

FILED

MAY 28 2014

Joe Aiello
Sangamon County Clerk

RESOLUTION NO. 8-1

AN ORDINANCE PROHIBITING THE USE OF GROUNDWATER AS A POTABLE WATER SUPPLY BY THE INSTALLATION OR USE OF POTABLE WATER SUPPLY WELLS OR BY ANY OTHER METHOD WITHIN CERTAIN AREAS IN THE COUNTY OF SANGAMON, ILLINOIS.

WHEREAS, certain properties in the County of Sangamon, Illinois have been used over a period of time for commercial/industrial purposes; and

WHEREAS, because of said use, concentrations of certain chemical constituents in the groundwater beneath the County may exceed Class I groundwater quality standards for potable resource groundwater as set forth in 35 Illinois Administrative Code 620 or Tier I remediation objectives as set forth in 35 Illinois Administrative Code 742; and

WHEREAS, the County of Sangamon desires to limit potential threats to human health from groundwater contamination while facilitating the redevelopment and productive use of properties that are the source of said chemical constituents;

NOW, THEREFORE, BE IT RESOLVED by the Members of the Sangamon County Board, in session this 15th day of May, 2014, that the County Board Chairman is authorized to execute the attached indemnification agreement and as follows:

Section One. Use of groundwater as a potable water supply prohibited.

The use or attempt to use as a potable water supply groundwater from within those areas of the County of Sangamon depicted on Figure 1, attached hereto and made a part of this ordinance, by the installation or drilling of wells or by any other method is hereby prohibited. This prohibition expressly includes the County of Sangamon.

Section Two. Penalties.

Any person violating the provisions of this ordinance shall be subject to a fine of up to \$500.00 for each violation. Each day constitutes a separate violation.

Section Three. Definitions.

(a) "Person" is any individual, partnership, co-partnership, firm, company,

limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or their legal representatives, agents or assigns.

(b) "Potable water" is any water used for human or domestic consumption, including, but not limited to, water used for drinking, bathing, swimming, washing dishes, or preparing foods.

Section Four. Repealer.

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed insofar as they are in conflict with this ordinance.

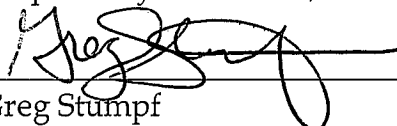
Section Five. Severability.

If any provision of this ordinance or its application to any person or under any circumstances is adjudged invalid, such adjudication shall not affect the validity of the ordinance as a whole or of any portion not adjudicated invalid.

Section Six. Effective Date.

