



MANAGER'S MEMO ITEM

ITEM: Highway Authority Agreement – between the Village and 7-Eleven, Inc.
WORKSHOP DATE: October 25, 2005
PREPARED BY: Ann Marie Perez, Assistant Village Attorney
BID AMOUNT: \$ _____ **ACCOUNT:** _____
BUDGET AMOUNT: \$ _____

PURPOSE: Adoption of a Highway Authority Agreement that is titled “Tiered Approach to Corrective Action Right-Of-Way Agreement” between the Village and 7-Eleven, Inc.

BACKGROUND:

7-Eleven, Incorporated owns the land at 6300 S. Main Street. A former 7-Eleven store had been located on the property and it was determined that the property has a leaking underground storage tank. The Village owns a grassy alleyway next to and west of the 7-Eleven property as well as the street which fronts the property. ENSR Corporation, a provider of environmental remediation services, on behalf of 7-Eleven, Incorporated had been trying to seek a No Further Remediation (NFR) letter from the Illinois Environmental Protection Agency based upon risk-based remediation objectives wherein the contamination would be allowed to remain on the site until such time as there would be further development of the area. At that time, 7-Eleven would have to clean up the area from the contamination.

As a further control, ENSR approached the Village requesting an Environmental Land Use Control (ELUC) Agreement. After review, Village staff determined that a Highway Authority Agreement (HAA) would provide more protections for the Village and was a better alternative to an ELUC. This HAA is an additional institutional control to safeguard the environment. This type of agreement is beneficial to the Village since, for the first time, we are notified of the contamination as well as who is responsible for the contamination and that 7-Eleven is willing to take responsibility for such contamination. We are granted a release from liability for said contamination and the contaminator indemnifies us for any claims.

It is further part of the agreement that should the Village excavate through the contaminated soil in the right-of-way from release of the contamination, 7-Eleven will reimburse our costs of dealing with the contamination including clean-up and disposal. Without such an agreement, this type of reimbursement would be very difficult to obtain considering the proof problems incurred in such a situation.

Our commitment in this agreement is two-fold:(1) we will not allow drinking water wells to tap groundwater in the area of the right-of-way that may be contaminated; and (2) if soil in the right-of-way that may be contaminated is excavated, human health and the environment will be protected. We have Ordinance No. 4423, dated June 3, 2002, codified as 25-52 of the Downers Grove Municipal Code, which protects us with regard to groundwater since this ordinance requires a permit for the digging of private wells. The Illinois Environmental Protection Agency has reviewed our ordinance in conjunction with the Illinois Administrative Code and the requirements for such a control and has issued a letter indicating that use of this ordinance as an environmental control is acceptable. This Highway Authority Agreement is necessary for the contaminated soil issues involved in this situation.

ATTACHMENTS:

A Highway Authority Agreement titled "*Tiered Approach to Corrective Action Right-Of-Way Agreement*".

STAFF RECOMMENDATION:

To approve and authorize the Highway Authority Agreement.

REQUESTED COURSE OF ACTION:

Approve and authorize execution of the resolution and Highway Authority Agreement at the November 1, 2005 Council Meeting.

J:\mw\agenda.05\HAA-7-Eleven

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A TIERED APPROACH TO
CORRECTIVE ACTION OBJECTIVE AGREEMENT BETWEEN THE
VILLAGE OF DOWNERS GROVE AND 7-ELEVEN, INC.**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois,
as follows:

1. That the form and substance of a certain Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and 7-Eleven, Inc. (the "Owner/Operator"), for certain corrective action and remediation objectives with regard to the contamination of soil and groundwater, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____

Village Clerk

Site PIN: _____

TIERED APPROACH TO CORRECTIVE ACTION RIGHT-OF-WAY AGREEMENT

This Agreement is entered into this ____ day of _____, 20__ pursuant to the Environmental Protection Act ("Act"), 35 Ill. Admin. Code Section 742.1020 by and between 7-Eleven, Inc. ("Owner/Operator"), and the Village of Downers Grove ("Village"), as follows:

