

E 370038 B 318 P 875
Date 15-FEB-2005 12:04pm
Fee: 41.00 Check
DIXIE SWASEY, Recorder
Filed By DKS
For MICHAEL R JENSEN
EMERY COUNTY CORPORATION

After recording, return to:

Wilford & Carol Durrant
PO Box 1009
Wellington, UT 84542

With copies to:

Paul McConkie
Utah Attorney General's Office
P.O. Box 140873
Salt Lake City, UT 84114-0873

Executive Director
Utah Department of Environmental Quality
Attn: DERR LUST Branch
168 North 1950 West
PO Box 144840
Salt Lake City, UT 84114-4840

**INSTITUTIONAL CONTROLS AND STIPULATION LIMITING
LIABILITY OF PROPERTY OWNER**

1.0 Real Property Description

Pursuant to the Utah Environmental Institutional Control Act, Utah Code Section 19-10-101 et seq., Wilford Durrant and Carol Durrant ("Property Owner"), owners of the property located at 495 East 3rd Avenue, Green River, Emery County, State of Utah ("Property"); more particularly described as:

Parcel 1

BEG 687.7 FT N & 1012 FT E, S/4 COR, SEC 9, TWP 21 S, R 16 E;
N 0 DEG 28' W 197 FT; N 89 DEG 32' E 120 FT; S 0 DEG 28' E 197
FT; S 89 DEG 32' W 120 FT TO BEG. 0.54 ACRES

Tax Parcel No. 01-151H-0011

Parcel 2

BEG 659.70 FT N & 1012 FT E, S/4 COR, SEC 9, TWP 21 S, R 16 E; N 0
DEG 28' W 28 FT; N 89 DEG 32' E 120 FT; S 0 DEG 28' E 28 FT; S 89
DEG 32' W PARALLEL TO STATE ROAD R / W 120 FT TO BEG.
0.08 ACRES

Tax Parcel No. 01-151H-0012

hereby make and impose upon the Property the following described Institutional Controls, subject to the terms and conditions herein stated.

2.0 Description of Environmental Status of Property and Reasons Institutional Controls are Necessary to Protect Public Health, Safety, Welfare or the Environment

Petroleum contamination is present in the soils and groundwater at the property located at 495 East 3rd Avenue, Green River, Utah. Information about the contamination is available for public review in the files of the Division of Environmental Response and Remediation ("Division" or "DERR") for Facility No. 5000729; Release ID EJIH. The Property has undergone investigation by the DERR to determine the extent and degree of the contamination and is undergoing ongoing remediation and monitoring by the DERR. The investigation has consisted of the collection of soil samples and the installation of groundwater monitoring wells followed by subsequent periodic sampling events. The Division has installed a system which is designed to treat the groundwater and is located directly across the street to the southeast of the Property. The groundwater samples are collected from a network of 24 permanently installed groundwater monitoring wells. The Division has also installed a series of capture trenches located approximately three to eight feet below grade and placed horizontally across the site which feed into concrete collection boxes. *Site maps depicting estimated contours of contamination in soils and groundwater as well as locations of monitoring wells and capture trenches is attached hereto as Exhibit 1*

The DERR is satisfied that the parameters of the Residual Contamination have been defined and that the contamination is being appropriately addressed with the installed remediation system. At this time, the DERR has no plans for additional onsite corrective action and does not have environmental or health-related objections to commercial use of the Property provided Institutional Controls as set forth herein are in place, and that such use does not interfere with the ongoing remedial activity.

While the Property may be suitable for certain commercial uses, the presence of petroleum hydrocarbons in the soils and groundwater would limit certain other uses, and future use or development of the Property would have to be coordinated with the DERR. Precautions and trained personnel would be required in excavating certain areas of the Property, as described herein. In addition, certain measures may need to be taken to ensure that the contamination is not creating a vapor issue in onsite buildings, and that the water supplying onsite buildings is not being impacted.

Of note is that the adjoining property to the south is a former service station property

located at 185 East Main ("service station property") which experienced release(s) from petroleum underground storage tanks historically located at that property which has resulted in a commingled plume on the groundwater. The subsurface contamination from the two properties is being jointly addressed from the installed remediation system. Similar Institutional Controls are in place on the service station property. Information about the contamination at the service station property is available for public review in the files of the Division of Environmental Response and Remediation for Facility No. 5000046; Release ID EFNS.

The DERR contact person for both properties is currently: Mark Crim, DERR project manager, Tel. (801)536-4100. 168 North 1950 West, 1st Floor, Salt Lake City, Utah 84116. A change in project managers can be learned by contacting the DERR at the same phone number or address and ask for the project manager assigned to Facility ID No. 5000729, Release ID. EJIH.