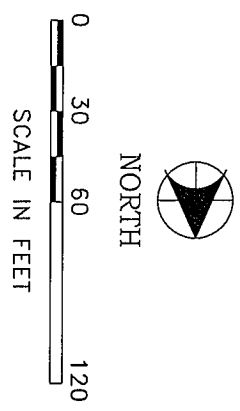
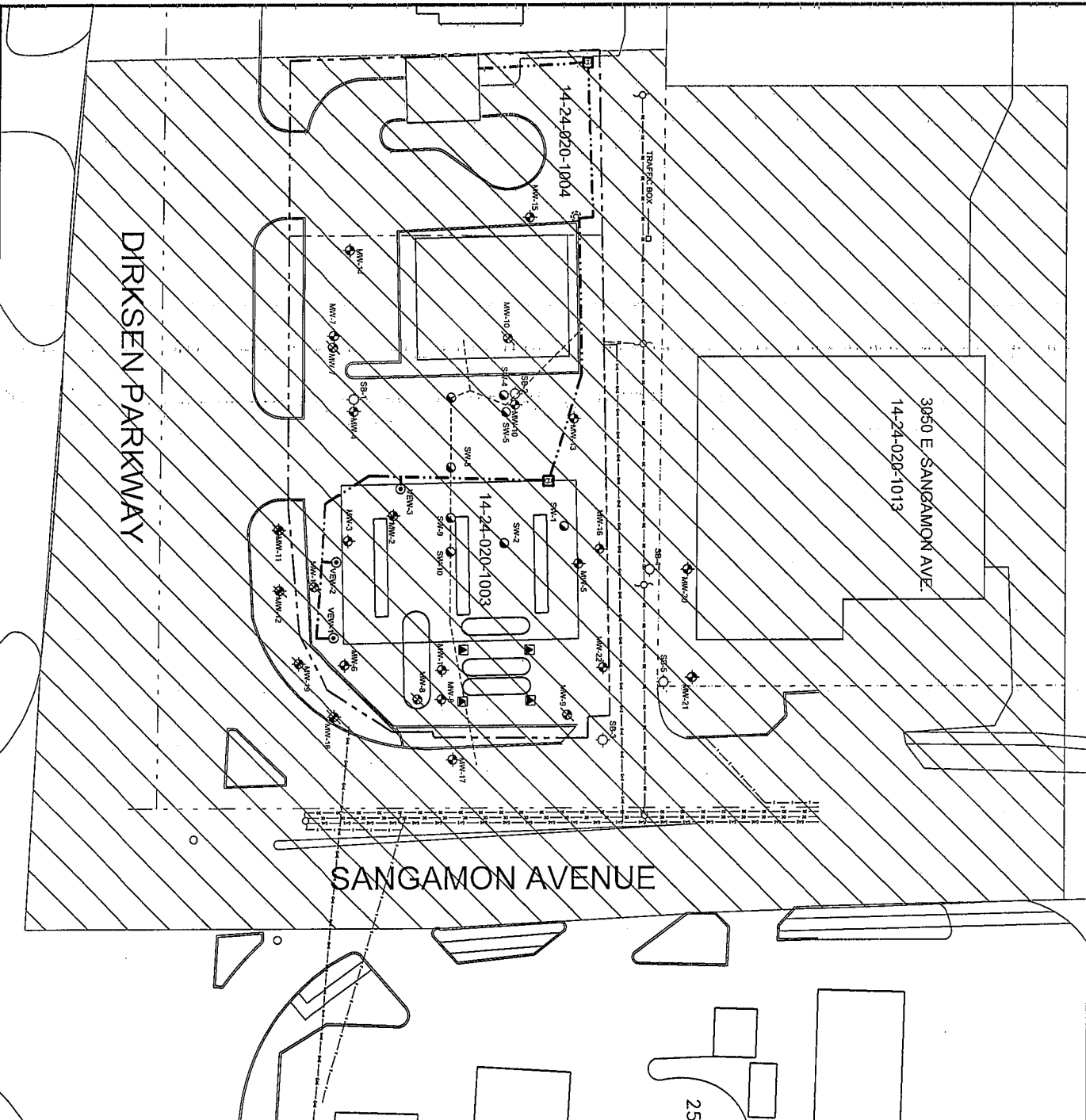
This ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

Respectfully submitted,



Greg Stumpf
Chairman of Public Health, Solid Waste
and Zoning

PLOTTED September 16, 2013 BY: Barbara Anthony, CTR, USED: PAPER SPACE TAB, FIGURE 1
 DUG PATH: I:\2013\proj\315\dwgs\315\Springfield_2013_N_Dirksen\Figure 3-6-Land.dwg - Figure 3-6-Land.dwg



- LEGEND
- PROPERTY BOUNDARY
 - - - AREA OF EXCAVATION
 - OBSERVATION WELL
 - MONITORING WELL LOCATION
 - ⊙ ABANDONED WELL LOCATION
 - SOIL BORING LOCATION
 - ☐ AREA LIGHT
 - UTILITY POLE
 - ⊕ FIRE HYDRANT
 - ⊖ CATCH BASIN
 - MANHOLE
 - SS STORM SEWER
 - S SANITARY SEWER
 - W WATER LINE
 - V GAS MAIN
 - DE OVERHEAD ELECTRIC
 - UG UNDERGROUND UTILITY
 - T TELEPHONE LINE
- 14-24-020-1003
 PROPERTY IDENTIFICATION NUMBER
 AREA SUBJECT TO GROUNDWATER
 USE RESTRICTION

