

When Recorded Return To:  
Mark Himberger  
One Shell Plaza, 910 Louisiana Street  
Houston, Texas, 77002

With Copy To:  
Project Manager: Melissa Turchi, Release Site LSK, and LXX  
Division of Environmental Response and Remediation  
DEQ  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

Parcel No. 08-25-126-008

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11/22/2011 11:40 AM \$32.00  
Book - 9968 Pg - 5680-5691  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
MARK HIMBERGER  
ONE SHELL PLAZA  
910 LOUISIANA ST  
HOUSTON TX 77002  
BY: ZJM, DEPUTY - WI 12 P.



### ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by the Pennzoil-Quaker State Company ("Pennzoil") 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 below. 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

##### 1. Utah Department of Environmental Quality Records

The property was the subject of an environmental response project overseen by DEQ's Division of Environmental Response and Remediation ("DERR"). Requests for records should be directed to the DERR and referenced as Facility Identification Number 4000691, Release Identifications ELSK and ELXK.

##### 2. Historical Property Use

The Property is located at 1180 North Beck Street, in Salt Lake City, Utah (tax parcel number 08-25-126-008) and is owned by the Pennzoil-Quaker State Company. The Property is zoned for light manufacturing (M-1) usage by the City of Salt Lake. The Property was formerly operated as a lubricating oil distribution center. Storage and distribution operations were ceased at the property in November 2011. Upon facility closure, all exterior ASTs (14) were emptied, cleaned and removed from the Property and five (5) additional ASTs situated in the building interior were emptied and cleaned as well.

##### 3. The Contamination

- a) The Pennzoil-Quaker State Company - Salt Lake Distribution Center property has been the location of reported releases of lubricating oil. The first reported release was

identified in 2002 at the location of the above ground storage tanks (ASTs) and was followed by a second release identification in 2005 following the identification and removal of an underground storage tank (UST). The DEQ Department of Environmental Response and Remediation (DERR) assigned the release IDs ELSK, and ELXK to the ASTs and UST releases, respectively under the Utah UST Program.

b) To address the presence of separate-phase liquid (SPL) and impacted soil observed in the vicinity of the former AST tank farms, soil excavation was performed in November 2010. The extent of the excavation was determined by the presence of SPL and was bounded by the Site buildings to the south and southwest of the AST and storm drain area and the interception trench to the northwest. The excavation yielded approximately 823 tons (625 cubic yards) of impacted soils.

c) The southern boundary of the excavation was extended to the northern limit of a previous excavation performed for the former UST Tank C release (ID LXX), which was removed together with adjacent soils in 2004. Following the 2004 UST removal, five soil confirmation samples (CS-401 through CS-405) were collected from the side walls and floor of the Tank C excavation area. Of the five samples collected, the concentrations in three samples (CS-401, CS-402, and CS-403) exceeded relevant RBCA Tier 1 screening levels. However, it should be noted that any impacted soils associated with sample locations CS-402 and CS-404 were subsequently abated and removed as part of the November 2010 excavation.

d) Eight soil grab confirmation samples were collected during excavation of the AST area in November 2011. All the analytical results for these samples were below the Risk-Based Corrective Action (RBCA) Tier 1 screening levels with the exception of one sample from the AST area excavation that was collected adjacent to the facility building. The analytical results for confirmation sample CS SW-1 showed exceedances of the RBCA Tier 1 screening levels for total petroleum hydrocarbons–diesel range organics (TPH-DRO), total recoverable petroleum hydrocarbons (TRPH), and oil and grease (O&G). This confirmation sample was taken from the soil beneath where the piping manifolds entered and exited the building.

e) Results of the post 2004 and 2010 excavation soil confirmation sampling indicate that remaining soil impact is confined to a portion of the property located east of the former ASTs and UST Tank C, adjacent to and potentially beneath a portion of the warehouse building. This impacted area within the property is referred to herein as the “Restricted Area”, and is more specifically defined below.

f) Two semiannual rounds of post-remediation groundwater samples were collected from downgradient monitoring wells MW-19, MW-20, and MW-27 in January and July 2011. Analytical results from the sampling events indicated that all concentrations were below the laboratory detection levels or below the RBCA Tier 1 screening levels.