3.0 Definitions: Unless otherwise expressly provided herein, terms used in the following Land Use Restrictions which are defined in Hazardous Substances Mitigation Act, Utah Code Ann. § 19-6-301 et seq. ("HSMA") and the Underground Storage Tank Act, Utah Code Ann. § 19-6-401 et seq. ("USTA") or in regulations promulgated thereunder shall have the meaning assigned to them in those Acts or in such regulations, including any amendments thereto.

- 3.0.1 "State of Utah" shall mean the Utah Department of Environmental Quality and any successor departments or agencies of the State of Utah.
- 3.0.2 "Executive Director" means the executive director of the Utah Department of Environmental Quality or the executive director's designated representative.
- 3.0.3 "DEQ" or shall mean the Utah Department of Environmental Quality, and any successor divisions or agencies of the State of Utah.
- 3.0.4 DERR" or "Division" shall mean the Division of Environmental Response and Remediation which is a subdivision of the Utah Department of Environmental Quality, and any successor divisions or agencies of the State of Utah.
- 3.0.5 "Institutional Control" means with respect to the Property, any deed restriction, restrictive covenant, easement, reservation, environmental notice, engineering control, or other restriction or obligation that is designed to protect public health, safety, welfare or the environment and:
- (a) is established in connection with a clean up or risk assessment that is reviewed, conducted, or administered by the department; and
 - (b)(i) limits the use of the real property, groundwater, or surface water;
 - (ii) limits activities that may be performed on or at the property; or
 - (iii) requires maintenance of any engineering or other control.
- 3.0.6 "Exacerbation" means any increase in threat to human health, safety, or the environment resulting from any improvements or modifications to the Property from its present state. Exacerbation also means use of the existing buildings, utilities or other fixtures in their present condition that results in exposing people to Residual Contamination

- 3.0.7 "Residual Contamination" shall mean any substances regulated under 42 U.S.C., Section 6991(2), present or existing on or under the Site as documented in the DERR release files for Facility ID No. 5000729; Release ID EJIH as of the effective date of this agreement.
- 3.0.8 "Property Owner" shall mean current and future owners of the Property.
- 3.0.9 "Successor in Interest" shall mean any person who is granted, acquires or otherwise receives any right, title or interest of less than fee simple, including through sale lease, sublease or other disposition, to any of the Property subsequent to the date of recording of the Institutional Controls.
- 3.1.0 "Successor in Title" shall mean any person who is granted, acquires or otherwise receives fee simple title in all or any portion of the Property subsequent to the effective date of this agreement.
- 3.1.1 "Property" shall mean the property more particularly described in 1.0 above.
- 3.1.2 "Site" shall include the Property described in 1.0 above, as well as the adjoining former service station property.

4.0. Environmental Controls

- 4.0.1 Pursuant to the Utah Environmental Control Act (Utah Code Section 19-10-101, et seq.), Property Owner hereby makes and imposes upon the Property the following described Institutional Controls, subject to the terms and conditions herein stated:
- 4.0.2 Property Owner shall not allow the on-site groundwater be used for any purpose. Wells shall not be installed on the Property without the express, written permission of the DEQ.
- 4.0.3 Property Owner shall not exacerbate the Residual Contamination.
- 4.0.4 Except as allowed in 4.0.6 below, Property Owner shall not expose any person to the Residual Contamination anywhere on the Property, including the existing buildings. To avoid exposing any person to the Residual Contamination, the Property Owner may need to implement engineering controls such as positive air flow or vapor barriers.
- 4.0.5 Property Owner shall not allow that there be any excavation deeper than three feet into areas of soil contamination as depicted on the map, (*attached hereto as Exhibit 2*), without the filing of an excavation plan ("Plan") with the Division for approval. The Plan shall indicate the location, depth and volume of the planned excavation and shall indicate how the excavated material will be handled, treated and disposed. The Division shall issue a written approval or disapproval of the Plan within 90 days of its filing. If disapproved, the Division shall provide the reasons in writing. The excavation shall not begin until the Division has approved the Plan. Property Owner shall comply with the approved Plan. The DEQ may charge the Property Owner the hourly rate for review set forth in the fee schedule in effect upon the filing
- 4.0.6 When excavating deeper than three feet, Property Owner shall use OSHA-certified personnel with at least 40 hours safety training and knowledge of environmental protocols. Property Owner shall notify the assigned DEQ project manager thirty days before performing construction activities that involve the movement or placement of petroleum

