

When Recorded Return To:

Rex P. Shipp  
RPS Enterprises, L.L.C.  
337 S. Main Street, Suite 230  
Cedar City, Utah 84720

DOC # 00372577

Agreements B: 0664 P: 1197  
Jayrene B Nielsen Sevier County Recorder Page 1 of 14  
12/21/2011 11:50:46 AM Fee \$36.00 By RPS ENTERPRISES LLC

With Copy To:

Utah Department of Environmental Quality  
Division of Environmental Response and Remediation  
195 North 1950 West  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

Parcel No. 1-S5-32

### ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by RPS Enterprises, LLC., a Utah limited liability company ("Owner") and the Utah Department of Environmental Quality ("DEQ"), (collectively "Parties") pursuant to Utah Code Ann. §§ 57-25-101 et seq. ("Act") and concerns the "Property" described in Paragraph B.2., Attachment A, and Attachment B. The DEQ enters this Environmental Covenant in its capacity as the Agency as defined in the Act. The DEQ assumes no affirmative obligations through the execution of this Environmental Covenant.

#### A. Environmental Response Project

- DEQ Records: The Property was the subject of an environmental response project overseen by the DEQ's Division of Environmental Response and Remediation ("DERR"). Requests for records should be directed to the DERR and referenced as Facility Identification No. 2000282, Release Site LPO.
- Historical Use of the Property: A gasoline service station operated on the Property from 1979 until 2002. In July 2002, the underground storage tank ("UST") system (consisting of one 10,000-gallon gasoline UST, one 6,000-gallon gasoline UST, one 6,000-gallon diesel fuel UST, and associated piping and dispensers) was removed under DERR permit.
- Environmental Response Project: A release of petroleum hydrocarbon contaminants (gasoline and diesel fuel) was reported to the DERR based on soil samples collected at the UST system removal in 2002. From 2004 to 2007, an in-situ passive bioventing remediation system operated and removed some contaminant mass. In 2007, approximately 2,500 cubic yards of petroleum-contaminated soil were excavated and properly disposed at the Sevier County Landfill. Due to safety limitations on the depth of the backhoe excavation, some petroleum-contaminated soil, at depths of about 16 to 20+ feet below ground surface ("bgs"), could not be removed and remains in the subsurface.

4. Contamination Remaining at the Property: Petroleum-contaminated soil remains in the subsurface at a depth of about 16 to 20+ feet bgs in the "Restricted Area" shown on the attached site map (Attachment B). Some petroleum hydrocarbon concentrations in the subsurface soils exceed the Tier 1 Screening Criteria, November 1, 2005, incorporated by reference in R311-211-6, Utah Admin. Code (Attachment B).

### B. Environmental Covenant

Now therefore, the Parties agree to the following:

1. Environmental Covenant: This instrument is an environmental covenant developed and executed pursuant to the Act.

2. Property: This Environmental Covenant governs the Property located at 1485 South State Street (formerly 1385 South State Street), in the City of Salina, in Sevier County, Utah, and more particularly described in Attachment A attached hereto and hereby incorporated by reference herein ("Property").

3. Owner: RPS Enterprises, located at 337 South Main Street, Suite 230, Cedar City, Utah 84720, owns the Property in fee simple. Consistent with Paragraph 6 of this Environmental Covenant, the obligations of the Owner are imposed on assigns, successors in interest, including without limitation future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, and the like ("Transferee").

4. Holder: Owner, whose address is listed above, is the holder.

5. Activity and Use Limitations: As part of the Environmental Response Project described in A. above, the Owner hereby imposes and agrees to implement, administer and maintain the following activity and use limitations pertaining to the Restricted Area of the Property shown in Attachment B. In the event the Owner conveys or transfers an interest in the Property or any portion thereof to another party, the Owner shall take necessary measures to ensure that the Transferee shall implement, administer, and maintain the following activity and use limitations.

5.1 Disturbance Limitations: The Owner shall prevent human contact with the petroleum-contaminated soil in the Restricted Area except as allowed in this section.

5.2 Excavation: Excavation or disturbance of petroleum-contaminated soil is allowed provided that the petroleum-contaminated soil is handled, transported, and disposed of in accordance with applicable law; the Owner develops a worker protection and site health and safety plan for the excavation; and workers are notified of the petroleum-contaminated soil, have proper training, and are provided with health and safety procedures in compliance with applicable worker health and safety laws.