1. This Agreement is not binding on the Village until it is executed by a duly authorized representative of the Village, and prior to execution, this Agreement constitutes an offer by Owner/Operator. The duly authorized representatives of Owner and Operator have signed this Agreement, and this Agreement is binding upon them, their successors and assigns.
2. Owner/Operator stipulates:
 - a. Owner/Operator is pursuing corrective action at a Site and in the right-of-way adjacent to the Site located at 6300 South Main Street, Downers Grove, Illinois 60515 ("Site"). This right-of-way is presently an alleyway on the west side of 6300 S. Main street and adjacent to 1025 63rd street, Downers Grove, Illinois. Site is legally described in Attachment A.
 - b. The right-of-way adjacent to the Site, described in Attachment B, is subject to this Agreement and is possibly impacted with contaminants from a release at the Site.
 - c. Attached as Attachment C is a site map showing the known and probable area(s) of contaminant impacted soil and groundwater in the right-of-way where, at the time of this Agreement, contaminants exceed the Tier 1 residential remediation objectives under the Act and 35 Ill. Admin. Code Section 742. Also attached as Attachment D is a table showing the concentration of contaminants in soil and/or groundwater within the area described in Attachment B and showing the applicable Tier I soil and groundwater remediation objectives for residential property that are exceeded.
 - d. The corrective action is for a confirmed release of petroleum from an underground storage tank at the Site.
 - e. The Illinois Emergency Management Agency has assigned incident number _912105_____ to the Site.
 - f. Under 35 Ill. Admin. Code 742.1020, the use of risk-based, site-specific remediation objectives in the right-of-way require this Agreement, in lieu of active remediation of the contaminant-impacted soil and groundwater.
 - g. Owner/Operator has requested risk-based, site-specific soil and/or groundwater remediation objectives from the Illinois Environmental

Protection Agency ("Illinois EPA") under the Act and 35 Ill Admin. Code Section 742.

3. The Village stipulates that it holds the right-of-way described in Attachment B in trust for the public and has jurisdiction over the right-of-way.
4. The parties stipulate that:
 - a. This Agreement is intended to meet the requirements of the Illinois Pollution Control Board ("Board") regulations for such Agreements and is intended, under 35 Ill. Admin. Code §742.1020, as an acceptable "Highway Authority Agreement."
 - b. This Agreement shall be recorded by the Owner/Operator at its expense along with the Illinois EPA's "No Further Remediation" determination with the DuPage County Recorder of Deeds. The Owner/Operator will similarly record any attachments, addendums, or alterations to this Agreement. Within thirty (30) days of such recording with the DuPage County Recorder of Deeds, the Owner/Operator shall provide the Village a copy of the Agreement that has been stamped by the DuPage County Recorder of Deeds to indicate that it has been recorded with that office.
 - c. This Agreement shall be null and void should the Illinois EPA not approve it, or should it not be recorded along with the Illinois EPA's "No Further Remediation" determination, or should the Village not review and approve the "No Further Remediation" determination for the Site as it applies to the right-of-way identified in Attachment B.
5. The Village agrees that it will prohibit by ordinance the use of groundwater that is contaminated at levels above Tier 1 residential remediation objectives beneath its right-of-way identified in Attachment B as a potable or other domestic supply of water. This prohibition is ensured in the Village of Downers Grove ordinance number 4423, dated June 18, 2003. The Village further agrees that it will limit access to soil as described herein under the right-of-way described in Attachment B that is contaminated from the release at levels above the Tier 1 residential remediation objectives, and by requiring applicants for a public way work permit in the right-of-way described in Attachment B to consult the Village before obtaining a permit.
 - a. Where any pavement or 10 feet of soil overburden in the right-of-way is to be considered an engineered barrier, the Owner/Operator agrees to reimburse the Village for maintenance activities requested by Owner/Operator. Except for ordinary maintenance performed on Village roadways, the Village does not agree to maintain the right-of-way, nor

does it guarantee that the right-of-way will continue as a roadway or that the right-of-way will always be maintained as an engineered barrier.

- b. This agreement does not in any way limit the Village's authority to construct, reconstruct, repair or maintain and operate a right-of-way upon the property identified in Attachment B or to allow others to do the same. To that extent, the Village reserves the right to identify, investigate, and remove contaminated soil and/or groundwater above Tier I residential remediation objectives from the right-of-way identified in Attachment B and to dispose of them as it deems appropriate in accordance with applicable environmental regulations so as to avoid causing a further release of the contaminants and to protect human health and the environment. The Owner/Operator shall reimburse the actual costs incurred by the Village or others in so identifying, investigating, removing, storing, handling or disposing of contaminated soil and/or groundwater, and it shall not be a defense for Owner/Operator that those costs were not consistent with or required by Board or United States Environmental Protection Agency regulations, guidelines or policies. Prior to incurring any such costs, and unless there is an urgent reason otherwise, the Village shall first give Owner/Operator thirty days notice and an opportunity to remove or dispose of contaminated soil and/or groundwater, at Owner/Operator's cost, to the extent necessary for the Village's work. Such removal and disposal shall be in accordance with all applicable laws and regulations. Failure to give this opportunity to Owner/Operator shall not be a defense to a claim for reimbursement or that the work should not have been done. Owner/Operator's reimbursement obligation under this Paragraph 5(b) shall be limited to costs associated with the release from Owner/Operator's Site, however, there is a rebuttable presumption that the contamination found in the right-of-way described in Attachment B arose from the release of contaminants at the Site. Should Owner/Operator not reimburse the costs identified here, this Agreement shall be null and void in addition to such other remedies as may be available to the Village by law.