- affected soils or the movement or placement of subsurface utilities (e.g. drinking water lines, sanitary sewer lines.)
- 4.0.7 Property Owner shall not allow aboveground petroleum storage tanks (AST) to be installed and operated on the Property unless the ASTs comply with the Uniform Fire Code and other applicable state and federal law.
- 4.0.8 If there are petroleum storage tanks (aboveground or underground) on the Property, exacerbation of the Residual Contamination from a new release shall be suspected upon the occurrence of conditions described in 40 CFR 280 subpart E subsections 280.50 and 280.51 or upon:
- (1) An increase in the levels of known constituents documented in the Division files for Facility ID. No. 5000046, Release ID. EFNS as of the date of this Agreement.
 - (2) The appearance of constituents not previously documented in the Division files for Facility ID. No. 5000046, Release ID. EFNS as of the date of this Agreement.
- 4.0.9 If exacerbation of Residual Contamination from a new release is suspected, Property Owner shall comply with the Utah Underground Storage Tank Act and implementing regulations to investigate, abate and take corrective action until such time as the new release is closed, regardless of whether the petroleum storage tanks involved are aboveground or underground storage tanks.
- 4.1.0 Property Owner shall ensure that the water supplying any buildings on the Property are free from petroleum contamination from an on "site" source.
- 4.1.1 Property Owner shall not adversely impact any ongoing or completed investigative or remedial actions on the Property. In particular, Property Owner shall not damage or destroy the monitoring wells that are currently in place or installed in the future. Also, a series of subsurface groundwater capture trenches exist. The capture trenches collect and convey the petroleum-affected groundwater to concrete collection boxes located on the property's eastern boundary and ultimately the DEQ's treatment system. The capture trenches exist from about three feet to eight feet below grade and are placed horizontally across the site and feed into concrete collection boxes. If monitoring wells, capture trenches or concrete collection boxes are damaged or destroyed during Property Owner's operations or construction activities at the Property, Property Owner shall notify the DEQ and shall pay DEQ for the reinstallation and repair. Also, existing monitoring wells, concrete collection boxes and their finished subsurfaces shall remain in place and be accessible until such time as the DEQ authorizes otherwise. If the existing surface cover or gradient is changed near the monitoring wells or concrete collection boxes due to construction or paving, Property owner shall ensure that the well's monuments and concrete collection boxes are properly raised to meet the new grade and allow for continued DEQ access. *See Exhibit 1.*
- 5.0 Right to Access
- 5.0.1 DEQ, its authorized officers, employees, representatives, and all other persons performing

remedial activity under DEQ oversight, shall have an irrevocable right of access at all reasonable times to the Property for the purposes of performing and overseeing remedial activity at the Property under federal and/or state law. DEQ shall provide reasonable notice to Property Owner of the timing of the remedial activity to be undertaken at the Property. Notwithstanding any other provision herein, DEQ retains all of its access authorities and rights, including enforcement authorities related thereto, under the Utah Underground Storage Tank Act, Utah Code Ann. § 19-6-401 et seq., and the Hazardous Substances Mitigation Act, Utah Code Ann. § 19-6-301 et seq., and any other applicable statute or regulation, including any amendments thereto.

- 5.0.2 DEQ shall have access to the Property at all reasonable times to verify that these Institutional Controls are being maintained and that the party or parties in possession of the Property are in compliance thereof.

6.0 General Conditions

- 6.0.1 The above described Institutional Controls shall be operated and maintained in perpetuity as follows unless terminated or modified as provided in Utah Code §19-10-105.
- 6.0.2 It shall be the responsibility of Property Owner and successors in title to maintain the Institutional Controls.
- 6.0.3 Within 15 days of the date of this agreement, Property Owner shall record this document in the county recorder's office in the county where the Property is located.
- 6.0.4 The Institutional Controls run with the land and are binding on and, shall inure to the benefit of, all successors in interest and title of Property Owner unless or until removed as provided in Utah Code Section 19-10-105.
- 6.0.5 The procedure for modification or termination of any institutional control as set forth herein shall be in accordance with Utah Code Ann. §19-10-105.
- 6.0.6 The Institutional Controls may only be terminated or modified in accordance with the provisions of Utah Code Ann. § 19-10-105 and with the prior written approval of the Executive Director of the Utah Department of Environmental Quality.
- 6.0.7 DEQ has no affirmative duty, obligation or responsibility, either express or implied, to remediate any contamination on the Property or perform any environmental testing.
- 6.0.8 If any terms of the Institutional Controls are adjudged invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions.
- 6.0.9 Nothing herein constitutes a waiver by the DEQ of its right to initiate enforcement action in the event of future noncompliance with the Institutional Control or with the Utah Hazardous Substances Mitigation Act (Utah Code Ann. §19-6-301 et seq.) or any other law, nor shall DEQ be precluded in any way from taking appropriate action to abate an endangerment to public health or the environment. This reservation is not intended to make Property Owner liable for Residual Contamination for which Property Owner was released.

