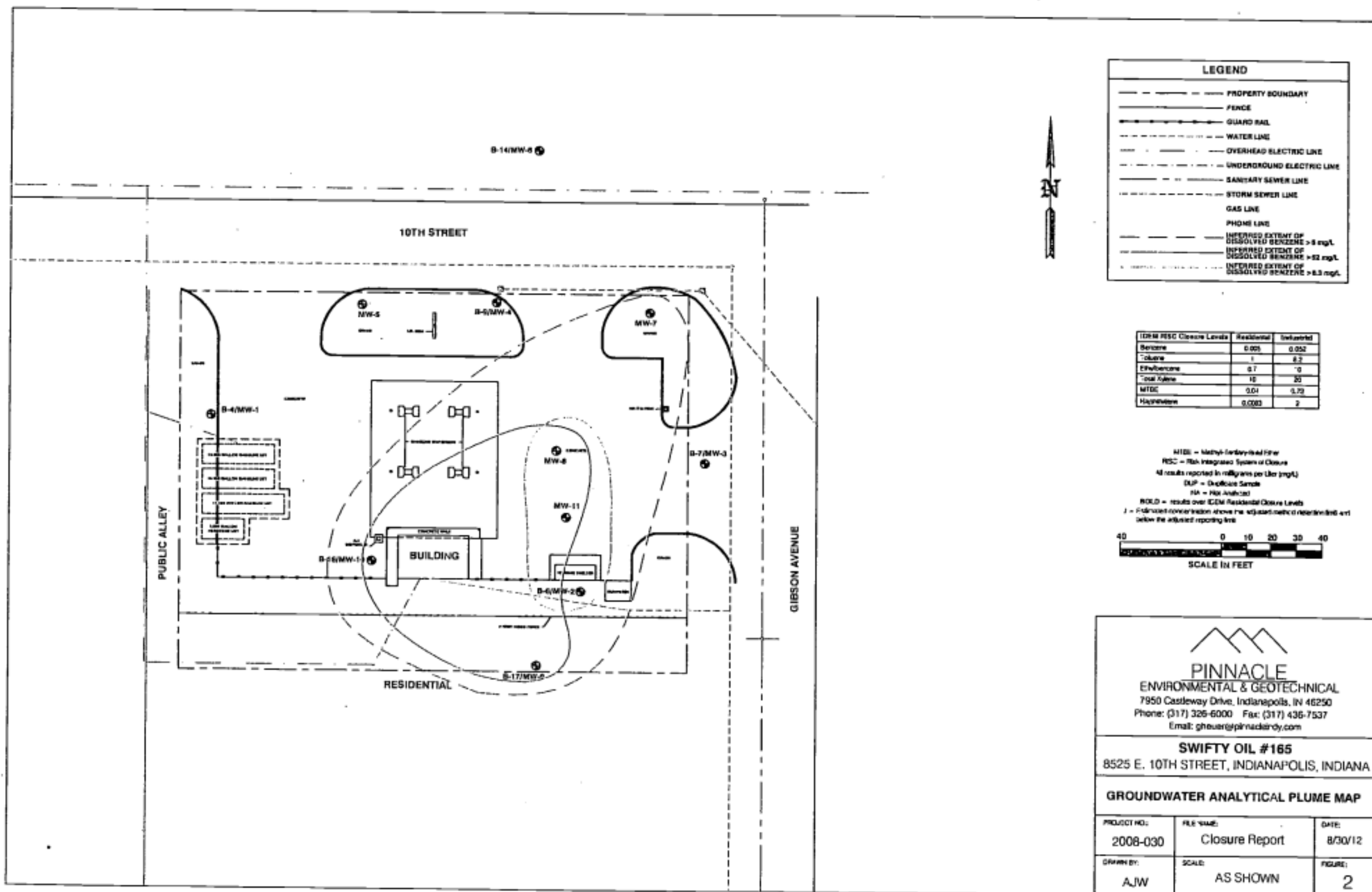


TABLE 1A
Historical Soil Analytical Results - TPH GRO/ERO
Swift #165
8525 East 10th Street
Indianapolis, Indiana
FID# 250