SHELL SERVICE STATION
 #141544
 2121 NORTH DIRKSEN
 SPRINGFIELD, ILLINOIS

PROPOSED GROUNDWATER ORDINANCE
 AREA MAP

DATE: September 9, 2013
 JOB NO.: 49194707
 DRAWN BY: JMM
 CHECKED BY: JMM
 SCALE: AS SHOWN

URS
 100 SOUTH WACKER DRIVE
 CHICAGO, ILLINOIS
 PHONE: (312) 939-1000
 FAX: (312) 939-4198

LIMITED ENVIRONMENTAL INDEMNITY AGREEMENT

This LIMITED ENVIRONMENTAL INDEMNITY AGREEMENT (the "Agreement") is entered into as of the ____ day of March, 2014, by Equilon Enterprises LLC d/b/a Shell Oil Products US ("Indemnitor") and the County of Sangamon, Illinois (the "County").

RECITALS

A. **WHEREAS**, Indemnitor was the former owner of certain real property located at 2121 Dirksen Parkway, Springfield, Sangamon County, IL (the "Property") and legally described in Exhibit A; and

B. **WHEREAS**, an underground storage tank system, as defined in 40 CFR Part 280 or supplanting federal regulations, owned by Indemnitor or its predecessor in interest ("UST System"), was present on the Property; and

C. **WHEREAS**, releases to the environment of petroleum hydrocarbons, including gasoline additives, has occurred in the past at the Property. Used/waste oil and hydraulic oil may be present on the Property. (All of the previously mentioned compounds and those identified in TACO modeling calculations for the groundwater contamination identified at the Property are hereby collectively referred to as "**Compounds of Concern**"). As a result of said releases, the groundwater at the Property contains detectable concentrations of Compounds of Concern. The groundwater impacted by Compounds of Concern extends beyond the Property. The Illinois Emergency Management Agency has assigned incident numbers 900240 to the releases at the Property (the "**Incident**"); and

D. **WHEREAS**, Indemnitor desires to limit any potential threat to human health from groundwater impacted with the Compounds of Concern and has requested that the County enact a limited area groundwater ordinance ("**Groundwater Ordinance**") and a highway authority agreement ("**HAA**") that prohibits the installation of new groundwater wells for potable water supply in an area adjacent to and including the Property and would impose requirements on individuals or entities who would work in the area subject to the HAA. Collectively the Groundwater Ordinance and the HAA shall be referred to herein as "**Institutional Controls**." The proposed Groundwater Ordinance is attached hereto as Exhibit B. The proposed HAA is attached hereto as Exhibit C. The area subject to this Agreement shall be the area in, under and adjacent to the Property which is within the jurisdiction of the County as described and set forth within the Groundwater Ordinance and HAA (the "**Institutional Control Area**") including the highways over which the County has jurisdiction

NOW, THEREFORE, in consideration of the terms and covenants contained herein including the recitals set forth hereinbefore, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. This Agreement is not binding upon the County until it is executed by the undersigned representative of the County and, prior to execution, this Agreement constitutes an offer by

Indemnitor. The duly authorized representative of Indemnitor has signed this Agreement, and this Agreement is binding upon Indemnitor, its successors and assigns.

2. The County agrees that it will adopt the Institutional Controls provided, however, that if the County does not adopt the Institutional Controls or rescinds the Institutional Controls, this Agreement shall be deemed null and void, and Indemnitor shall have no other remedy against the County. Nothing contained in this Agreement shall be construed as an admission of liability by Indemnitor for any environmental condition at or adjacent to the Property but, if approved by the County, Indemnitor will undertake the activities set forth herein irrespective of this non admission. No breach by the County, its agents, trustees, employees and its successors in interest of a provision of this Agreement is actionable in law or equity by Indemnitor against the County, and Indemnitor hereby releases the County and County Affiliates (as defined below) from any cause of action it may have against them arising under this Agreement or Environmental Laws (as defined below), regulations or common law.

