

March 5, 2015

BRRTS#: 07-03-562890

Barron County
Attn: Vonnie Ritchie, County Treasurer
335 East Monroe Avenue
Room 2412
Barron, WI 54812

Subject: Liability Clarification and Current Environmental Conditions for the Bents
Motors Properties, US Highway 63 and 18 ¾ Avenue, Comstock, WI 54826

Dear Ms. Ritchie:

Request and Purpose

On November 28, 2014, the Wisconsin Department of Natural Resources ("the Department") received a request for a general liability clarification letter from County Treasurer, Vonnie Ritchie, on behalf of Barron County. As requested, this letter provides an explanation of the local governmental unit (LGU) liability exemption regarding the County's proposed acquisition of twelve (12) parcels referred to as "the Property" (See Attachment A - Parcel List), located on both US Highway 63 and 18 ¾ Avenue in Comstock, Town of Crystal Lake.

Section 292.11(9)(e)1m, Stats., was created to exempt LGUs from liability for hazardous substance discharges that the LGU did not cause, if a property is acquired by a LGU through methods including, but not limited to, tax delinquency, bankruptcy, eminent domain, condemnation, or for the purpose of blight elimination or slum clearance. Under this exemption, a LGU is not required to investigate or clean up properties under the requirements of s. 292.11(3), (4), and (7)(b) and (c), Stats., if the LGU takes title for the properties through one of the eight prescribed acquisition methods listed in the statute.

Background and Summary of Environmental Conditions

This Property (all 12 parcels) is a total of 8.149 acres. Previously, the Property was an automotive dealership developed in the 1940's. The site originally consisted of a smaller service and sales building, and underground storage tanks. Currently the Property is used for storage. The foundation is a concrete slab on concrete footings.

The Property is listed as a closed site in the Bureau for Remediation and Redevelopment Tracking System (BRRTS) # 03-03-000395. The Department was notified of a release in 1991 from a site assessment report submitted by Cedar Corporation. A waste oil underground storage tank (UST) was excavated and three USTs: (two) 2000 gallon gasoline, and (one) 1000 gallon diesel; were abandoned in place. Impacted soil was observed in the waste oil tank and approximately 65 tons of

impacted soils were excavated and properly disposed. Soil samples confirmed no further remediation was needed in this area.

However, petroleum impacted soil was also observed near the tank system located in front of the building on the east side. In response, groundwater monitoring wells were installed and soil borings performed to define the degree and extent of contamination. An excavation removed additional impacted soils. The site was monitored for natural attenuation and was closed by the Department of Safety and Professional Services on August 25, 2011. The site was placed on the GIS registry for remaining soil and groundwater contamination. The extent of soil and groundwater contamination is shown on the attached Figure 3, Soil Excavation Map, prepared by Meridian Environmental Consulting on April 19, 2011 and Figure 5, Extent of Ground Water Contamination, also prepared by Meridian on April 15, 2011. Soil contamination remains under the former tank and pump island locations, and extends into the right-of-way of Highway 63. Groundwater contamination remains under the former tank and pump island locations, extending across Highway 63 and onto the 1872 Highway 63 property, owned by Bents Motors. There is remaining direct contact soil contamination (from 3-4 feet below ground surface) in GP-3, GP-6, and GP-8, located in the former tank and pump island areas. This is shown on Table 1: Soil Analytical Data and Figure 3, which are attached. There was no cap maintenance plan required at the time of closure. These items will need to be considered during the redevelopment of the Property.

Documents reviewed

- Technical Assistance and Environmental Liability Request (Form 4400-237), dated 11/24/14.
- GIS registry packet, dated August 25, 2011, from a closed investigation on the Property.