#### **4. Pathways and Receptors**

Based upon the subsurface investigation and post remediation soil sampling data collected at the Site, the horizontal and vertical extent of soil impacts have been defined and are confined to an area in the vicinity of the indoor ASTs. This impacted area within the Property is referred to herein as the "Restricted Area", and is more specifically defined below. Since the property is zoned industrial, on-site receptors would likely include adult commercial/industrial workers in both the current and future scenarios, as well as construction/utility workers. Pathways that would be considered complete include construction worker/underground utility worker for contact/ingestion and outdoor air, and also commercial worker/industrial worker for volatilization to indoor air.

### **B. Covenant**

Now therefore, Pennzoil makes and imposes this Environmental Covenant upon the Property.

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

**2. Property.** This Environmental Covenant concerns an approximately 3.03 acre property; tax parcel number 08-25-126-008, owned by the Pennzoil-Quaker State Company, located at 1180 North Beck Street, Salt Lake City, in Salt Lake County, Utah, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property").

a) **Restricted Area.** The Restricted Area is a portion of the Property, consisting of an approximate 0.066 acre tract, and more particularly shown in Figure 1 and the "Record of Survey", attached hereto, and described in Exhibit A, attached hereto, and hereby incorporated by reference herein ("Restricted Area"). The Restricted Area contains that portion of the Property that exceeds the RBCA Tier 1 Screening Levels for soil.

**3. Owner.** Pennzoil is an Owner and the grantor of the Environmental Covenant. Pennzoil is located at 700 Milam Street, Houston Texas, 77002. The "Owner" in this Environmental Covenant is a person who controls, occupies, or holds an interest (other than this Environmental Covenant) in the Property at any given time. Consistent with Paragraph 6 of this Environmental Covenant, the obligations of the Owner are transferred to assigns, successors in interest, including without limitation to future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, and any other person or entity who acquires any interest whatsoever in the Property, or any portion thereof, whether or not any reference to this Environmental Covenant or its provisions are contained in the deed or other conveyance instrument, or other agreements by which such person or entity acquires its interest in the Property or any portion thereof (the "Transferees"). Owner and all Transferees shall hereinafter be referred to in this Environmental Covenant as "Owner."

**4. Holder.** Pennzoil is also the Holder (grantee) of this Environmental Covenant. Holder shall have the right to designate one or more persons to act on its behalf under this Environmental

Covenant, which designation shall: (a) be in writing; (b) refer to this Environmental Covenant; and (c) be duly recorded in the Salt Lake County, Utah real property records, and following such designation Holder shall notify Owner and DEQ regarding the same.

**5. Activity and Use Limitations.** As part of the Environmental Response Project described above the Owner hereby imposes and agrees to implement, administer, and maintain the following activity and use limitations. In the event the Owner conveys or transfers an interest in the Property or any portion thereof to another party, the Transferee shall implement, administer, and maintain the following activity and use limitations.

a) Groundwater Use. The Owner shall not extract or allow anyone else to extract groundwater for any purpose except for investigation or remediation. Groundwater may also be extracted for dewatering in accordance with Paragraph 5.C below.

b) Disturbance Limitations. The Owner shall prevent human contact with the hydrocarbon-affected soil and groundwater in the Restricted Area except as allowed in this Paragraph 5. Excavation or disturbance of the hydrocarbon-affected soil and groundwater is allowed, provided the hydrocarbon-affected soil and groundwater are handled, transported and disposed of in accordance with applicable law, workers are notified of the hydrocarbon-affected soil and groundwater, have proper training, and are provided with health and safety procedures in compliance with applicable worker health and safety laws. In addition before excavating or disturbing the hydrocarbon-affected soil and groundwater, the Owner shall notify the Holder and DEQ at least 30 days in advance.

c) Restricted Area Ventilation. The Owner shall ensure ventilation of the warehouse buildings crawl space located within the Restricted Area whenever the building is occupied. Potential residual soil impact within the Restricted Area may allow vapor migration through the crawl space and wood floor of the warehouse building. The Owner shall mitigate this potential hazard through the continuous operation of a ventilation system capable of meeting an air exchange rate of four (4) air changes per hour (ACH). Operation of the ventilation system may be ceased by the Owner upon approval from the DEQ that the vapor intrusion pathway has been demonstrated to be incomplete.

d) Construction Limitations. In general, any construction activity on the Property must leave the Restricted Area ventilation intact. In the event that construction activity needs to alter the Restricted Area ventilation, the DERR must be notified at least 45 days prior to such construction activities commencing and such actions must comply with this Environmental Covenant. The Owner shall notify the DEQ of plans to place in the Restricted Area a new structure that is expected to be occupied. The Owner promptly shall determine if a vapor intrusion risk exists due to hydrocarbon-affected soil, assess a need for mitigation, and if such mitigation is necessary, shall promptly mitigate such risks by remediation of hydrocarbon-affected soil or installation of institutional controls.