5.3 Coordination: Before excavating or disturbing the petroleum-contaminated soil, the Owner shall notify the DEQ and if requested shall submit a soil management plan to the DEQ for approval. If the Owner submits sampling results acceptable to the DEQ that demonstrate that all of the petroleum-contaminated soil was removed, the Owner may seek

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termination of this Environmental Covenant in accordance with Paragraph 12 entitled "Amendment or Termination" below.

5.4 Construction Limitations: The Owner shall determine if a vapor intrusion risk exists before placing a structure over the Restricted Area. If a vapor intrusion risk exists, the Owner shall mitigate the risk. Alternatively, if no risk assessment for contaminant vapor intrusion is conducted, the Owner shall install a vapor mitigation system in all structures located over the Restricted Area before the structures are occupied.

5.5 Notification: The Owner shall notify DEQ in writing within two (2) days of becoming aware of a breach of the activity and use limitations described herein and shall indicate in that submission the action that the Owner shall take to remedy the breach. The Owner shall remedy the breach within two (2) days unless another time period is required or allowed by the DEQ. In addition, the Owner shall submit a written report to the DEQ describing the remedy implemented in response to the breach within thirty (30) days of the completion of the remedy.

6. Running with the Land: This Environmental Covenant shall be binding upon the Owner and any Transferee during that person's period of control, occupation, or ownership interest, and shall run with the land, pursuant to the Act and subject to amendment or termination as set forth herein.

7. Compliance Enforcement: This Environmental Covenant may be enforced pursuant to the Act. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party, and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the DEQ from exercising any authority under applicable law. If the Owner fails to provide any of the submissions to the DEQ within the required time period, the DEQ may inspect the Property, prepare the submissions itself, and recover its costs from the Owner.

8. Rights of Access: Owner hereby grants to the DEQ, its agents, contractors, and employees the right of access to the Property for inspection, implementation, or enforcement of this Environmental Covenant.

9. Compliance Reporting: Upon request, Owner shall submit written documentation to the DEQ verifying that the activity and use limitations remain in place and are being followed.

10. Notice upon Conveyance: Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 2011, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE \_\_\_\_\_ COUNTY RECORDER ON \_\_\_\_\_, 2011, IN [DOCUMENT \_\_\_\_\_, or BOOK \_\_\_\_\_]

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PAGE \_\_\_\_J. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: [Instructions: Insert verbatim all of Paragraph 5 entitled: "Activity and Use Limitations."]

Owner shall notify the DEQ within **ten (10) days** after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed, or other documentation evidencing the conveyance, and an unsurveyed plat that shows the boundaries of the property being transferred.

11. Representations and Warranties: Owner hereby represents and warrants to the other signatories hereto:

11.1 that the Owner is the sole owner of the Property;

11.2 that the Owner holds fee simple title to the Property which is free, clear, and unencumbered;

11.3 that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided, and to carry out all obligations hereunder;

11.4 that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property, and notified such persons of the Owner's intention to enter into this Environmental Covenant;

11.5 that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which Owner is a party or by which Owner may be bound or affected;

12. Amendment or Termination: This Environmental Covenant may be amended or terminated pursuant to the Act.

13. Effective Date, Severability and Governing Law: The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the Sevier County Recorder. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

14. Recordation and Distribution of Environmental Covenant: Within **thirty (30) days** after the date of the final required signature upon this Environmental Covenant, the Owner shall file this Environmental Covenant for recording in the same manner as a deed to the Property, with the Sevier County Recorder's Office. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the DEQ and the City of Salina in Sevier County,

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Utah.

15. Notice: Unless otherwise notified in writing by or on behalf of the current owner or DEQ, any document or communication required by this Environmental Covenant shall be submitted to:

DEQ

Department of Environmental Quality  
Division of Environmental Response and Remediation  
Attention Project Manager (Facility Identification No. 2000282, Release Site LPO)  
195 North 1950 West  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

Owner

Rex P. Shipp  
RPS Enterprises, LLC  
337 South Main Street, Suite 230  
Cedar City, Utah 84720

16. Governmental Immunity: In executing this Environmental Covenant, the DEQ does not waive governmental immunity afforded by law. The Owner, for itself and its successors, assigns, and Transferees, hereby fully and irrevocably releases and covenants not to sue the State of Utah, its agencies, successors, departments, agents, and employees ("State") for any and all claims, damages, or causes of action arising from, or on account of the activities carried out pursuant to this Environmental Covenant except for an action to amend or terminate the Environmental Covenant pursuant to sections 57-25-109 and 57-25-110 of the Utah Code Ann., or for a claim against the State arising directly or indirectly from or out of actions of employees of the State that would result in (i) liability to the State of Utah under Section 63G-7-301 of the Governmental Immunity Act of Utah, Utah Code Ann. Section 63G-7-101 et seq. or (ii) individual liability for actions not covered by the Governmental Immunity Act as indicated in Sections 63G-7-202 and -902 of the Governmental Immunity Act, as determined in a court of law.