3. Indemnitor on behalf of itself, its successors and assigns shall covenant and agree, at its sole cost and expense, to indemnify, defend and hold the County and the County's former, current and future officials, trustees, officers, servants, employees, agents, successors and assigns (collectively "**County Affiliates**"), both in their capacities as County representatives and as individuals, harmless from and against any loss, actions, responsibilities, obligations, liability, damage (whether direct or consequential), expenses, claims (whether asserted or unasserted, direct or indirect, existing or inchoate, known or unknown, having arisen or to arise in the future), penalties, fines, injunctions, suits (including but not limited to suits alleging or related to personal injury and/or death), proceedings, disbursements or expenses (including, without limitation, attorneys' and experts' fees and disbursements and court costs) (collectively, the "**Liabilities**"), arising under or relating to any Environmental Laws (as defined below), or any other Liabilities which may be incurred by or asserted against any of the County Affiliates resulting or arising from, alleged to arise from, or caused by, in whole or in part, from the presence of Hazardous Material (as defined below) on, in or from the Property (including the groundwater thereunder) and/or any condition of any property (including groundwater) or surface water alleged to have been caused by the migration, transportation, release or threatened release of Hazardous Materials on or from the Property as a result of Indemnitor's operations at the Property.

Indemnitor shall assume the defense of all suits, administrative proceedings and disputes of any description with all persons, entities, political subdivisions or government agencies arising out of the matters to be indemnified under this Agreement. Indemnitor shall pay, promptly upon entry, any nonappealable order, judgment or other final resolution of any claim or dispute arising out of the matters to be indemnified under this Agreement and shall pay promptly when due any fines, penalties or agreed settlements arising out of the matters to be indemnified under this Agreement. In the event that such payment is not made, the County or any County Affiliate, at their sole discretion, may proceed to file suit against the Indemnitor to compel such payment. Indemnitor also agrees that it will not settle or compromise any action, suit or proceeding with the County's prior written consent, which consent shall not be unreasonably withheld.

For purposes of this Agreement, "**Hazardous Materials**" means and includes Compounds of Concern or those chemicals or substances which are or were commonly used at The Property

which are defined as hazardous, special or toxic materials, substances or waste under any Environmental Law. "Environmental Laws" collectively means and includes any present and future local, state, federal or international law, statute, ordinance, order, decree, rule, regulation or treaty relating to public health, safety or the environment (including those laws relating to releases, discharges, emissions or disposals to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use, handling, storage, disposal, treatment, transportation or management of Hazardous Materials) including, without limitation, the Resource Conservation and Recovery Act, as amended ("**RCRA**"), 42 U.S.C. §6901, et seq., the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. §9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"), the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., the Clean Water Act, 33 U.S.C. §1251, et seq., the Clean Air Act, as amended, 42 U.S.C. §7401, et seq., the Toxic Substances Control Act, 15 U.S.C. §2601, et seq., the Safe Drinking Water Act, 42 U.S.C. §300f, et seq., the Occupational Safety and Health Act, 29 U.S.C. §655, et seq., the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136, et seq., the National Environmental Policy Act, 42 U.S.C. §4321, et seq., the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001, et seq., and the Illinois Environmental Protection Act, and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereunder.

In addition to the indemnity provided above, if the County or County Affiliates encounter Hazardous Materials while working in, on or under the Institutional Control Area or encounter Hazardous Materials migrating from the Property, the County has the right to remove contaminated soil or groundwater above Tier 1 residential remediation objectives (as set forth in the Tiered Approach to Cleanup Objectives, Title 35, Part 742) from the area it is working and intends to do work and to dispose of them as it deems appropriate not inconsistent with applicable Environmental Laws so as to avoid causing a further release of the Hazardous Materials and to protect human health and the environment.

Prior to taking any action noted above, the County will first give Indemnitor not less than sixty (60) days prior written notice, unless there is an emergency or an immediate threat to the health or safety to any individual or to the public, that it intends to perform a site investigation 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), which Indemnitor may review or may perform. If practicable, Indemnitor shall be allowed to remove and dispose of the contaminated soil and/or groundwater necessary for the County's work in advance of that work. In any event, Indemnitor shall reimburse the reasonable incremental costs incurred by the County to perform the site investigation and to dispose of any contaminated soil or groundwater. The parties understand and agree that the County's soil and groundwater removal will be in conjunction and/or associated with other work being done by the County in, on, under or near the Property, and part of the purpose of this paragraph is that if the County encounters contaminated soil and/or groundwater while working on its utilities, or on a municipal project or otherwise, it will not be responsible in any way for the cost associated with encountering, removing and/or disposing of the contaminated soil and/or groundwater. In addition, it is specifically understood and agreed between the parties that the County will not be identified at any time, in any place, document or manifest as the owner, generator or transporter of contaminated soil or groundwater taken from the Property. If asked,

