

CITY OF COLUMBIA, ILLINOIS

ORDINANCE NO. 2810

**AN ORDINANCE TO AUTHORIZE THE CITY OF COLUMBIA,
ILLINOIS, TO ENTER INTO A HIGHWAY AUTHORITY
AGREEMENT WITH MIDWEST PETROLEUM COMPANY
PERTAINING TO SOIL AND/OR GROUNDWATER
CONTAMINATION ON PROPERTY LOCATED AT 1553 NORTH
MAIN STREET IN COLUMBIA, ILLINOIS**

**Adopted by the
City Council
of the
City of Columbia, Illinois
this 4th day of October, 2010**

**Published in pamphlet form by
authority of the City Council
of the City of Columbia,
Illinois, this 4th day
of October, 2010**

OCT 04 2010

J. Ronald Clegg
City Clerk

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MAIN STREET IN COLUMBIA, ILLINOIS**

WHEREAS, Midwest Petroleum Company (the "Company") is the owner of one or more leaking underground storage tanks presently or formerly located at 1553 North Main Street (the "Site") in the City of Columbia, Illinois (the "City"); and

WHEREAS, as a result of one or more releases of contaminants from said underground storage tanks, soil and/or groundwater contamination at the Site exceeds the Tier 1 residential remediation objectives of 35 Ill. Adm. Code 742; and

WHEREAS, the soil and/or groundwater contamination exceeding said Tier 1 residential remediation objectives extends or may extend into the City's right-of-way at the Site (the "Right-of-Way"); and

WHEREAS, the City and the Company desire to prevent groundwater beneath the Right-of-Way that exceeds said Tier 1 remediation objectives from use as a supply of potable or domestic water and to limit access to soil within the Right-of-Way that exceeds said Tier 1 residential remediation objectives so that human health and the environment are protected during and after any access of the Right-of-Way.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

Section 1. The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

Section 2. The City Council of the City of Columbia, Illinois, does hereby authorize and direct the Mayor to execute and deliver a Highway Authority Agreement in the form attached hereto, which Highway Authority Agreement is hereby approved as to form, in as many counterparts as the Mayor shall determine, and the City Clerk is hereby authorized and directed to attest the same and affix thereto the corporate seal of the City.

Section 3. This ordinance shall be in full force and effect following its passage and publication in pamphlet form, as provided by law.

Alderman Roessler moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Niemietz, and the roll call vote was as follows:

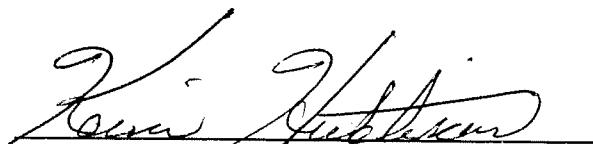
YEAS: Aldermen Agne, Niemietz, Row, Hejna, Stumpf and Roessler.

NAYS: None.

ABSENT: Aldermen Ebersohl and Oberkfell.

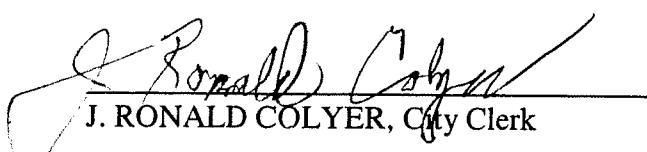
ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 4th day of October, 2010.



KEVIN B. HUTCHINSON, Mayor

ATTEST:



J. RONALD COLYER, City Clerk

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

CERTIFICATE OF PUBLICATION

I, J. Ronald Colyer, certify that I am the duly elected and acting City Clerk of the City of Columbia, Illinois.