The Owner shall file reports with DEQ detailing the assessment and the mitigation. The assessment and mitigation plan reports shall be prepared by a certified underground storage tank consultant pursuant to Section 19-6-402(6) of the Utah Code Ann. and Rule R 311 of the Utah Admin. Code and Section 311-201-2 and R311-204-5 of the Utah Admin. Code. The Owner shall not allow occupancy of a new structure in the Restricted Area until vapor intrusion risks have been adequately assessed or mitigated. The Owner shall notify the DEQ prior to allowing occupancy of a new structure in the Restricted Area.

**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.

**8. Rights of Access.** Owner hereby grants to the Holder, DEQ, and their 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 Holder and DEQ 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 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 \_\_\_\_\_, 200\_, IN /DOCUMENT \_\_\_\_, or BOOK \_\_\_\_, PAGE \_\_\_\_,].

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. Owner shall disclose in writing the terms of this Environmental Covenant to any Transferee of any interest in the Property or a portion thereof.

**11. Representations and Warranties.** Pennzoil hereby represents and warrants that:

- A. Pennzoil is the sole owner of the Property;
- B. Pennzoil hold fee simple title to the Property which is subject to the interests or encumbrances used to prevent exposure to lubrication oil impacted soils underlying the warehouse building.
- C. Pennzoil 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;
- D. Pennzoil 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;
- E. this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which Pennzoil is a party or by which Pennzoil may be bound or affected.

**12. Amendment or Termination.** This Environmental Covenant may be amended or terminated pursuant to the Act. Pennzoil waives the right to consent to amendment or termination and also consent to recording of any instrument related to the amended or terminated Environmental Covenant if Pennzoil is not the current Owner.

**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 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, Owner[s] shall file this Environmental Covenant for recording in the same manner as a deed to the Property, with the Salt Lake County Recorder's Office. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the DEQ; the Salt Lake County of Utah and the "Holder," any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property; and any other person designated by the DEQ.

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

Project Manager: Melissa Turchi, Release Site ELSK, and ELXX  
Division of Environmental Response and Remediation  
DEQ  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

Owner  
Pennzoil-Quaker State Company  
700 Milam Street  
Houston, Texas, 77002

**16. Governmental Immunity.** In executing this 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") from 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. 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 Pennzoil represents and certifies that he is authorized to execute this Environmental Covenant.

**IT IS SO AGREED:**

Pennzoil-Quaker State Company

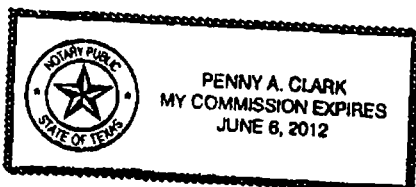
  
Mark Himberger  
Principle Program Manager

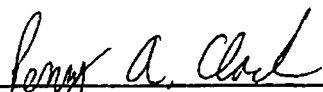
11/28/11  
Date

<sup>pac 11/28/11</sup>  
State of Harris Texas )  
County of Harris ) : ss.

Before me, a notary public, in and for said county and state, personally appeared Mark Himberger, a duly authorized representative of Pennzoil-Quaker State Company, who acknowledged to me that *he* did execute the foregoing instrument on behalf of Pennzoil-Quaker State Company.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 28 day of November, 2011.



  
Notary Public  
My Commission expires: 06/06/2012



UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

The Utah 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

15 November 2011

Date

State of Utah )

County of Salt Lake ) : ss.