STIPULATION LIMITING LIABILITY OF PROPERTY OWNER

- 7.0 The limitation of liability provided herein is made pursuant to a settlement agreement between the DEQ and the current owners of the Property and is done by the Executive Director under the authority of the Hazardous Substances Mitigation Act, Utah Code §19-6-301 et seq., ("HSMA") to enter abatement action agreements and to compromise and settle claims thereunder. The purpose is to settle and resolve the potential liability of an individual or entity for the Residual Contamination at the Property which may otherwise result from property ownership.
- 8.0 Section 19-6-310(d) of the Utah Code provides in part that: "A responsible party who is not exempt . . . may be considered to have contributed to the release and may be liable for a proportionate share of costs as provided under this section either by affirmatively causing a release or by failing to take action to prevent or abate a release which has originated at or from the facility." The Executive Director and the current owner of the Property stipulate that compliance with the foregoing Institutional Controls which includes full cooperation and access to persons that are authorized to conduct remedial actions at the Property, completely satisfies the Property Owner's duty as set forth in section 19-6-310(d), and the Property Owner will not be liable to the DEQ for any response action that may be required, or for any cost recovery action or contribution claim with respect to the Residual Contamination pursuant to the Hazardous Substances Mitigation Act.
- 9.0 The above provision does not limit the authority of the DEQ to require any person responsible for contamination which does not include Residual Contamination, or for exacerbating Residual Contamination, to perform a response action.

PROPERTY OWNER

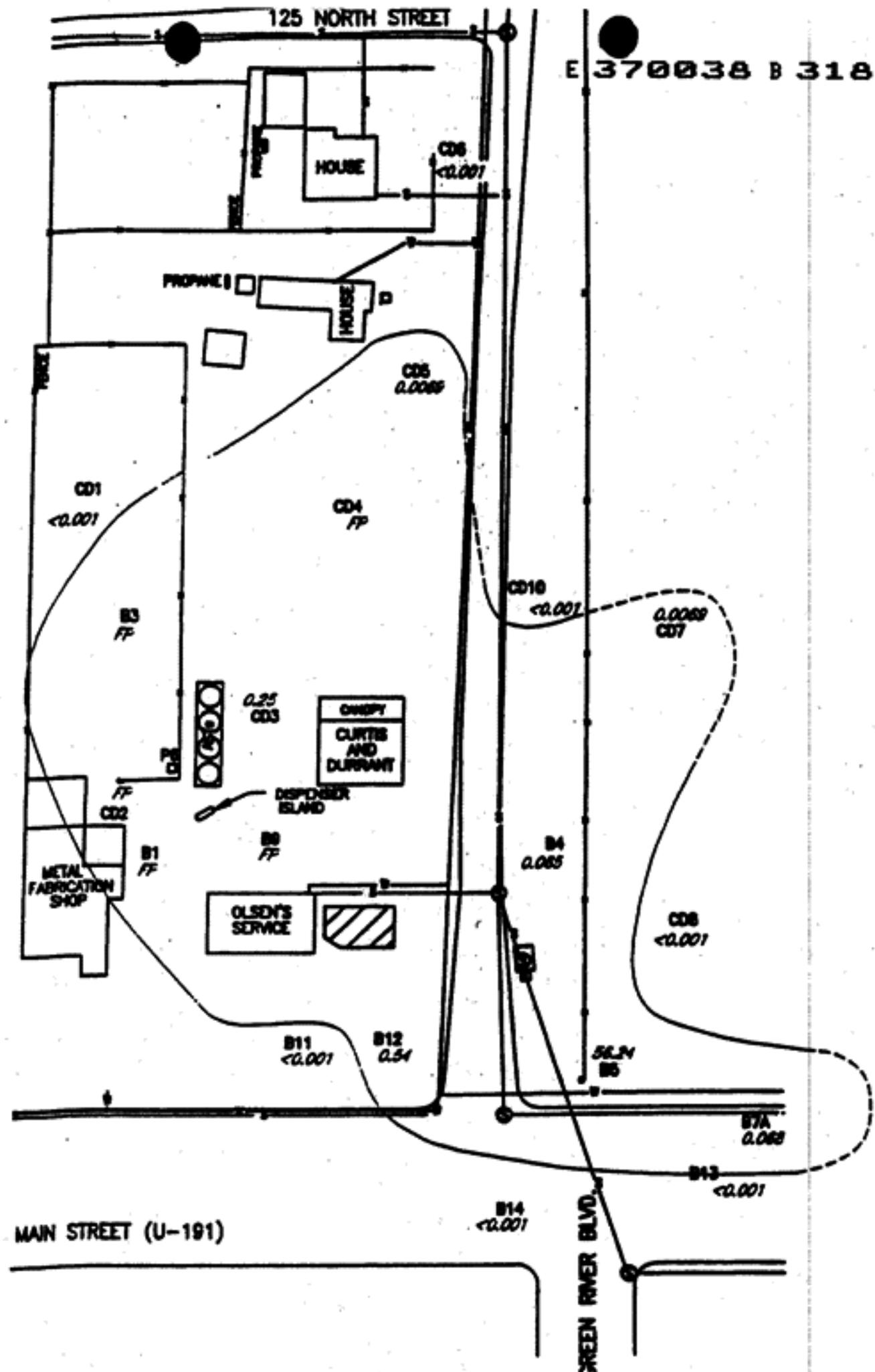
By Wilford Durrant Date 2.3.05
Wilford Durrant

STATE OF UTAH)
)ss
COUNTY OF CARBON)

The foregoing instrument was acknowledged before me this 3rd day of February, 2005, by Wilford Durrant.