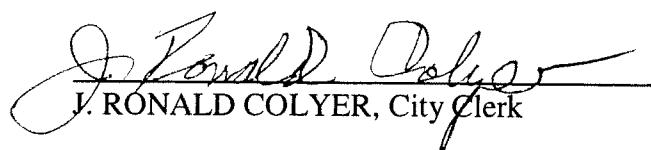
I further certify that on the 4th day of October 2010, the Corporate Authorities of the City of Columbia, Illinois, passed and approved Ordinance No. 2810 entitled:

“AN ORDINANCE TO AUTHORIZE THE CITY OF COLUMBIA, ILLINOIS, TO ENTER INTO A HIGHWAY AUTHORITY AGREEMENT WITH MIDWEST PETROLEUM COMPANY PERTAINING TO SOIL AND/OR GROUNDWATER CONTAMINATION ON PROPERTY LOCATED AT 1553 NORTH MAIN STREET IN COLUMBIA, ILLINOIS”

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2810, including the ordinance and a cover sheet thereof, was prepared, and a copy of such ordinance was posted in the Columbia City Hall, commencing on October 5, 2010 and continuing for at least ten (10) days thereafter. Copies of such ordinance were also made available for public inspection upon request in the office of the City Clerk.

DATED at Columbia, Illinois this 4th day of October, 2010.



J. RONALD COLYER, City Clerk

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

CERTIFICATE OF TRUE COPY

I, J. Ronald Colyer, hereby certify that I am the duly elected and acting City Clerk of the City of Columbia, Illinois, and as such I am the keeper of the books, records, files and corporate seal of said City.

I do further certify that Ordinance No. 2810, entitled:

“AN ORDINANCE TO AUTHORIZE THE CITY OF COLUMBIA, ILLINOIS, TO ENTER INTO A HIGHWAY AUTHORITY AGREEMENT WITH MIDWEST PETROLEUM COMPANY PERTAINING TO SOIL AND/OR GROUNDWATER CONTAMINATION ON PROPERTY LOCATED AT 1553 NORTH MAIN STREET IN COLUMBIA, ILLINOIS”

to which this certificate is attached, is a true, perfect, complete and correct copy of said ordinance as adopted at a regular meeting of the Columbia, Illinois, City Council held on the 4th day of October, 2010.

IN WITNESS WHEREOF, I have made and delivered this certificate for the uses and purposes hereinabove set forth this 4th day of October, 2010.



J. RONALD COLYER, City Clerk

(SEAL)

HIGHWAY AUTHORITY AGREEMENT

This Agreement is entered into this ____ day of _____, 20____ pursuant to 35 Ill. Adm. Code 742.1020 by and between the Midwest Petroleum Company ("Owner/Operator") and The City of Columbia, Illinois, ("Highway Authority" or "The City"), collectively known as the "Parties."

WHEREAS, Midwest Petroleum Company is the owner or operator of one or more leaking underground storage tanks presently or formerly located at 1553 North Main St., Columbia, Illinois 62236 ("the Site");

WHEREAS, as a result of one or more releases of contaminants from the above referenced underground storage tanks ("the Release(s)"), soil and/or groundwater contamination at the Site exceeds the Tier 1 residential remediation objectives of 35 Ill. Adm. Code 742;

WHEREAS, the soil and/or groundwater contamination exceeding Tier 1 residential remediation objectives extends or may extend into the Highway Authority's right-of-way;

WHEREAS, the Owner/Operator is conducting corrective action in response to the Release(s);

WHEREAS, the Parties desire to prevent groundwater beneath the Highway Authority's right-of-way that exceeds Tier 1 remediation objectives from use as a supply of potable or domestic water and to limit access to soil within the right-of-way that exceeds Tier 1 residential remediation objectives so that human health and the environment are protected during and after any access;

NOW, THEREFORE, the Parties agree as follows:

1. The recitals set forth above are incorporated by reference as if fully set forth herein.
2. The Illinois Emergency Management Agency ("IEMA") has assigned incident numbers 971077 & 2004-1602 to the Release(s).
3. Attached as Exhibit A is a scaled map prepared by the Owner/Operator that shows the Site and surrounding area and delineates the current and estimated future extent of soil and groundwater contamination above the applicable Tier 1 residential remediation objectives as a result of the Release(s).
4. Attached as Exhibit B is a table prepared by the Owner/Operator that lists each "contaminant of concern" as defined in 35 Ill. Adm. Code 724.200, that exceeds its Tier 1 residential remediation objective, its Tier 1 residential remediation

objective and its concentrations within the zone where Tier 1 residential remediation objectives are exceeded. The locations of the concentrations listed in Exhibit B are identified on the map in Exhibit A.