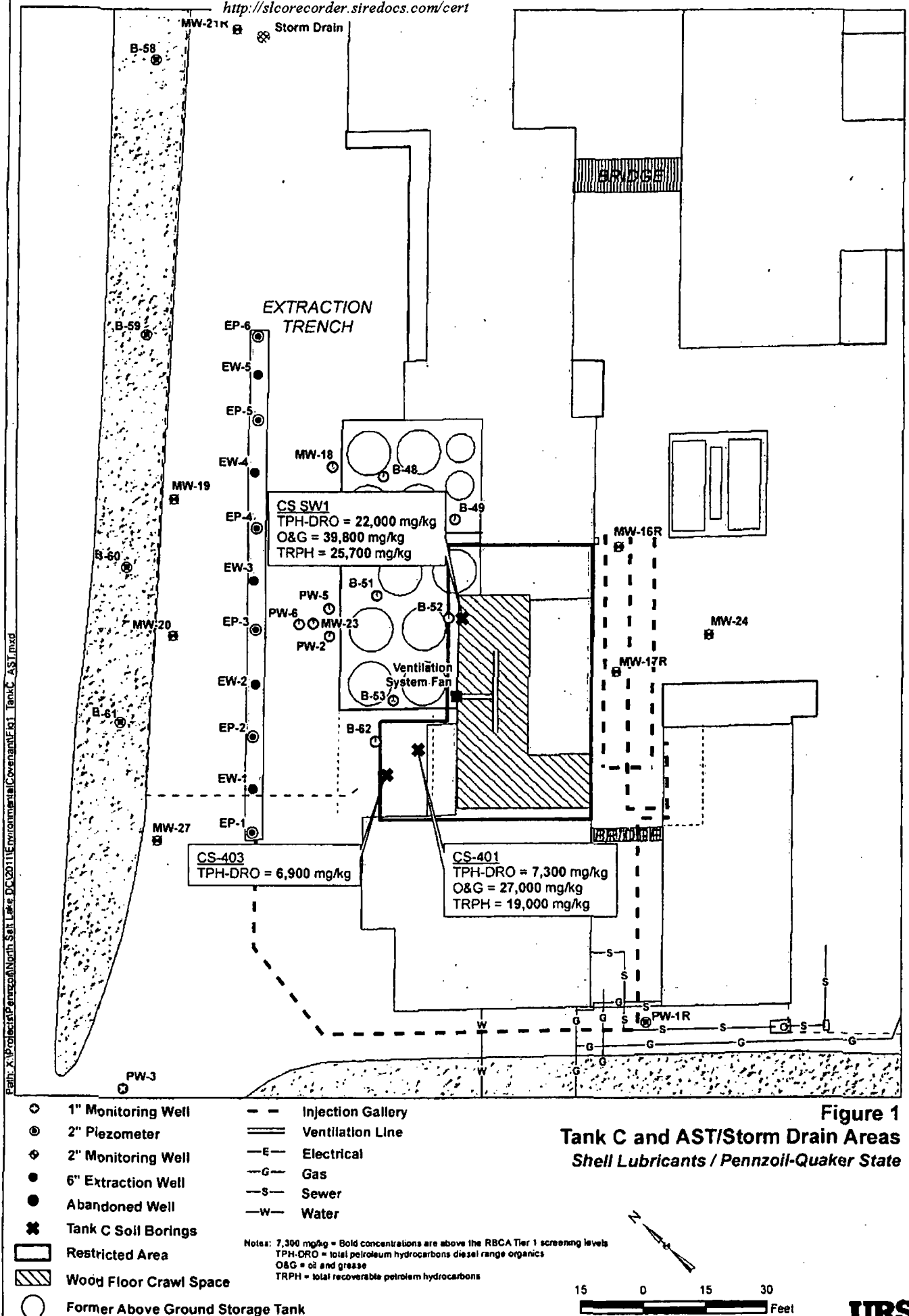
Before me, a notary public, in and for said county and state, personally appeared Brent H. Everett, an authorized representative of the Utah Department of Environmental Quality, who acknowledged to me that he did execute the foregoing instrument this 15 day of November, 2011.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 15 day of November, 2011.