Barron County's proposals for the Property

- The Property is currently owned by Bents Motors, Inc., however Barron County intends to acquire the Property through the In-rem tax foreclosure process at an unknown date in the future.
- The Property is currently being used as storage for boats and cars. The Property was previously a car dealership and may have been a gas station.
- Surrounding land uses include the Comstock Creamery, a trailer court, a post office and vacant land. (See Property Location and Land Use Map, attached as Figure 1.)
- Future plans are uncertain at this time, but may include expansion of the current ATV trail system by the recreation department. The highway department may use the existing buildings for storage and the Comstock Creamery may be interested in some of the other parcels for expansion purposes.

Local Governmental Liability Exemption

To provide liability relief to local governmental units (LGUs), the Wisconsin legislature amended the Spill Law to include an exemption to some provisions of the Spill Law for LGUs that meet certain specified conditions in s. 292.11(9)(e), Wis. Stats. The general conditions an LGU must meet in order to demonstrate eligibility for the LGU exemption are described below:

Acquisition method: A local government is eligible for the exemption from portions of the Spill Law if it acquires the contaminated property by one of the following means:

- result of an order by a bankruptcy court
- tax delinquency proceedings
- from a local governmental unit that has the exemption
- escheat
- condemnation or other proceeding under chapter 32, Stats.
- for the purpose of slum clearance or blight elimination
- use of Stewardship funds with a signed agreement with the Department

Action or Inaction: The LGU exemption does not apply at a property where the discharge of a hazardous substance was caused by any of the following:

- An action taken by the LGU;
- A failure of the LGU to take appropriate action to restrict access to the property;
- A failure of the LGU to sample and analyze unidentified substances in containers stored above ground on the property; or
- A failure of the LGU to remove and properly dispose of, or to place in a different container and properly store, any hazardous substances stored in a container that is leaking or is likely to leak, stored above ground on the property.

Liability Determinations

Under Wisconsin's Hazardous Substance Spill Law (the "Spill Law"), s. 292.11, Wis. Stats., a person who "possesses, controls or causes" a hazardous substance discharge is liable for taking necessary investigation and cleanup actions at the Property. Section 292.55(1)(d)1., Wis. Stats., authorizes the Department to issue letters concerning potential liability for environmental pollution. This liability exists even if another person, such as a prior owner or tenant caused the contamination.

Whenever possible, the Department requires the person who caused the hazardous substance discharge to take the appropriate response actions. However, if these persons cannot be located or are unable to pay, the owner of the Property is responsible for taking the appropriate actions. The Department will take the steps available to it through state law to compel the person that the Department believes to have caused the discharge on the Property to take the response action necessary to address that threat. The Department would only require the person in current possession or control of the Property to address that threat if the Department were unable to compel the person who caused the discharge to take the appropriate response action.

The R&R Program at the Department of Natural Resources (Department) provides the following environmental clarifications and assurances to Barron County concerning your proposed method of acquiring the Property and potential reuse plans.

If Barron County acquires the Property through in rem foreclosure against delinquent property taxes, and follows the provisions of s. 292.11(9)(e), Stats., the County will be eligible for the LGU liability exemption under s. 292.11(9)(e)1m.a., Stats. The County should document its acquisition methods for the Department, provide a copy of the court's Judgment of Title Assignment to the County, and notify the Department of when the Property is acquired. If the Property or any of the parcels are subsequently transferred to the Town of Crystal Lake, or another eligible LGU, under the provisions of s. 292.11(9)(e)1m.b. or s. 75.17, Stats., that LGU will also be eligible for the LGU liability exemption in addition to the County. Documentation of that process of transfer and notification to the Department of that acquisition date should occur as well.

In addition, Barron County asked a number of very specific questions; the answers are provided below.

1. Does any redevelopment plan need to be approved by the DNR prior to taking title to the Property?

No, the Department does not have to approve a redevelopment plan prior to the County taking title to the Property. However, the Department could evaluate and discuss potential future uses if a specific plan is submitted. The County should be aware that if they put the Property to its intended use, the LGU must take any necessary actions to reduce any exposure to contaminants to prevent a substantial threat to public health or safety. If the LGU does not take those actions, then, the LGU may risk losing their Spill Law exemption. That is why the DNR highly encourages LGUs to discuss development plans in advance of undertaking those actions, especially at sites that may be contaminated and the LGU does not intend to conduct a voluntary cleanup of the entire Property.