5. Attached as Exhibit C is a scaled map prepared by the Owner/Operator showing the area of the Highway Authority's right-of-way that is governed by this Agreement ("Right-of-Way"). Because Exhibit C is not a surveyed plat, the Right-of-Way boundary may be an approximation of the actual Right-of-Way lines.
6. The Highway Authority stipulates it has jurisdiction over the Right-of-Way that gives it sole control over the use of the groundwater and access to the soil located within or beneath the Right-of-Way.
7. The Highway Authority agrees to prohibit within the Right-of-Way all potable and domestic uses of groundwater exceeding Tier 1 residential remediation objectives.
8. The Highway Authority further agrees to limit access by itself and others to soil within the Right-of-Way exceeding Tier 1 residential remediation objectives. Access shall be allowed only if human health (including worker safety) and the environment are protected during and after any access. The Highway Authority may construct, reconstruct, improve, repair, maintain and operate a highway upon the Right-of-Way, or allow others to do the same by permit. In addition, the Highway Authority and others using or working in the Right-of-Way under permit have the right to remove soil or groundwater from the Right-of-Way and dispose of the same in accordance with applicable environmental laws and regulations. The Highway Authority agrees to issue all permits for work in the Right-of-Way, and make all existing permits for work in the Right-of-Way, subject to the following or a substantially similar condition:

As a condition of this permit the permittee shall request the office issuing this permit to identify sites in the Right-of-Way where a Highway Authority Agreement governs access to soil that exceeds the Tier 1 residential remediation objectives of 35 Ill. Adm. Code 742. The permittee shall take all measures necessary to protect human health (including worker safety) and the environment during and after any access to such soil.

9. This Agreement shall be referenced in the Illinois Environmental Protection Agency's ("Agency" or "IEPA") no further remediation determination issued for the Release(s).
10. The Agency shall be notified of any transfer of jurisdiction over the Right-of-Way at least 30 days prior to the date the transfer takes effect. This Agreement shall be null and void upon the transfer unless the transferee agrees to be bound by this Agreement as if the transferee were an original party to this Agreement. The

transferee's agreement to be bound by the terms of this Agreement shall be memorialized at the time of transfer in a writing ("Rider") that references this Highway Authority Agreement and is signed by the Highway Authority, or subsequent transferor, and the transferee.

11. This Agreement shall become effective as a Highway Authority Agreement on the date the Agency issues a no further remediation determination for the Release(s). It shall remain effective as a Highway Authority Agreement until the Right-of-Way is demonstrated to be suitable for unrestricted use and the Agency issues a new no further remediation determination to reflect there is no longer a need for this Agreement, or until the Agreement is otherwise terminated or voided.
12. In addition to any other remedies that may be available, the Agency may bring suit to enforce the terms of this Agreement or may, in its sole discretion, declare this Agreement null and void if any of the Parties or any transferee violates any term of this Agreement. The Parties or transferee shall be notified in writing of any such declaration.
13. This Agreement shall be null and void as a Highway Authority Agreement if a court of competent jurisdiction strikes down any part or provision of the Agreement.
14. This Agreement supersedes any prior written or oral agreements or understandings between the Parties on the subject matter addressed herein. It may be altered, modified or amended only upon the written consent and agreement of the Parties.
15. Any notices or other correspondence regarding this Agreement shall be sent to the Parties at the following addresses:

Manager, Division of Remediation Management
Bureau of Land
Illinois Environmental Protection Agency
P.O. Box 19276
Springfield, IL 62974-9276