Dana J. Powers  
Notary Public

My Commission expires: 6-23-2015



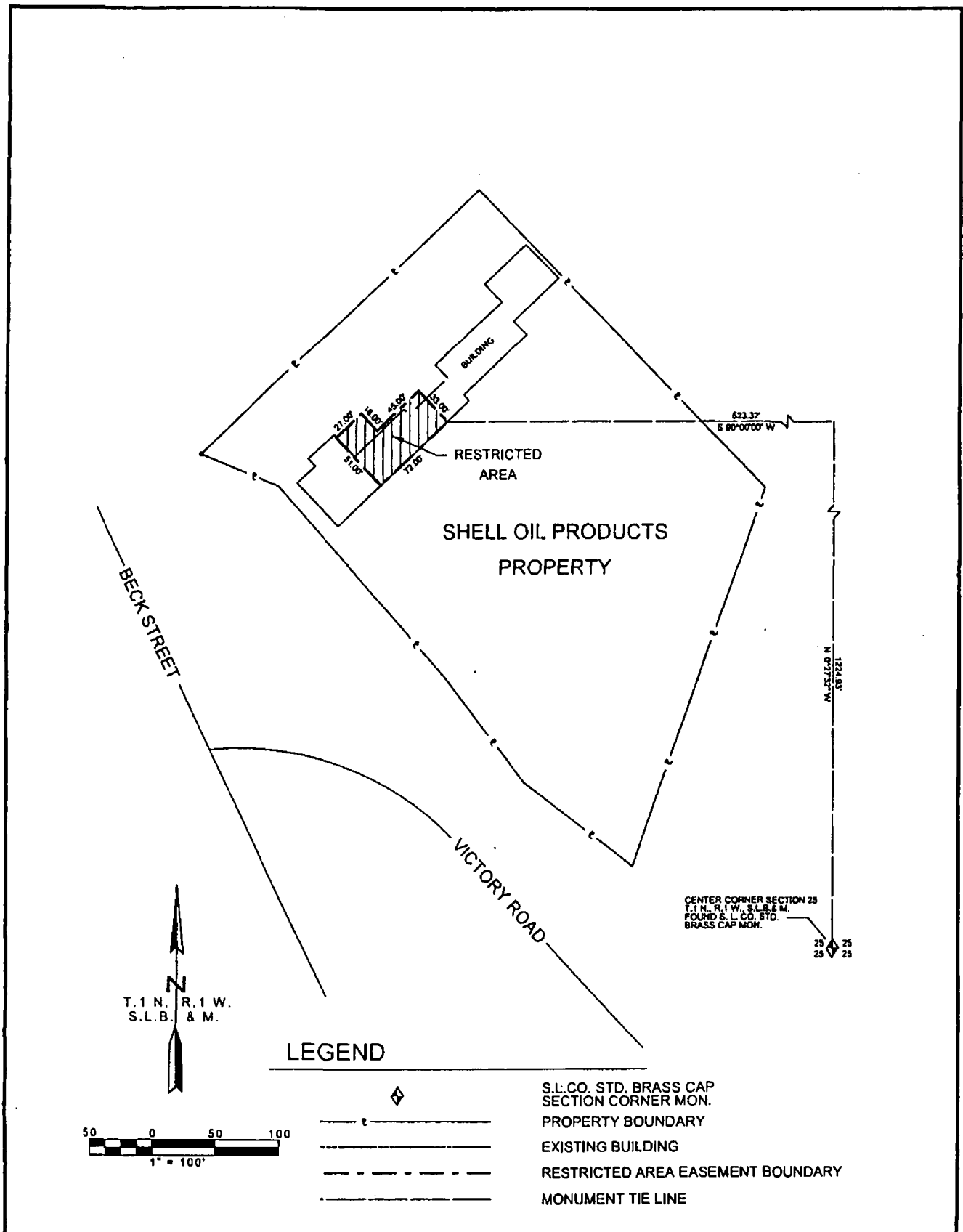
## **Exhibit A**

### **Restricted Area Description**

A restricted area, upon part of an entire tract of property, in the NW1/4 of Section 25, T. 1 N., R. 1 W., S.L.B. & M., in Salt Lake County, Utah, for the purpose of activity and use limitation. The boundaries of said part of an entire tract are described as follows:

Beginning at a point which is 1224.93 feet N. 0°27'32" W. along the Quarter Section line and 523.32 feet West from the Center of said Section 25 and running thence S. 46°27'46" W. 72.00 feet; thence N. 43°32'14" W. 51.00 feet; thence N. 46°27' 46" E. 27.00 feet; thence S. 43°32'14" E. 18.00 feet; thence N. 46°27'46" E. 45.00 feet; thence S. 43°32' 14" E. 33.00 feet to the point of beginning.

The above described part of an entire tract contains 2,862 square feet or 0.066 acre.



DESIGN MKP	<b>SHELL OIL PRODUCTS                  RESTRICTED AREA EASEMENT                  SALT LAKE CITY, UTAH</b>	 <b>ESI ENGINEERING</b> CONSULTING ENGINEERS AND LAND SURVEYORS 3500 SOUTH MAIN STREET SUITE 206 SALT LAKE CITY, UTAH 84115 TEL: (801) 263-1752	SHEET <u>1</u> OF <u>1</u>
DRAWN MKP			PROJECT NO. 11-114
CHECKED KPM			
DATE 10/10/11			