2. What are the restrictions for redevelopment on this Property?

As the County looks at potential uses for the Property, the Department recommends gathering sufficient information to confirm existing conditions do not affect or create problems with future development. The known conditions described below should be factored into any redevelopment plans that are considered by the County.

The Property is listed as a closed site in the Bureau for Remediation and Redevelopment Tracking System, (BRRTS) # 03-03-000395. The extent of soil and groundwater contamination is shown on the attached Table 1 and Figures 3 and 5. There is residual soil contamination as shown on Figure 3. At the time of excavation of soil in this area, the property owner must have the soil analyzed to determine whether the soil would be considered solid or hazardous waste and ensure any storage, treatment or disposal is in compliance with applicable statutes and rules. The Department must be contacted before the construction of any private wells on the Property.

3. What is the liability to new owners if the Property is sold at public auction?

The LGU exemption is not transferrable to private parties. Subsequent owners will not receive LGU liability exemption protection. They would be considered a responsible party if any new investigation and remediation needs arise at the Property.

Please note that this letter does not exempt any existing underground storage tanks on the Property from compliance with federal and state requirements, including ch. ATCP 93, Wis. Adm. Code. If you have questions regarding these requirements, you should contact the Weights and Measures program at the Department of Agriculture Trade and Consumer Protection. For questions about weights & measures issues, call 608-224-4942, or email: datcpweightsandmeasures@wi.gov. The program website can be found at [http://datcp.wi.gov/consumer/weights and measures/Storage Tank Regulations/](http://datcp.wi.gov/consumer/weights_and_measures/Storage_Tank_Regulations/)

The Department tracks information on contaminated properties in a database that is available on the Internet at dnr.wi.gov/topic/Brownfields/clean.html. The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is included at the top of this letter. Click on "BRRTS on the web" to access information about this activity.

More information about the LGU exemption is on the DNR website: <http://dnr.wi.gov/topic/Brownfields/lgu.html> Click on the tab for Liability Tools and Acquisition and the FAQ tab for more information. If the Town of Crystal Lake is also interested in the LGU exemption for one or more of these properties, please look on the website and talk with Carrie Stoltz for additional assistance.

If you have any questions or concerns regarding this letter, please contact Carrie Stoltz at the Department's Rhinelander Service Center, 107 Sutliff Avenue, Rhinelander, WI 54501, directly at (715) 365-8942, or by e-mail to Carrie.Stoltz@wisconsin.gov.

Sincerely,



John Robinson
Northern Region Team Supervisor
Remediation and Redevelopment Program

Attachments:

- Attachment A-Property List
- Figure 1: Site map
- Figure 3: Soil Excavation Map
- Figure 5: Extent of Ground Water Contamination
- Table 1: Soil Analytical Data

Cc: Carrie Stoltz-WDNR Project Manager (via email)
Dan Kolberg-WDNR Land Recycling Team (via email)
Arlene Frisinger-Clerk/Treasurer, Town of Crystal Lake, 164 22nd Avenue,
Comstock, Wi 54826

Attachment A-Property List

396 18 ¾ Avenue, Parcel # 016-3400-05-000, Owner: Bents Motors, Inc.

397 18 ¾ Avenue, Parcel # 016-3400-17-000, Owner: Bents Motors, Inc.

No address, Parcel # 016-3400-19-000, Owner: Bents Motors, Inc.

No address, Parcel # 016-3400-25-000, Owner: Bents Motors, Inc.

1872 USH 63, Parcel # 016-4044-13-000, Owner: Bents Motors, Inc.

No address, Parcel # 016-4044-15-000, Owner: Bents Motors, Inc.