If to Owner/Operator:

Midwest Petroleum Company
Attn: Mike McNutt
6760 Southwest Avenue
St. Louis, MO 63143

If to The City:

City of Columbia
Attn: Al Hudzik
Columbia City Hall
208 South Rapp Avenue
P.O. Box 467
Columbia, IL 62236-0467

16. This Agreement is not binding upon The City until it is executed by the undersigned representative of The City. Prior to execution by the undersigned representative of The City, this Agreement constitutes an offer by Owner/Operator. The duly authorized representatives of Owner/Operator have signed this Agreement, and this Agreement is binding upon them, their successors and assigns.
17. The IEPA and Illinois Attorney General (“AG”) must review and approve this Agreement, and this Agreement shall be referenced in the IEPA’s “No Further Remediation” determination in the chain of title for the Site in the county where the Site is located. This Agreement shall be null and void as a Highway Authority Agreement should the IEPA or AG not approve it or should it not be referenced in the “No Further Remediation” determination, provided, however, that this Agreement shall be effective between the Owner/Operator and The City immediately upon signature by their representatives.
18. The Owner/Operator agrees to defend, indemnify and hold harmless The City, and other highway authorities, if any, maintaining the highway Right-of-Way by an agreement with The City, and The City’s agents, contractors or employees for all obligations asserted against or costs incurred by them, including reasonable attorney’s fees and court costs, associated with the release of contaminants from the Site, regardless whether said obligations or costs were caused by the negligence, but not the gross negligence, of them.
19. As an additional consideration, Owner/Operator agrees to reimburse The City for reasonable costs to protect human health and the environment, including, but not limited to, identifying, investigating, handling, storing and disposing of contaminated soil and/or groundwater in the Right-of-Way as a result of the release of contaminants at this Site. It has been determined that The City has not incurred any reimbursable costs at the time this Agreement is executed by the undersigned representative of The City. If future costs are incurred, a cashier’s check made payable to “The City of Columbia, Illinois” shall be tendered to The City upon demand by The City.
20. Violation of the terms of this Agreement by Owner/Operator, or their successors in interest, may be grounds for voidance of this Agreement as a Highway Authority Agreement. Violation of the terms of this Agreement by The City will not void this Agreement, unless the IEPA has determined that the violation is grounds for voiding this Agreement as a Highway Authority Agreement and The City has not cured the violation within such time as IEPA has granted to cure the violation.
21. Prior to accessing or granting access to the soil as provided in Paragraph 8 herein, The City will first give Owner/Operator written notice, unless there is an immediate threat to the health or safety to any individual or to the public, that it

intends to perform a site investigation in the Right-of-Way and remove or dispose of contaminated soil or groundwater to the extent necessary for its work. Failure to give notice is not a violation of this Agreement. The removal or disposal shall be based upon the site investigation (which may be modified by field conditions during excavation). A copy of the site investigation report will be provided to Owner/Operator. If practicable, as reasonably determined by The City, The City may provide Owner/Operator with an opportunity to perform the site investigation and to remove and dispose of the contaminated soil and/or groundwater necessary for The City's work in advance of that work.

The Owner/Operator shall reimburse the reasonable costs incurred by The City to perform the site investigation and to dispose of any contaminated soil or groundwater, provided, however, that if notice to Owner/Operator has not been given and there was no immediate threat to health or safety, reimbursement for those costs shall be limited to \$10,000.00. There is a rebuttable presumption that the contaminants found in the highway Right-of-Way arose from the release of contaminants from the Site. Should Owner/Operator not reimburse the reasonable costs under the conditions set forth herein, this Agreement shall be null and void, at The City's option, upon written notice to Owner/Operator by The City that those costs have not been reimbursed. Owner/Operator may cure that problem within twenty (20) working days by making payment, or may seek to enjoin that result.