Witness my hand and official seal Susan Harvey
Notary Public





MAIN STREET (U-191)

GREEN RIVER BLVD.

LEGEND

57.13

Groundwater monitoring well with
benzene concentration in ppm
Current estimated extent of benzene

Underground utility line: -p- power,
-S- sewer, -W- water,

APPROXIMATE SCALE (ft.)

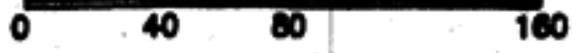
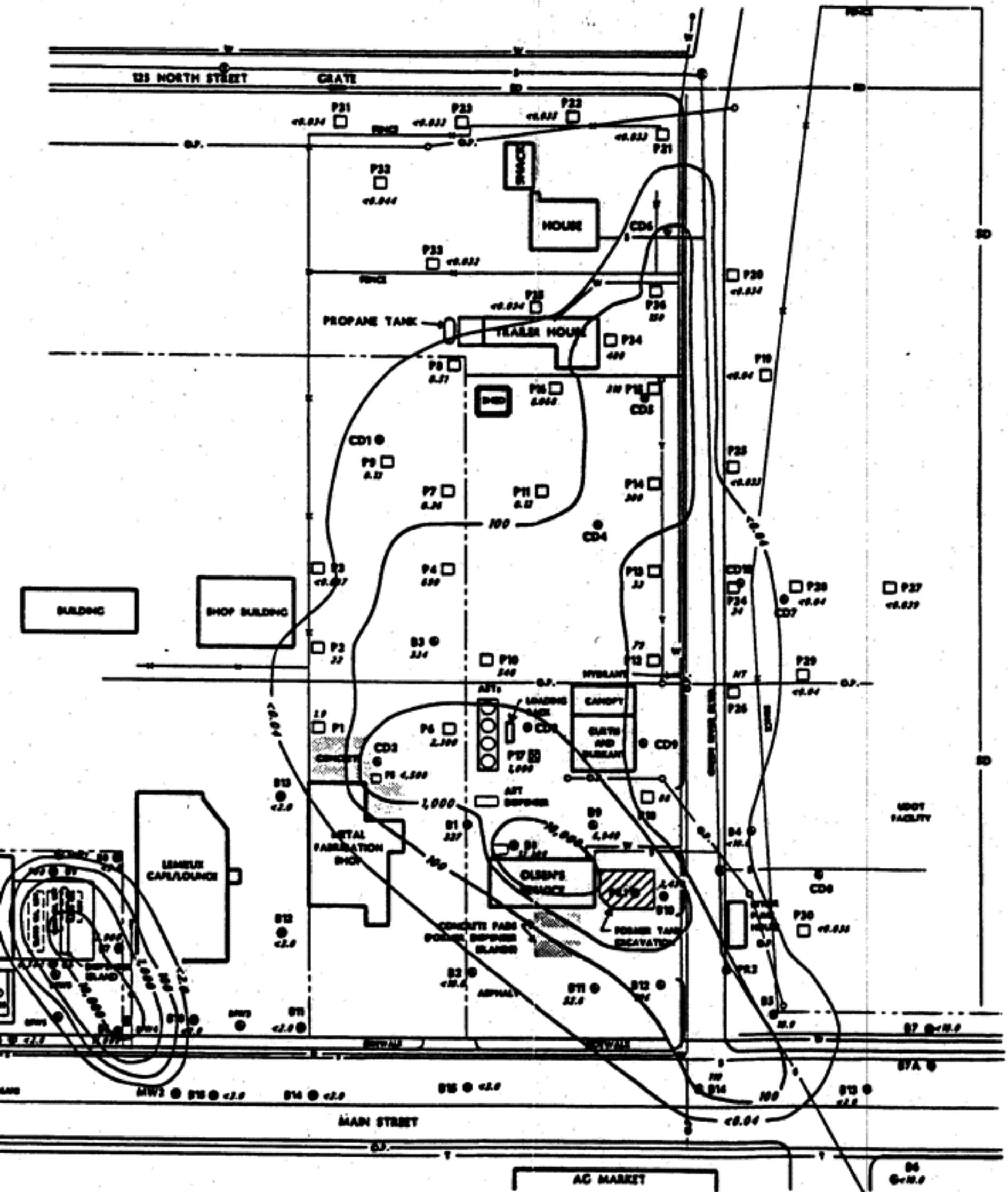