Sample No.	Date Sampled	TPH GRO	TPH ERO
IDEM TPH Commercial Closure Level		1,500	2,300
IDEM TPH Residential Closure Level		120	230
SB-1 (2-4')	11/2/06	287	<24.4
SB-2 (2-4')	11/2/06	2,120	<25.7
SB-3 (10-12')	11/2/06	1,290	<22.2
SB-4 (8-10')	11/2/06	509	<23.7
SB-6 (2-4')	11/2/06	1,450	<21.2
B-16 (10-12')	8/19/08	941	NA
B-16 (10-12') DUP	8/19/08	992	NA
B-16 (18-20')	8/19/08	358	NA
B-18 (10-12')	12/22/09	2,040	NA

All results reported in milligrams per kilogram (mg/kg)

IDEM = Indiana Department of Environmental Management

TPH-GRO = total petroleum hydrocarbons - gasoline range organics

TPH-ERO = total petroleum hydrocarbons - extended range organics

BOLD = analytical result above IDEM TPH Residential Closure Level

NA = Not Analyzed

DUP = Duplicate Sample

TABLE 1B
Historical Soil Analytical Results - VOC
Swift #165
8525 East 10th Street
Indianapolis, Indiana
FID# 250

Sample No.	Date Sampled	Benzene	Toluene	Ethylbenzene	Xylene, M&P	Xylene, Ortho	Xylenes, Total	Methyl-tert-butyl-ether	Naphthalene	n-Hexane
B-18 (10-12')	12/22/09	0.951	< 0.329	19.5	45.7	< 0.329	45.7	< 0.180	8.73	< 0.658
IDEM RISC Residential		0.034	12	13	NE	NE	170	0.18	0.7	100
IDEM RISC Industrial		0.35	96	160	NE	NE	170	3.2	170	100

All results reported in milligrams per kilogram (mg/kg)

IDEM RISC Residential = Indiana Department of Environmental Management, Risk Integrated System of Closure Residential Default Closure Levels

IDEM RISC Industrial = Indiana Department of Environmental Management, Risk Integrated System of Closure Industrial Default Closure Levels

BOLD = analytical result above IDEM RISC Residential levels

NE - Not Established

TABLE 2
Groundwater Analytical Results - BTEX/MTBE and Naphthalene
June 6, 2012
Swift #165
8525 East 10th Street
Indianapolis, Indiana
FID# 250

Sample No.	Benzene	Toluene	Ethylbenzene	Xylenes, Total	Methyl-tert- butyl-ether	Naphthalene
IDEM RISC Residential	0.005	1	0.7	10	0.04	0.0083
IDEM RISC Industrial	0.052	8.2	10	20	0.72	2
MW-2	0.467	0.0065	0.105	0.329	< 0.004	0.0391
MW-7	0.026	< 0.005	< 0.005	< 0.01	< 0.004	< 0.005
MW-8	1.170	0.0135	0.0222	0.0345	< 0.004	0.0109
MW-8 DUP	1.330	0.0133	0.0230	0.0337	< 0.004	0.0104
MW-9	0.0776	< 0.005	< 0.005	< 0.01	< 0.004	< 0.005
MW-10	0.0595	< 0.005	0.0075	0.0356	< 0.004	< 0.005
MW-11	1.210	0.0215	1.800	2.210	< 0.004	0.636

All results reported in milligrams per liter (mg/L)

IDEM RISC Residential = Indiana Department of Environmental Management, Risk Integrated System of Closure Residential Default Closure Levels

IDEM RISC Industrial = Indiana Department of Environmental Management, Risk Integrated System of Closure Industrial Default Closure Levels

BOLD = analytical result above IDEM RISC Residential levels

I = Estimated concentration above the adjusted method detection limit and below the adjusted reporting limit

DUP = Duplicate Sample