No address, Parcel # 016-4044-18-000, Owner: Bents Motors, Inc.

1870 USH 63, Parcel # 016-4044-19-000, Owner: Bents Motors, Inc.

1866 USH 63, Parcel # 016-4044-20-000, Owner: Bents Motors, Inc.

1864 USH 63, Parcel # 016-4044-21-000, Owner: Bents Motors, Inc.

No address, Parcel # 016-4044-22-000, Owner: Bents Motors, Inc.

No address, Parcel # 016-4044-23-000, Owner: Bents Motors, Inc.

BENTS MOTORS, INC.

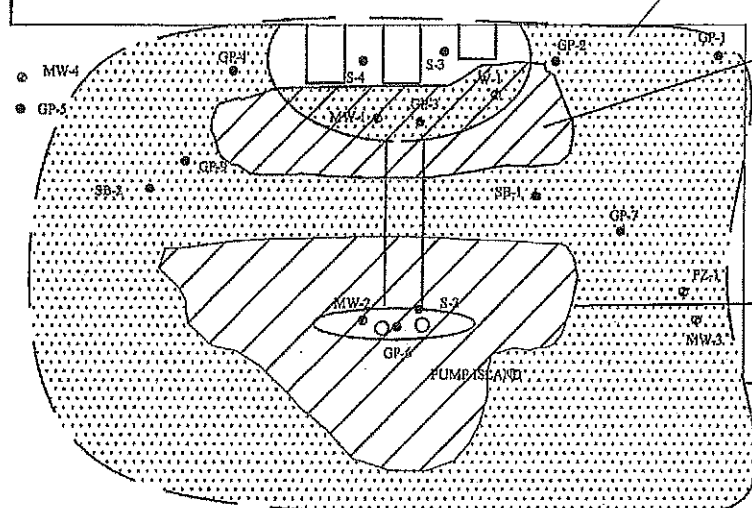
RESIDUAL
CONTAMINATION

USTs ABANDONED IN PLACE
2000 GAL GASOLINE 550 GAL DIESEL

VENTS

TANK EXCAVATION AREA

PUMP ISLAND
EXCAVATION AREA



HWY 63

MW-6 ●● MW-5

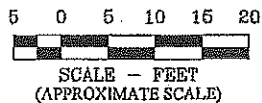
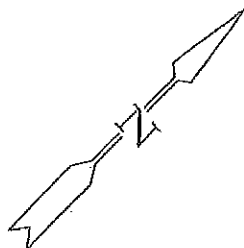



Figure 3
Soil Excavation Map
Bents Motors
Comstock, WI

PROJECT NO. 05C668	PREPARED BY RSK	 Meridian Environmental Consulting, LLC
DATE 4/19/11	REVIEWED BY KAS	