FIGURE 4: BENZENE IN GROUNDWATER 4/5/00
WEI 1150-7L





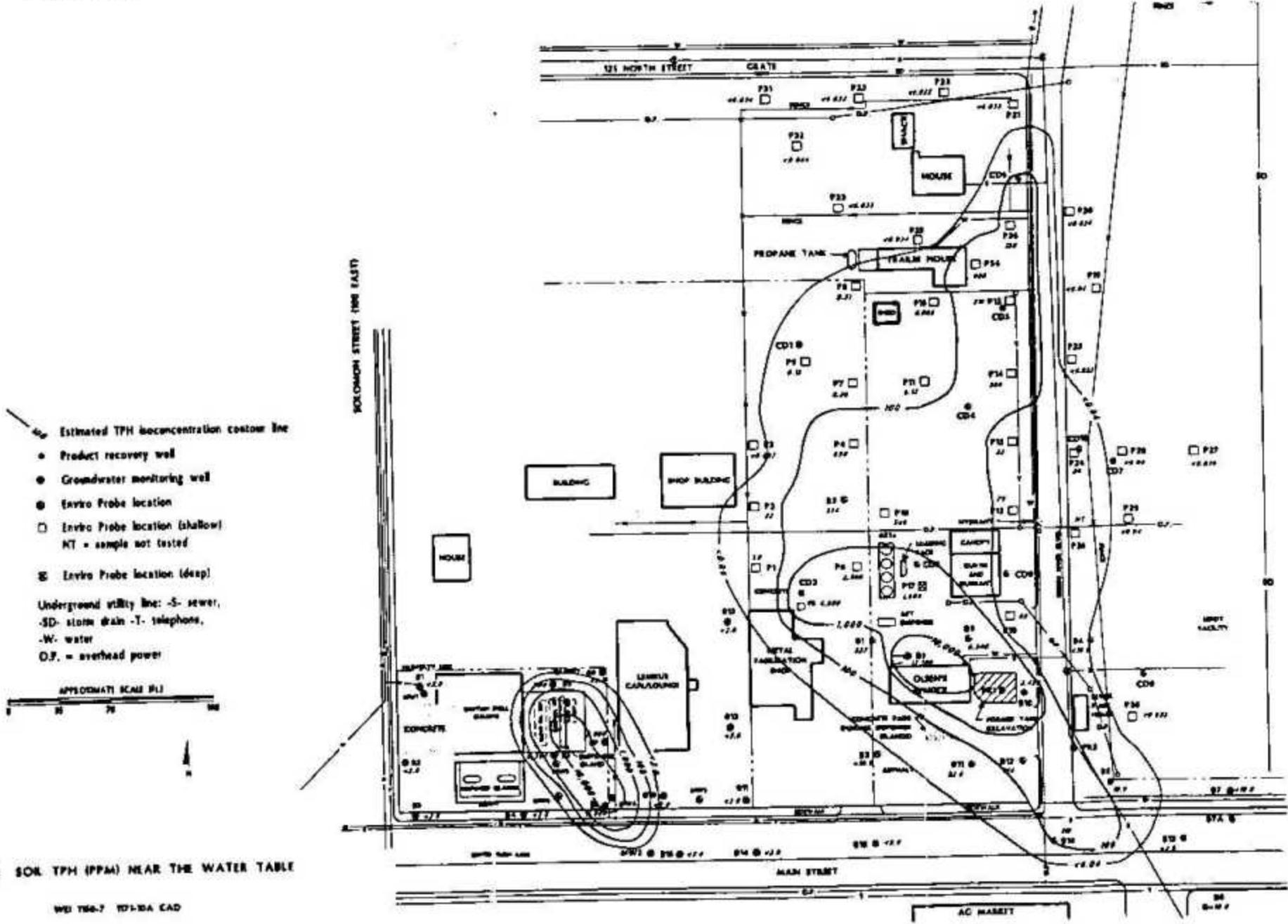