The undersigned representative of the Owner represents and certifies that he is authorized to execute this Environmental Covenant.

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IT IS SO AGREED:

OWNER

RPS Enterprises, LLC

Rex P. Shipp  
Rex P. Shipp

12/19/2011  
Date

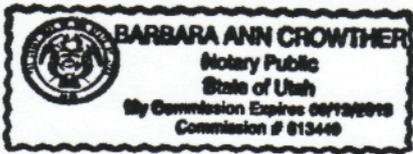
STATE OF UTAH )

: ss.

County of Sevier )

Before me, a notary public, in and for said county and state, personally appeared Rex P. Shipp, a duly authorized representative of RPS Enterprises LLC, who acknowledged to me that he did execute the foregoing instrument on behalf of RPS Enterprises LLC.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 19th day of December, 2011.



Barbara Ann Crowther  
Notary Public

My Commission expires: 9/13/2015

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DEPARTMENT OF ENVIRONMENTAL QUALITY

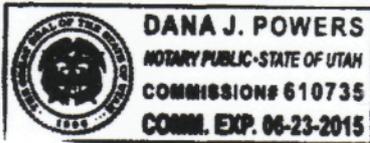
The Department of Environmental Quality authorized representative identified below hereby approves the foregoing Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

Brent H. Everett  
Brent H. Everett  
Executive Secretary (UST)  
Utah Solid and Hazardous Waste Control Board

17 November 2011  
Date

STATE OF UTAH    )  
                          : ss.  
County of Salt Lake )

Before me, a notary public, in and for said county and state, personally appeared Brent H. Everett, an authorized representative of the Utah Department of Environmental Quality, who acknowledged to me that he did execute the foregoing instrument this 17 day of November, 2011.



Dana J. Powers  
Notary Public  
My Commission expires: 6/23/2015

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ATTACHMENT A

Legal Description of Property  
Sevier County Assessor

Situs: 1485 S. STATE ST , SALINA, SEVIER COUNTY, UTAH

Parcel No. 1-S5-32

Legal: BEG 18.75 CHS W & S 0\*23' E 56.75 FT & E 161 FT FROM THE SE COR OF THE  
NE/4 OF SEC 36 T21S R1W SLM TH E 231.94 FT S 84.27 FT E 80 FT S 7\*41' W 149.26 FT  
W 453.42 FT N 0\*23' W 140.25 FT E 161 FT N 0\*23' W 92 FT TO BEG AREA 1.99 ACRES