Indemnitor will cooperate with the County in the removal and disposal of such soil and groundwater and will sign all necessary documents and manifests for the proper transportation and disposal of the soil and/or groundwater.

4. This Agreement is intended by the parties hereto to be limited to claims, costs, expenses, causes of action, penalties, Liabilities, losses and damages actually sustained and incurred by the County Affiliates or for which the County Affiliates are found to be legally liable that arise as a consequence of Hazardous Materials that were released or alleged to be released into the environment from the Incident on the Property within the Institutional Control Area.

5. Any notice required or permitted to be given to either party shall be deemed to be received by such party (i) three (3) days after deposit in the United States Registered or Certified Mail, Return Receipt Requested; or (ii) one (1) business day after deposit with a nationally recognized overnight delivery service guaranteeing next business day delivery, or (iii) upon personal delivery to the party to whom addressed provided that a receipt of such delivery is obtained, or (iv) on the same business day as transmitted and confirmed by telecopy provided that a confirmation copy is concurrently deposited in United States Certified or Registered Mail, Return Receipt Requested. Such notices shall be addressed to the parties at the following addresses:

If to Indemnitor:

John Robbins
Environmental Program Manager
Shell Oil Products US
20945 S. Wilmington Avenue
Carson CA 90810
Phone: 815-468-8824
Fax: 713-423-0544

If to the County:

or to the parties at such other addresses or telecopy numbers as they may designate by notice to the other party as herein provided.

6. This Agreement has been made and delivered in Illinois and shall be construed according to and governed by the internal laws of the State of Illinois without regard to its conflict of law rules. If any provision hereof shall be held invalid, prohibited or unenforceable under any applicable laws of any applicable jurisdiction, such invalidity, prohibition or unenforceability shall be limited to such provision and shall not affect or invalidate the other provisions hereof or affect the validity or enforceability of such provision in any other jurisdiction, and to that extent, the provisions hereof are severable. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law.

7. Failure of the County to require performance of any provision of this Agreement shall not affect the County's right to require full performance thereof at any time thereafter, and the waiver by

the County of a breach of any provision of this Agreement shall not constitute or be deemed a waiver of a similar breach in the future, or any other breach, or nullify the effectiveness of such provisions of this Agreement. The rights and remedies of the County of this Agreement are cumulative. The exercise or use of any one or more thereof shall not bar the County from exercise or use of any other right or remedy provided herein or otherwise provided by law, nor shall exercise or use of any right or remedy by the County waive any other right or remedy.

8. This Agreement shall be binding upon the Indemnitor and the successors and assigns for so long as the Institutional Controls are required by Indemnitor as an Institutional Control as defined by the Environmental Laws. Provided, however, Indemnitor's duty to indemnify County shall survive if the Liabilities are incurred during the effective period of the Institutional Controls for a period of five years. No transfer of Indemnitor's rights or obligations hereunder shall be made without the prior written approval of the County's Board of Trustees, which approval shall not be unreasonably withheld or conditioned.

9. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. This Agreement may not be amended, modified, revised, supplemented or restated except by a writing signed by each of the parties hereto. In construing this Agreement or determining the rights of the parties hereunder, no party shall be deemed to have drafted or created this Agreement or any portion thereof.

10. The executing representatives of the parties to this Agreement represent and certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.

IN WITNESS WHEREOF, the parties have executed this Limited Environmental Indemnity Agreement as of the day, month and year first above written.

COUNTY OF SANGAMON

**EQUILON ENTERPRISES LLC d/b/a
SHELL OIL PRODUCTS US**

By: _____

By: _____

Name: _____

Name: W.E. Platt III

Title: _____

Title: Claims Manager