22. The City's sole responsibility under this Agreement with respect to others using the highway Right-of-Way under permit from The City is to include the following, or similar language, in the future standard permit provisions and to make an effort to notify its current permit holders of the following:

As a condition of this permit, the permittee shall request the office issuing this permit to identify sites in the Right-of-Way where a Highway Authority Agreement governs access to soil that exceeds the Tier 1 residential remediation objectives of 35 Ill. Adm. Code 742. The permittee shall take all measures necessary to protect human health (including worker safety) and the environment during and after any access to such soil.

Owner/Operator hereby releases The City from liability for breach of this Agreement by others under permit and agrees to defend and indemnify The City against claims that may arise from others under permit causing a breach of this Agreement. Owner/Operator agrees that its personnel, if any, at the Site who are aware of this Agreement will notify anyone they know is excavating in the Right-of-Way about this Agreement.

23. Should The City breach this Agreement, Owner/Operator's sole remedy is for an action for damages in the Circuit Court of Monroe County, Illinois. Any and all claims for damages against The City, its agents, contractors, employees or its

successors in interest arising at any time for a breach of paragraphs 7 and 8 of this Agreement are limited to an aggregate maximum of \$20,000.00. No other breach by The City, its agents, contractors, employees and its successors in interest of a provision of this Agreement is actionable in either law or equity by Owner/Operator against The City or any of them and Owner/Operator hereby releases The City, its agents, contractors, employees and its successors in interest for any cause of action it may have against them, other than as allowed in this paragraph, arising under this Agreement or environmental laws, regulations or common law governing the contaminated soil or groundwater in the highway Right-of-Way. Should The City convey, vacate or transfer jurisdiction of that highway Right-of-Way, Owner/Operator may pursue an action under this Agreement against the successors in interest in a court of law.

24. This Agreement is entered into by The City in recognition of laws passed by the Illinois General Assembly and regulations adopted by the Illinois Pollution Control Board which encourage a tiered-approach to remediating environmental contamination. This Agreement is entered into by The City in the spirit of those laws and under its right and obligations as a highway authority.

Should any provisions of this Agreement be struck down as beyond the authority of The City, however, this Agreement shall be null and void.

IN WITNESS WHEREOF, Owner/Operator, Midwest Petroleum Company, has caused this Agreement to be signed by its duly authorized representative.

BY: _____ DATE: _____
Owner

IN WITNESS WHEREOF, The City has caused this Agreement to be signed by its Mayor and attested by its City Clerk.

