

NO FURTHER ACTION REQUEST

**HIRLINGER CHEVROLET
158 HARRISON BROOKVILLE ROAD
WEST HARRISON, INDIANA 47060
FID No.: 13695
LUST INCIDENT No.: 201405503**

**PREPARED FOR:
HIRLINGER MOTORS, INC.
WEST HARRISON, INDIANA 47060**

**PREPARED BY:
ALT & WITZIG CONSULTING SERVICES
A&W PROJECT No.: 14CN0165**



Solutions From the Subsurface Up

August 23, 2021



Alt & Witzig Consulting Services

4105 West 99th Street • Carmel, Indiana 46032
(317) 875-7000 • Fax (317) 876-3705

August 23, 2021

Indiana Department of Environmental Management
Office of Land Quality
Leaking Underground Storage Tank Section
100 North Senate Avenue, Room 1101
Indianapolis, Indiana 46204-2251
Mail Code: 67-18
Attention: Mr. Cliff Rice

RE: No Further Action (NFA) Request
Hirlinger Chevrolet
158 Harrison Brookville Road
West Harrison, Indiana 47060
Facility ID No. 13695
LUST Incident No. 201405503
A&W Project No. 14IN0165

Dear Mr. Rice:

Alt & Witzig Engineering, Inc. (A&W) is pleased to submit this No Further Action (NFA) Request for the above referenced Site. An environmental restrictive Covenant (ERC) was recorded with the Dearborn County Recorder on June 23, 2021. The recorded environmental restrictive Covenant (ERC) is included in Attachment I.

Site Investigation Summary

The Site is located at 158 Harrison Brookville Road, Dearborn County, Indiana. The Site currently operates as a used car dealership with maintenance facility. The Site is expected to remain commercial (car dealership/maintenance) for the foreseeable future. The site was developed for its current use in 1980. The Site is located approximately 520 feet above mean sea level (MSL). Adjoining property use includes other commercial properties.

The Site appears to have consisted of agricultural land from prior to 1937 through at least the early 1960s. By 1966 the Site appears to consist of agricultural land, unimproved land and a small square structure. An interview during the A&W Phase I Environmental Site Assessment (ESA) (A&W Project No.: 13CN0250) with Mr. Steve Hirlinger, former Site owner, indicated that the Site was developed into a small used automobile retail facility prior to the development of the Hirlinger Chevrolet facility. The Site was occupied by the Hirlinger Chevrolet facility from circa 1980 through 2014, when it was sold to White Water Motors. The Site has continued to operate as a used car dealership and vehicle maintenance facility since 2014.

Offices:

Cincinnati • Dayton, Ohio
Indianapolis • Evansville • Fort Wayne • Lafayette • South Bend, Indiana

• *Environmental Services* •

Investigations were initiated at the Site as part of the due diligence process surrounding a property transaction involving the Site. A&W performed a Phase II ESA dated February 24, 2014 at the Site (A&W Project No.: 14CN0030). The incident was reported to the Indiana Department of Environmental Management (IDEM) on May 5, 2014, with an Initial Site Characterization (ISC) submitted to IDEM on June 6, 2014 (A&W Project No.: 14CN0099). Further Site Investigation (FSI) activities were completed during three separate mobilizations to the Site on May 12, 2015, December 31, 2015, and January 18, 2017 with documentation submitted in three separate FSI reports (A&W Project No.: 14CN0165). A Corrective Action Plan (CAP) (A&W Project No.: 14CN0165) proposing closure via an ERC dated September 12, 2017 was submitted to IDEM.

Potential Exposure Pathways

Soil Direct Exposure

Soil impacts have been delineated in all compass directions and vertically to below IDEM RCG Direct Contact Screening Levels. Additional soil investigation is not necessary. COC concentrations above RCG Direct Contact Screening Levels are limited to two soil borings (B-3, B-7, B-8, B-18, B-19, and B-21) and are confirmed within the Site property boundaries at a depth of approximately 8 to 24 feet below ground surface (bgs). With impacted soils identified at depths greater than 8 feet bgs and minimal risk of direct contact, the commercial use of the Site and in-place concrete and asphalt (parking lot) barrier, active soil remediation does not appear to be necessary at this time. Based on the depth of identified concentrations in soil and groundwater, it is unlikely that the release is a threat to human health or the environment.