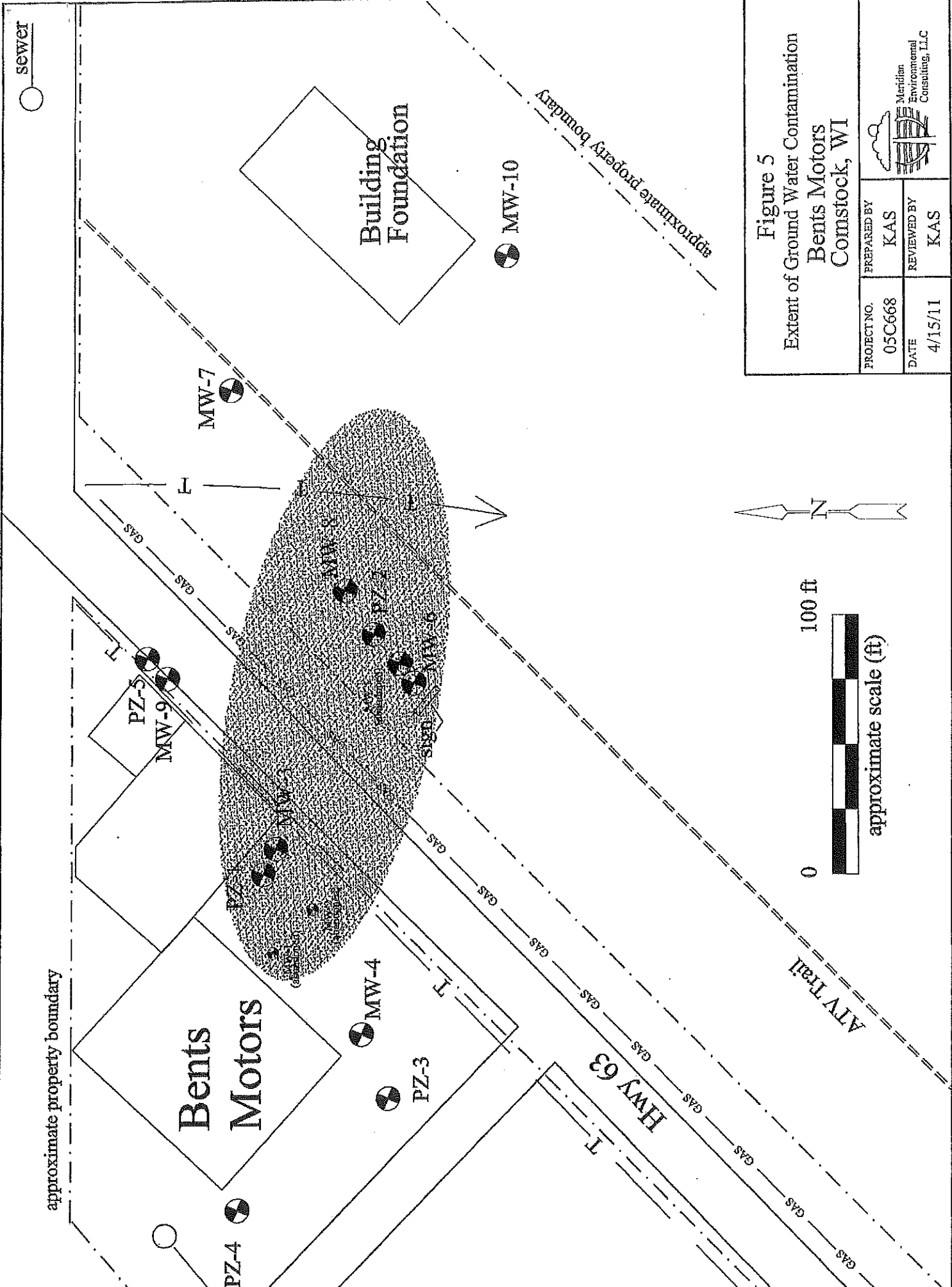
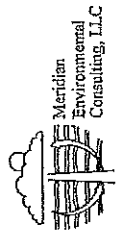