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**ATTACHMENT B**

**Site Map with Sampling Locations and Restricted Area**

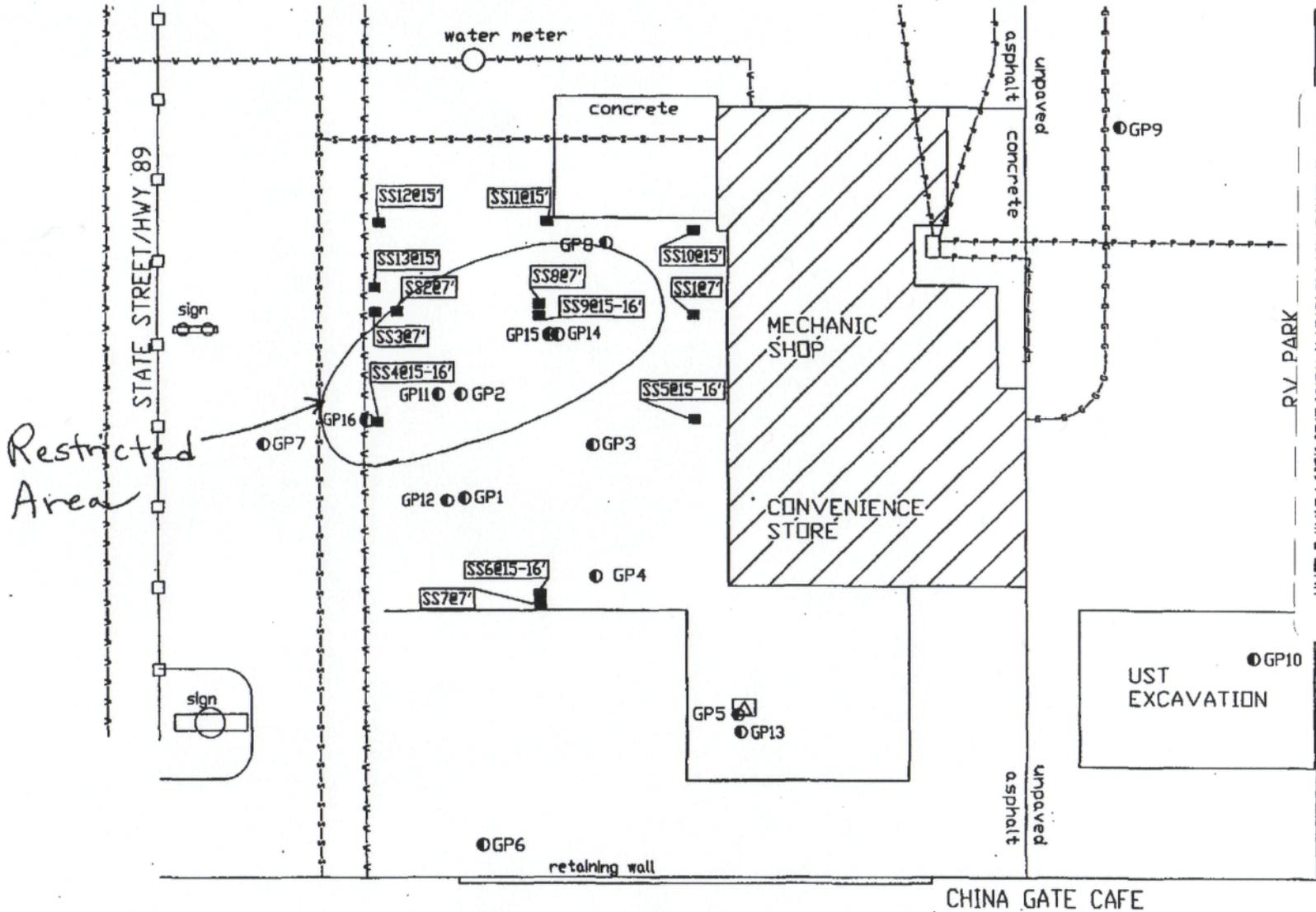
**Soil Data Tables**

**UST Facility Cleanup Standards, November 1, 2005 (R311-211-6, Utah Admin. Code)**

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Ellis Environmental	All sampling locations. GP designates push probe boring, SS designates soil samples collected during the 2007 excavation. Refer to the spreadsheet for sample quality summary.
DWG: terrysalno.661.dwg DATE: 11/10/11	SCALE: 1" = 10' 0" NORTH ↑

Former Salina Texaco  
 1485 (formerly 1385) South State Street, Salina, Utah  
 DERR Facility ID 2000282, Release IDLPO