Migration to Groundwater

Laboratory analysis of soil samples collected during site characterization activities identified the presence of volatile organic compounds (VOCs) and polynuclear aromatic hydrocarbons (PAHs) at concentrations above Indiana IDEM Remediation Closure Guide (RCG) Soil Migration to Groundwater (MTG) screening levels. Soil leaching to groundwater is a transport mechanism. Depth to groundwater measured on February 20, 2017 ranged from 17.74 feet bgs (MW-3) to 18.59 feet bgs (MW-5). Soils above the MTG Screening Levels are typically near the smear zone or below the static water level as measured within the monitoring wells. Based on the depth of soil impacts, the Migration to Groundwater exposure route is a potential but unlikely concern at this time.

Groundwater

Groundwater impacts have been delineated in all compass directions to below IDEM RCG Screening Levels. Additional groundwater delineation investigation is not necessary. COC concentrations above RCG Screening Levels are limited to five monitoring wells (MW-1, MW-2, MW-3, MW-6 and MW-10) and are confined within the Site property boundaries at a general depth of approximately 17.7 to 18.5 feet bgs. Potential exposure pathways could include contact with groundwater during construction/excavation activities and/or ingestion if contaminated groundwater was consumed. Given the depth of groundwater at approximately 17 feet bgs and the developed nature of the area, it is unlikely that construction workers would come in direct

contact with groundwater. Although a groundwater well is present on the west side of the Site, it is not used for potable purposes. In addition, the water sample collected from the well via a spigot at the former Hirlinger facility did not indicate the presence of potential contaminants. The well is also located approximately 120 feet cross- or up-gradient of the identified contaminant plume. With the inclusion of a groundwater restriction in the recorded ERC, the groundwater exposure route is not a concern at this time.

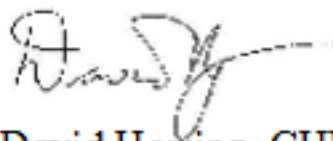
Vapor Intrusion

A&W utilized the IDEM RCG dated March 22, 2012 for our evaluation of the vapor intrusion exposure route. Multiple lines of evidence were considered for the vapor intrusion evaluation, including the presence/absence of free product and groundwater contamination near occupied structures and significant preferential pathways. Laboratory analysis of groundwater samples collected from the soil borings and monitoring wells indicated benzene above the IDEM RCG Commercial Groundwater Vapor Exposure Screening Levels on-Site. However, based on the depth to groundwater at approximately 17 to 19 feet bgs, no identified light non-aqueous phase liquid (LNAPL), no benzene concentrations identified above 1,000 micrograms per liter ($\mu\text{g/L}$) directly beneath the building and site utilities located at approximate depths of three to five feet bgs, it does not appear that vapor intrusion (VI) sampling is necessary at this time. In addition, the current use of the Site as a vehicle maintenance shop would likely cause more potential indoor air quality issues than VI through the concrete floor. Potential Groundwater Vapor Exposure issues are limited to the on-Site commercial building and do not appear to be a factor for off-Site properties.

NFA Request

Based on the Site characterization activities completed on the Site including the attached recorded ERC restricting groundwater use, A&W on behalf of Hirlinger Motors, Inc. requests that NFA status be granted to the Site.

Sincerely,
Alt & Witzig Consulting Services

A handwritten signature in black ink, appearing to read "David Herring", with a stylized flourish extending to the right.

David Herring, CHMM
Senior Project Manager

ATTACHMENT I
Recorded ERC



Environmental Restrictive Covenant

THIS ENVIRONMENTAL RESTRICTIVE COVENANT ("Covenant") is made this 15th day of June, 2021, by Michael A. Ross, at 852 Isbell Lane, West Harrison, Indiana 47060 (together with all successors and assignees, collectively "Owner").

WHEREAS: Owner is the fee owner of certain real estate in the County of Dearborn, Indiana, which is located at 158 Harrison-Brookville Road, West Harrison, Indiana 47060 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 November 13, 2015, and recorded on September 22, 2014, as Deed Record 2014006684, in the Office of the Recorder of Dearborn County, Indiana. The Real Estate consists of approximately 2.132 acres and has also been identified by the county as parcel identification number 15-01-13-101-029.000-006. The Real Estate, to which the restrictions in this Covenant apply, is depicted on a map attached hereto as Exhibit B.

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 MDK Red D Mart Site. The incident number assigned by the Indiana Department of Environmental Management ("Department" or "IDEM") for the release is 198908512, and the relevant facility identification number is 13695.

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 petroleum compounds relating to gasoline.

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).