Figure 5
 Extent of Ground Water Contamination
 Bents Motors
 Comstock, WI

PROJECT NO.	05C668	PREPARED BY	KAS
DATE	4/15/11	REVIEWED BY	KAS



Meridian
 Environmental
 Consulting, LLC

Table 1: Soil Analytical Data

Bents Motors
 Comstock, Wisconsin
 Meridian No. 05C688

Soil Data

Sample	Units	Benzene	Ethylbenzene	MTBE	Naphthalene	Toluene	1,2,4-TMB	1,3,5-TMB	Total TMBs	Xylenes	DRO
Soil Borings (March 29, 2006)											
GP-1 3-4	mg/kg	ND	ND	ND	ND	0.0689	ND	ND	ND	0.0495	29.5
GP-1 7-8	mg/kg	ND	ND	ND	ND	ND	ND	ND	ND	ND	9.7
GP-2 3-4	mg/kg	ND	0.0527	ND	ND	0.0415	0.0688	0.0411	0.1049	0.1193	20.2
GP-3 3-4	mg/kg	8.71	70.6	ND	16.1	19.9	150	66.5	215.5	252.6	1550
GP-3 7-8	mg/kg	0.263	4.32	ND	2.02	1.59	11.1	4.6	15.7	9.08	142
GP-4 3-4	mg/kg	0.117	0.0728	ND	0.0918	0.0694	0.0766	0.0469	0.1235	0.106	17.7
GP-4 7-8	mg/kg	0.0334	0.137	ND	0.275	0.0897	0.621	0.787	1.405	0.187	66.8
GP-5 3-4	mg/kg	0.0322	ND	ND	ND	ND	ND	ND	ND	0.0407	ND
GP-5 7-8	mg/kg	81.4	179	ND	34.2	592	132	440	765	0.0394	12.2
GP-6 7-8	mg/kg	32.4	89.6	ND	23.3	216	117	51.2	168.2	323.2	797
GP-7 3-4	mg/kg	ND	ND	ND	ND	ND	ND	ND	ND	ND	9.4
GP-8 3-4	mg/kg	1.79	3.24	ND	1.56	0.473	4.57	2.38	6.95	5.929	26.2
GP-9 3-4	mg/kg	0.0767	0.133	ND	0.0669	0.0653	0.0977	0.078	0.1757	0.1888	17.8
GP-10 3-4	mg/kg	ND	ND	ND	ND	ND	ND	ND	ND	ND	11.7
GP-10 7-8	mg/kg	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
July 12, 2006											
PZ-1 5-7	mg/kg	ND	ND	ND	ND	ND	ND	ND	ND	ND	NA
PZ-1 20 - 22	mg/kg	ND	0.084	ND	ND	ND	ND	ND	ND	ND	NA
PZ-1 40 - 42	mg/kg	ND	ND	ND	ND	ND	ND	ND	ND	ND	NA

Excavation Confirmation Samples

Sample	Units	Benzene	Ethylbenzene	MTBE	Naphthalene	Toluene	1,2,4-TMB	1,3,5-TMB	Total TMBs	Xylenes
Tank W Wall	mg/kg	0.182	1.23	ND	0.329	0.358	3.24	1.6	4.84	3.37
Tank N Wall	mg/kg	ND	0.11	ND	ND	ND	0.114	ND	0.114	ND
Tank S Wall	mg/kg	ND	ND	ND	ND	ND	ND	ND	ND	ND
Tank E Wall	mg/kg	0.21	0.546	ND	ND	0.226	1.51	0.632	2.142	1.436
Tank Bottom	mg/kg	0.429	0.987	ND	ND	0.674	1.84	1.09	2.73	1.017
PI N 4ft	mg/kg	ND	ND	ND	ND	ND	ND	ND	ND	ND
PI S 4ft	mg/kg	ND	ND	ND	ND	ND	ND	ND	ND	ND
PI Bottom 17ft	mg/kg	ND	ND	ND	ND	ND	ND	ND	ND	ND
PI W 4ft	mg/kg	1.09	5.5	ND	3.8	4.72	26	13	39	15.6
PI E 4ft	mg/kg	ND	ND	ND	ND	ND	0.497	0.312	0.809	ND

Regulatory Standards for Soil

Sample	Units	Benzene	Ethylbenzene	MTBE	Naphthalene	Toluene	1,2,4-TMB	1,3,5-TMB	Total TMBs	Xylenes
NR720.09	mg/kg	0.00055	2.9	NS	NS	1.5	NS	NS	NS	4.1
NR746.06 Table 1	mg/kg	8.5	4.5	NS	NS	38	83	11	NS	42
NR746.06 Table 2	mg/kg	1.1	NS	NS	NS	NS	NS	NS	NS	NS

BOLD indicates concentration exceeds regulatory standard
 NS - No Standard
 ND - Not Detected at or above method detection limit
 NA - parameter not analyzed for