Soil Data  
 mg/kg  
 EPA Method 8260

Sample Description	Sample ID	Depth feet b/s	Sample Collection Date	Benzene	Toluene	Ethyl- benzene	Xylenes	Naph- thalene	MTBE	TPH GRO C6-C10	TPH DRO C11-C16	
Closure	NE Corner Tanks Exc. 12' below grade	SS-1-C	12	7/22/2002	0.19	36	21	190	3.1	<0.1	910	98
	SE Corner Tanks Exc. 12' below grade	SS-2-C	12	7/22/2002	<0.0024	<0.0048	<0.0048	0.0079	<0.0048	0.046	<0.048	<0.048
	SW Corner Tanks Exc. 13' below grade	SS-3-C	13	7/22/2002	<0.05	0.5	0.67	5.1	0.5	<0.1	34	17
	NW Corner Tanks Exc. 13' below grade	SS-4-C	13	7/22/2002	<0.0025	<0.005	<0.005	<0.005	<0.005	0.019	0.088	0.071
	Piping 33' E of So Dispenser 4' below	SS-5-C	4	7/22/2002	0.0089	0.11	0.1	0.71	0.0057	0.0057	1.9	0.054
	Piping So Dispenser 4' below grade	SS-6-C	4	7/22/2002	0.0033	0.031	0.022	0.084	0.018	0.021	0.54	0.12
	Piping 45' W of So Dispenser 4' below	SS-7-C	4	7/22/2002	<0.0025	0.037	0.017	0.077	0.018	0.014	0.73	0.12
	Piping SW Dispenser 3' below grade	SS-8-C	3	7/22/2002	2.8	51	12	85	2	<0.1	980	150
	Piping NW Dispenser 3' below grade	SS-9-C	3	7/22/2002	7.9	210	69	529	7.3	<2	4700	720
	Piping NE Dispenser 3' below grade	SS-10-C	3	7/22/2002	<0.0024	0.013	0.01	0.08	<0.0048	<0.0048	1.1	0.3
	Piping SE Dispenser 3' below grade	SS-11-C	3	7/22/2002	0.18	5.2	13	100	<0.1	<0.1	1200	270
	SE Corner Tanks Exc. 12' below grade	SS-12-C	12	7/22/2002	CL Sandy Lean Clay					USC		
	Piping 45' W of So Dispenser 4' below	SS-13-C	4	7/22/2002	CL Sandy Lean Clay					USC		
Investigation		GP1	5-6	10/17/2002	0.72	6.1	1.3	9.8	1.2	0.19	65	9.7
		GP1	15-16	10/17/2002	<0.050	<0.10	0.27	2.9	1.5	<0.10	74	20
		GP1	20-22	10/17/2002	<0.0025	<0.005	<0.005	0.027	0.1	<0.005	1.3	1.1
		GP1	23-24	10/17/2002	0.0033	0.019	0.01	0.07	0.087	0.015	0.83	0.14
		GP2	5-7	10/17/2002	3.9	7	14	190	1.7	<0.10	1200	45
		GP2	14-16	10/17/2002	<0.0029	0.02	0.018	0.18	0.4	0.0078	20	15
		GP3	5-7	10/17/2002	0.22	0.18	0.23	1.2	0.2	0.048	17	1.5
		GP3	14-16	10/17/2002	0.0034	0.013	0.0089	0.042	0.019	0.012	0.55	0.17
		GP3	18-20	10/17/2002	0.0031	0.0095	<0.0047	0.013	0.011	<0.0047	0.12	0.16
		GP4	5-7	10/17/2002	0.11	4.4	13	95	6.5	<0.0045	180	33
		GP4	14-16	10/17/2002	0.0078	0.022	<0.0054	0.033	0.2	<0.0054	4.6	3.2
		GP4	23-24	10/17/2002	0.0041	0.017	0.0066	0.041	0.06	<0.0049	0.94	0.56
		GP5	5-7	10/17/2002	0.076	3.8	11	220	7.8	<0.10	800	69
		GP5	14-16	10/17/2002	<0.050	0.24	2.8	13	8	<0.10	300	56
					Tier 1 SL	0.9	25	23	142	51	9.3	1990
				ISL	0.2	9	5	142	81	0.3	150	500

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Former Salina Texaco  
1485 (formerly 1385) South State Street, Salina, Utah  
DERR Facility ID 2000282, Release ID LPO

TPH Fractionation Soil Data  
mg/kg  
EPA Method 8260

GP-14, 19-20 feet, TPH GRO 18000 mg/kg

	GP-14 19-20 feet
C9-C10 Alkyl Benzenes (aromatics)	71
C6 Aliphatics	78
C7-C8 Aliphatics	3200
C9-C10 Aliphatics	14000

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**Initial Screening Levels**  
November 1, 2005

Contaminants*	Groundwater (mg/L)	Soil (mg/kg)
Benzene	0.005	0.2
Toluene	1.0	9
Ethylbenzene	0.7	5
Xylenes	10.0	142
Naphthalene	0.7	51
Methyl t-butyl ether (MTBE)	0.2	0.3
Total Petroleum Hydrocarbons (TPH) as gasoline	1	150
Total Petroleum Hydrocarbons (TPH) as diesel	1	500
Oil and Grease or Total Recoverable Petroleum Hydrocarbons (TRPH)	10	1000

**Tier 1 Screening Criteria**  
November 1, 2005

*Tier 1 Screening Levels are applicable only when the following site conditions are met:*

- 1.) No buildings, property boundaries or utility lines within 30 feet of the highest measured concentration of any contaminant that is greater than the initial screening levels but less than or equal to the Tier 1 screening levels AND,*
- 2.) No water wells or surface water within 500 feet of highest measured concentration of any contaminant that is greater than the initial screening levels but less than or equal to the Tier 1 screening levels.*

Contaminants *	Groundwater (mg/L)	Soil (mg/kg)
Benzene	0.3	0.9
Toluene	3	25
Ethylbenzene	4	23
Xylenes	10	142
Naphthalene	0.7	51
Methyl t-butyl ether (MTBE)	0.2	0.3
Total Petroleum Hydrocarbons (TPH) as gasoline	10	1500
Total Petroleum Hydrocarbons (TPH) as diesel	10	5000
Oil and Grease or Total Recoverable Petroleum Hydrocarbons (TRPH)	10	10000

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