NOW THEREFORE, Michael A. Ross 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 shall:

- (a) Subject to the exceptions contained in this paragraph, prohibit the use and/or extraction of groundwater located at the Real Estate for any purpose, including, but not limited to: human or animal consumption, gardening, or agriculture, except that groundwater may be extracted in conjunction with environmental investigation and/or remediation activities. Groundwater may only be extracted for commercial/industrial use from the existing water well at GPS point 39.274699, - 84.821652, as depicted in Exhibit B. Should the size or capacity for the existing well require replacement, upgrade or expansion, or should any additional wells be required for commercial or industrial processes, a work plan must be presented to the agency for approval prior to completing any work.

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 _____ 20__,

**RECORDED IN THE OFFICE OF THE RECORDER OF DEARBORN COUNTY
ON _____, 20__, INSTRUMENT NUMBER (or other identifying
reference) _____ 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 Dearborn 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, guidance, 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:
Michael A. Ross
852 Isbell Lane
West Harrison, Indiana 47060
Attn: Michael A. Ross

To Department:
IDEM, Office of Land Quality
100 N. Senate Avenue
IGCN 1101
Indianapolis, IN 46204-2251
Attn: Chief Petroleum Remediation 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.

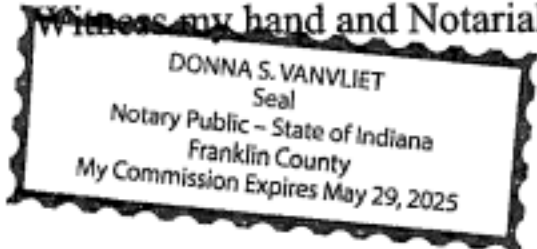
Owner hereby attests to the accuracy of the statements in this document and all attachments.

IN WITNESS WHEREOF, Michael A. Ross, the said Owner of the Real Estate described above has caused this Environmental Restrictive Covenant to be executed on this 15th day of June, 2021.

Michael A. Ross
Michael A. Ross

STATE OF Indiana)
COUNTY OF Daneboen) SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Michael A. Ross, the Pres. of the Owner, Whitewater Motors Inc., who acknowledged the execution of the foregoing instrument for and on behalf of said entity.

Witness my hand and Notarial Seal this 15 day of June, 2021.


Donna S. VanVliet
_____, Notary Public
Residing in Indiana County, Franklin

My Commission Expires:

This instrument prepared by:
Glenn D Bowman, Esq.
Stoll Keenon Ogden PLLC
300 North Meridian Street, Suite 1650
Indianapolis, IN 46204-1904

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:
Glenn D. Bowman, Esq., Stoll Keenon Ogden PLLC, 300 N. Meridian, Suite 1650, Indianapolis, IN 46204