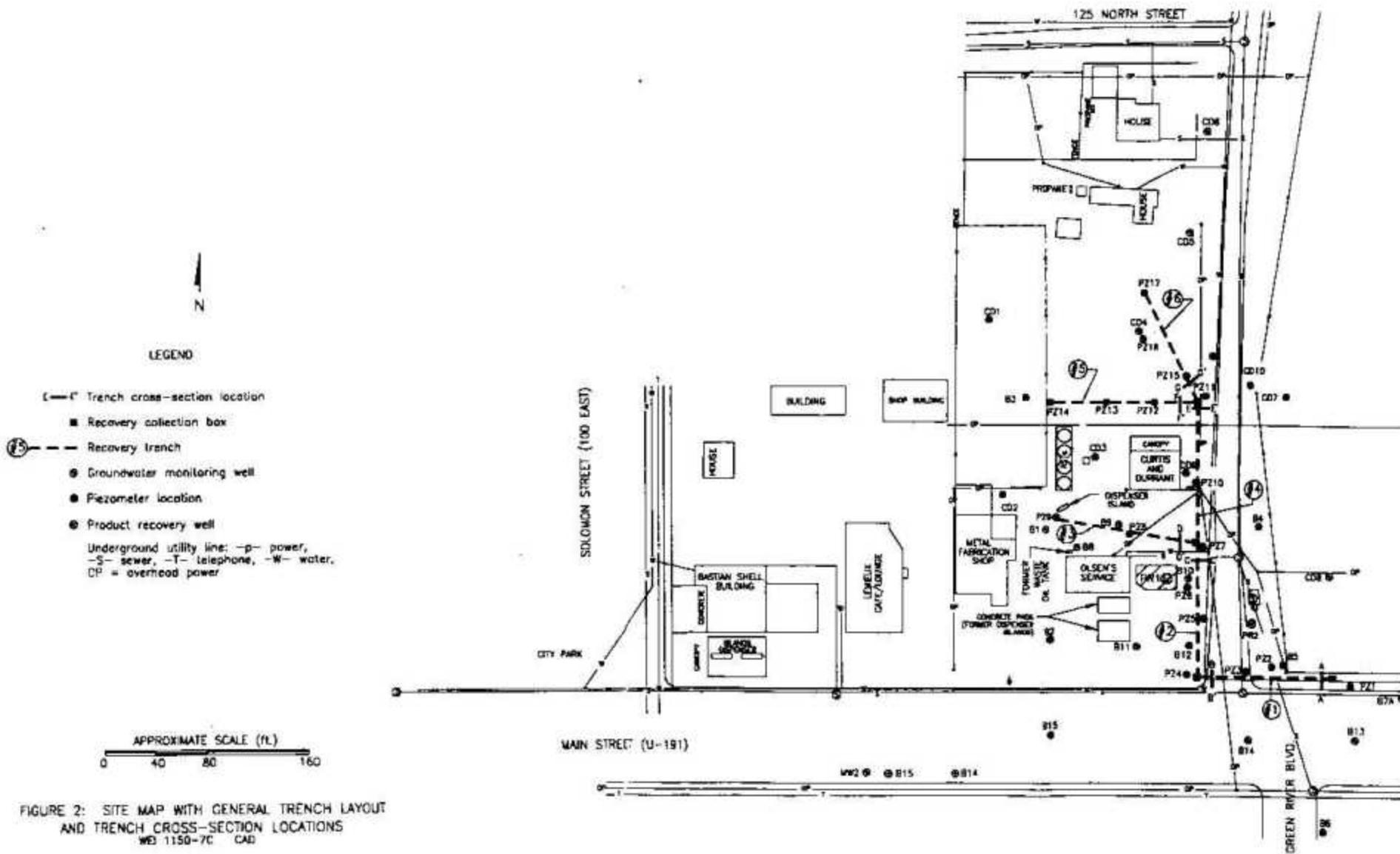
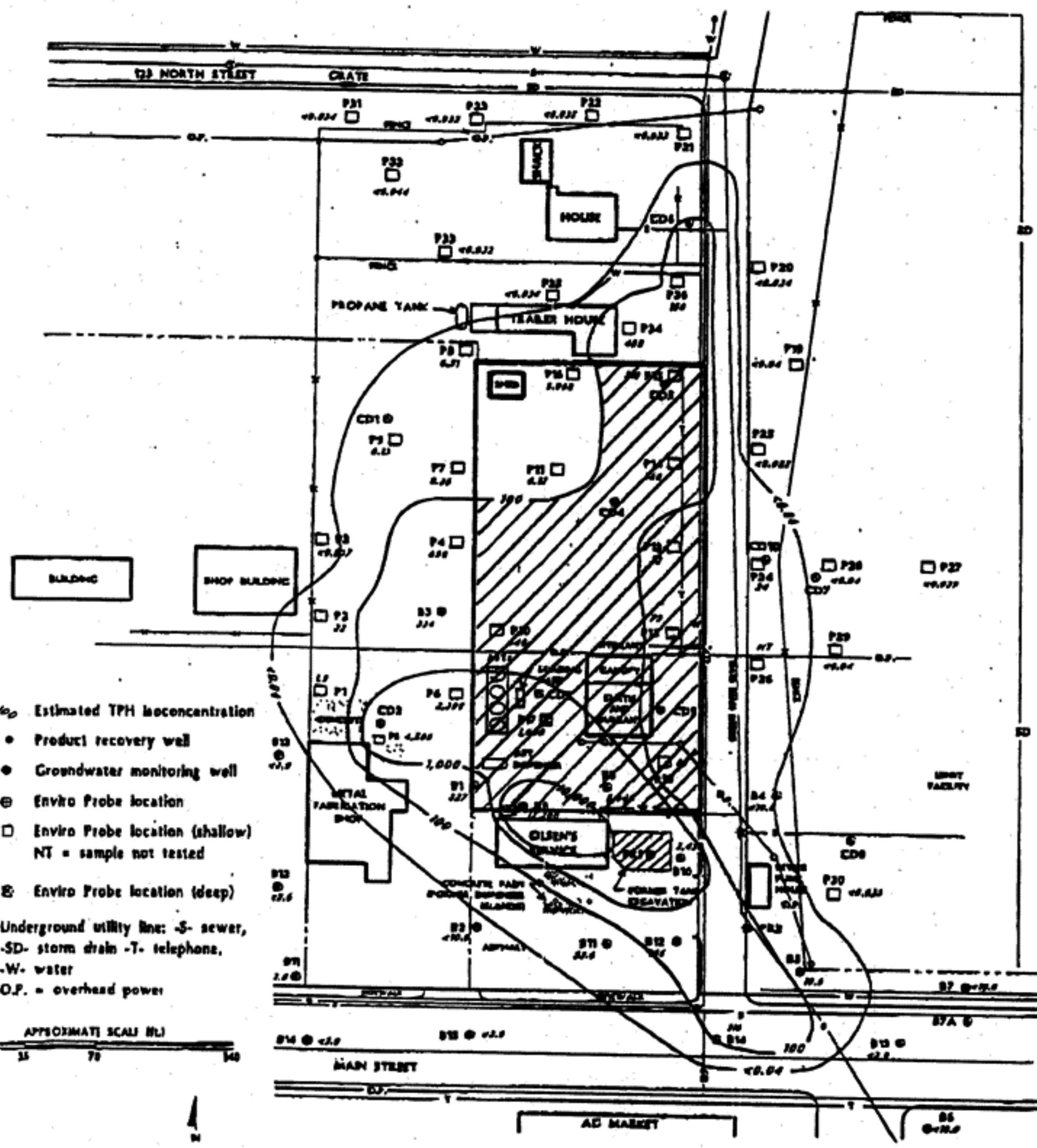