City of Columbia

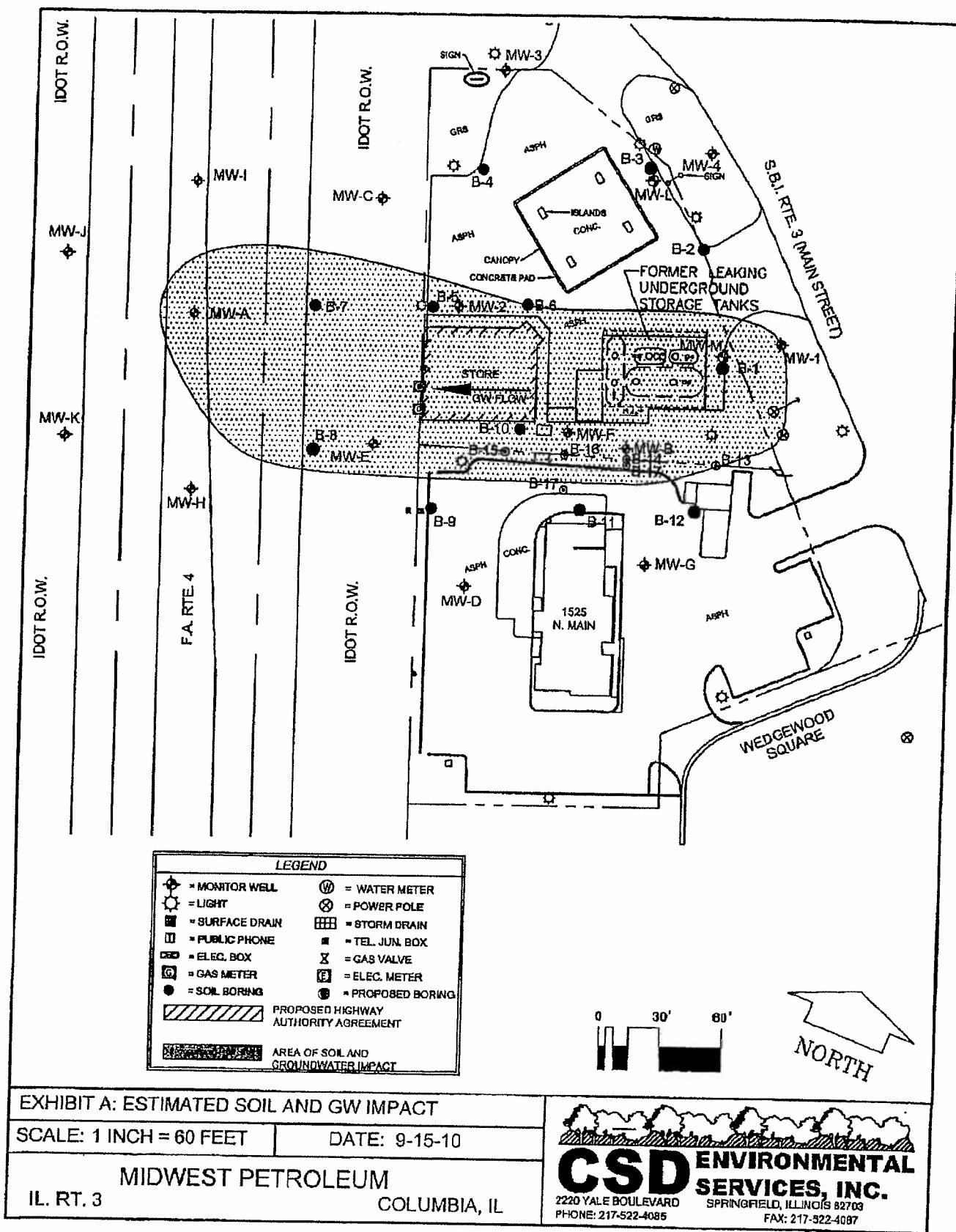
BY: _____ DATE: _____
Kevin B. Hutchinson, Mayor

Attest:

J. Ronald Colyer, City Clerk

(SEAL)

HIGHWAY AUTHORITY AGREEMENT
EXHIBIT A



HIGHWAY AUTHORITY AGREEMENT
EXHIBIT B

MW-M	Groundwater Standard	Date of Sampling		Comments
		5-May-10	10-May-10	
Benzene	0.005	0.0248		
Toluene	1	<0.05		
Ethylbenzene	0.7			
Xylenes	10	1.41		
Naphthalene	0.14	0.326		
Acenaphthene	0.42	<0.000521		
Anthracene	2.1	<0.000521		
Fluoranthene	0.28	<0.000521		
Fluorene	0.28	<0.000521		
Pyrene	0.21	<0.000521		
Benzo (a) Anthracene	0.00013	<0.000129		
Benzo (a) Pyrene	0.0002	<0.000198		
Benzo (b) Fluoranthene	0.00018	<0.000177		
Benzo (k) Fluoranthene	0.00017	<0.000167		
Chrysene	0.0015	<0.000521		
Dibenzo (a,h) anthracene	0.0003	<0.00026		
Indeno (1,2,3-c,d) Pyrene	0.00043	<0.000417		
Acenaphthylene	0.010	<0.000521		
Benzo (g,h,i) Perylene	0.00076	<0.000521		
Phenanthrene	0.0064	<0.000521		

(J) - estimated value detected above MDL but below PQL

HIGHWAY AUTHORITY AGREEMENT
EXHIBIT C