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

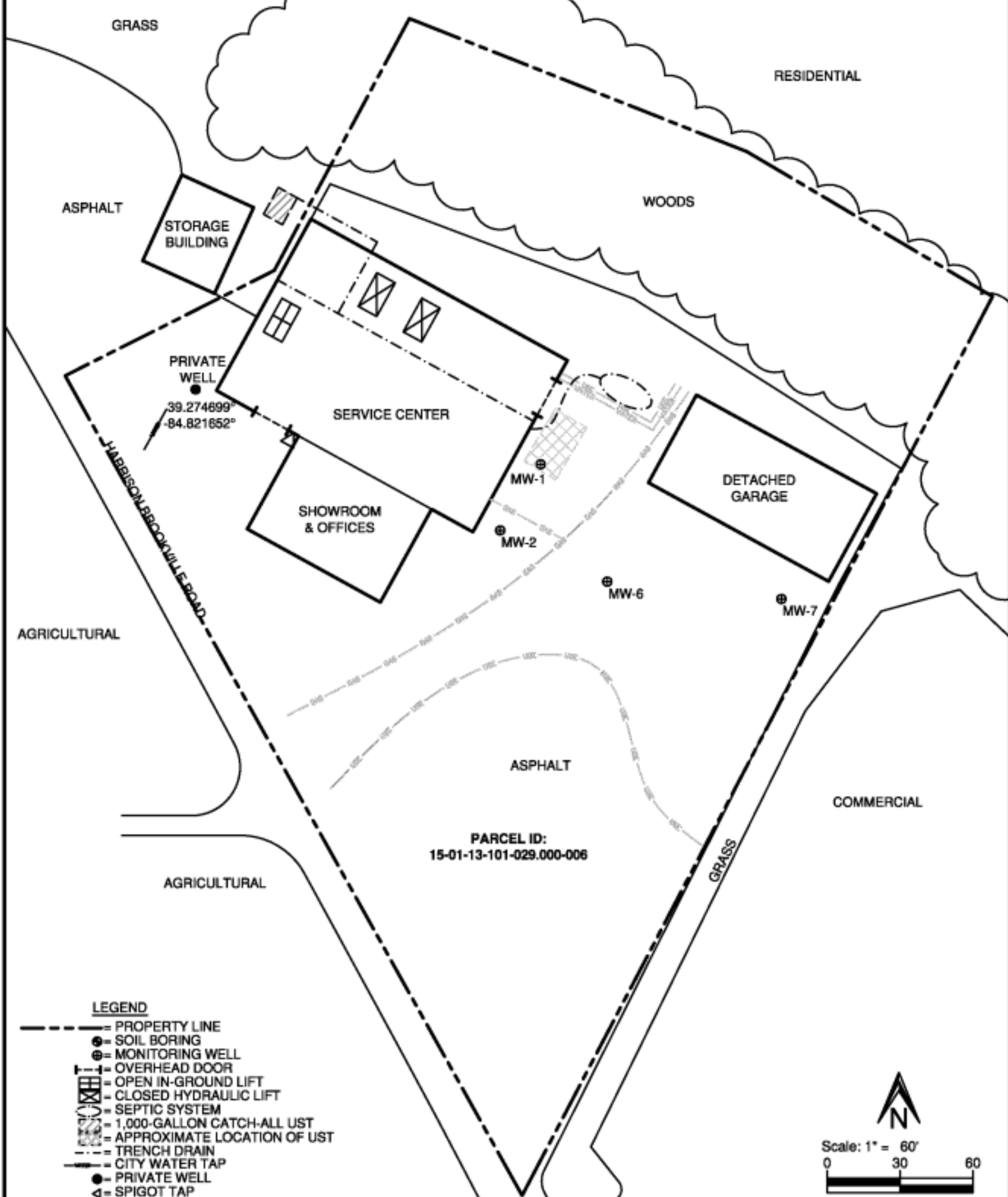
EXHIBIT "A"
LEGAL DESCRIPTION

HARRISON TOWNSHIP: Beginning at a point which is 518.1 feet West of and 396.5 feet South of the intersection of the Indiana-Ohio State Line and the North line of Section 13, T7N, R1W, thence S. $68^{\circ}12'E$. 210.7 feet to a post; thence S. $58^{\circ}6'E$. 118.6 feet to a steel fence post; thence S. $27^{\circ}38'W$. 418.9 feet to the center line of Highway No. 52; thence N. $29^{\circ}18''W$. 209.6 feet to a point; thence N. 328.36 feet to the place of beginning; containing 2.03 acres, more or less.

EXCEPTING THEREFROM: HARRISON TOWNSHIP: Part of the Northeast Quarter of Section 13, Township 7 North, Range 1 West, in Harrison Township, Dearborn County, Indiana, described as follows: Beginning on the Indiana-Ohio State Line at the northeast corner of Section 13; thence West 618.1 feet. More or less, with the north line of said section; thence S. $02^{\circ}03'30''W$. 325.1 feet, more or less, to an iron pin at the northeasterly corner of the 1.102 acre tract belonging to the Grantee herein; thence with the east line of said 1.102 acre tract, S. $01^{\circ}18'30''E$. 74.17 feet to an iron pipe at the northwesterly corner of the 2.03 acre tract belonging to the Grantor herein, and the ACTUAL BEGINNING POINT of the parcel herein conveyed: and running thence with the north line of said 2.03 acre Grantor's tract, S. $70^{\circ}56'44''E$. 60.00 feet to an iron pipe (this line bears S. $68^{\circ}12'E$. by Grantor's deed); thence S. $26^{\circ}08'W$. 122.20 feet to an iron pipe on the property line between the tracts of the Grantee and Grantor herein; thence with said line, N. $01^{\circ}18'30''W$. 129.36 feet (North by Hirlinger deed) to the actual beginning point. Containing 0.084 acre.

EXHIBIT B
SITE MAP

SITE MAP WITH LOCATIONS ABOVE IDEM RCG SCREENING LEVELS



PROJECT NAME: Hirlinger Chevrolet Facility
 LOCATION: West Harrison, Indiana
 PREPARED FOR: Hirlinger Motors, Inc.
 PROJECT NO: 14CN0165

Project Manager: DH
 Checked By: PW
 Drawn By: JT
 Date: 12/16

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