FIGURE 9: SOX TPH (PPM) NEAR THE WATER TABLE

WEI 786-7 101-30A CAD

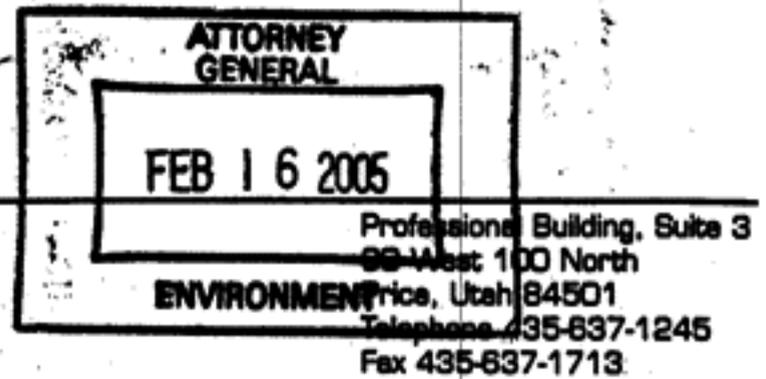




SOIL TPH (PPM) NEAR THE WATER TABLE

WU 186.7 10/1/00 CAD

MICHAEL R. JENSEN
ATTORNEY & COUNSELOR AT LAW



February 14, 2005

Roy Baran
DERR Accounting
168 North 1950 West, Bldg. #2
Salt Lake City, Utah 84116

Re: Utah Department of Environmental Quality et al. vs Wilford Durrant et al.,
Case No. 990700008, in the Seventh District Court for Emery County
My Clients: Wilford and Carol Durrant

Dear Mr. Baran:

Enclosed is my clients' check dated February 14, 2005 in the amount of \$10,000 made payable to UDEQ/DERR, herewith sent to you pursuant to the February 9, 2005 Consent Decree in the above case.

Assistant Attorney General Paul M. McConkie has informed me that UDEQ/DERR received the sum of \$63,172 from my clients' insurer, Nationwide Insurance Company, in December 2004; therefore, the enclosed check represents full payment of the balance of the Settlement Payment pursuant to said Consent Decree.

Sincerely,

Michael R. Jensen

MRJ/sh

Encl.

c: Paul M. McConkie, Esq.
Wilford and Carol Durrant

MICHAEL R. JENSEN
ATTORNEY & COUNSELOR AT LAW

Professional Building, Suite 3
90 West 100 North
Price, Utah 84501
Telephone 435-637-1245
Fax 435-637-1713

February 14, 2005

Emery County Recorder's Office
75 East Main
Castle Dale, Utah 84513

Re: Utah Department of Environmental Quality et al. vs Wilford Durrant et al.,
Case No. 990700008, in the Seventh District Court for Emery County
My Clients: Wilford and Carol Durrant

Dear Recorder:

Please record the enclosed Institutional Controls and Stipulation Limiting Liability of Property Owner, send the recorded original to me as attorney for Wilford and Carol Durrant, and send copies to Assistant Attorney General Paul McConkie and to the Executive Director of the Utah Department of Environmental Quality at their addresses set forth on the face of the document.

Also enclosed herewith is my clients' check made payable to Emery County Recorder in the amount of \$41.00 as and for the recording.

Sincerely,


Michael R. Jensen

MRJ/sh

Encl.

c: Paul M. McConkie, Esq.
Wilford and Carol Durrant