6. The Owner/Operator agrees to indemnify and hold harmless the Village, its agents and employees, and other entities using the right-of-way by a permit issued by the Village, for all third-party claims asserted against or costs incurred by them as a result of such third-party claims associated with the release of contaminants of concern as described in Attachments C and D.
7. Violation of the terms of this Agreement by Owner/Operator, or its successor(s) in interest, may be grounds for avoidance of this Agreement as a Highway Authority Agreement.
8. No violation of a permit by a third party shall constitute a breach of this Agreement by the Village. Owner/Operator also agrees that its personnel, if any,

at the Site will exercise due diligence in notifying those accessing contaminated soil in the right-of-way of their rights and responsibilities under this Agreement.

9. Should the Village breach this Agreement, Owner/Operator's sole remedy is for an action for damages in the Circuit Court of DuPage County. Any and all claims for damages against the Village, its agents, contractors, employees or its successors in interest or others under permit from the Village arising at any time are limited to an aggregate maximum of \$20,000.00. No other breach by the Village, its successors in interest or others under permit, of a provision of this Agreement is actionable in either law or equity by Owner/Operator against the Village or them and Owner/Operator hereby releases the Village, its agents, contractors, employees and its successors in interest, or others under permit from the Village 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 right-of-way. Should the Village convey, vacate or transfer jurisdiction of that right-of-way, Owner/Operator may pursue an action under this Agreement against the successors in interest, other than the Village, or any of its departments, or State agency, in a Court of Law.
10. This Agreement is entered into by the Village in recognition of laws passed by the General Assembly and regulations adopted by the Board which encourage a tiered approach to remediating environmental contamination. This Agreement is entered into by the Village in the spirit of those laws. Should any provision of this Agreement be determined to exceed the authority of the Village, however, this Agreement shall be null and void.
11. This Agreement (including attachments, addendums, and amendments) shall run with the land and be binding upon all assigns and successors in interest to the Owner/Operator of the Site.
12. The Village will limit access to the Site and rights-of-way as follows:
 1. Normal Access: The Village will limit access to the Site and rights-of-way via the Village Transportation Department or its successor agency, by which persons seeking authorization to perform subsurface work in a Village right-of-way will be informed of the nature and extent of the contamination, and will be informed that they should take appropriate steps to ensure the health and safety of people working at the Site and rights-of-way.
 2. Emergency Access: The Public Works Department, the Village Building Department, and the Downers Grove Fire Department or their successor agencies will be notified of the contamination at this Site and adjacent rights-of-way and will be provided with all available environmental data regarding the Site and adjacent rights-of-way. Upon request, such information will be provided to utilities in the area.

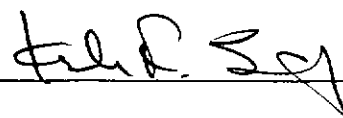
13. This Agreement shall continue in effect from the date of the Agreement until contaminant concentrations in the soil and groundwater are subsequently reduced through active remediation or through natural attenuation to Tier I residential levels as approved by the Illinois EPA and Board regulations, such that the right-of-way identified in Attachment B is demonstrated to be suitable for unrestricted use and there is no longer a need for this Agreement, and the Illinois EPA has, upon written request to the Illinois EPA and notice to the Village, amended the "No Further Remediation" determination for the Site to reflect unencumbered future use of that right-of-way.
14. Written notice and other communications relating to this agreement directed to the Village shall be sent to:
- Village Manager
 - Village of Downers Grove
 - 801 Burlington Ave.
 - Downers Grove, IL 60515
15. Written notice and other communications relating to this agreement directed to Owner/Operator shall be sent to:
- 7-Eleven, Inc.
 - 2711 N. Haskel Avenue
 - Dallas, Texas 75204
 - Attn: Ken Hilliard
 - Telecopy No.: (214) 841-6747
 - e-mail: khilli01@7-11.com

IN WITNESS WHEREOF, the Village of Downers Grove has caused this Agreement to be signed by its duly authorized representative:

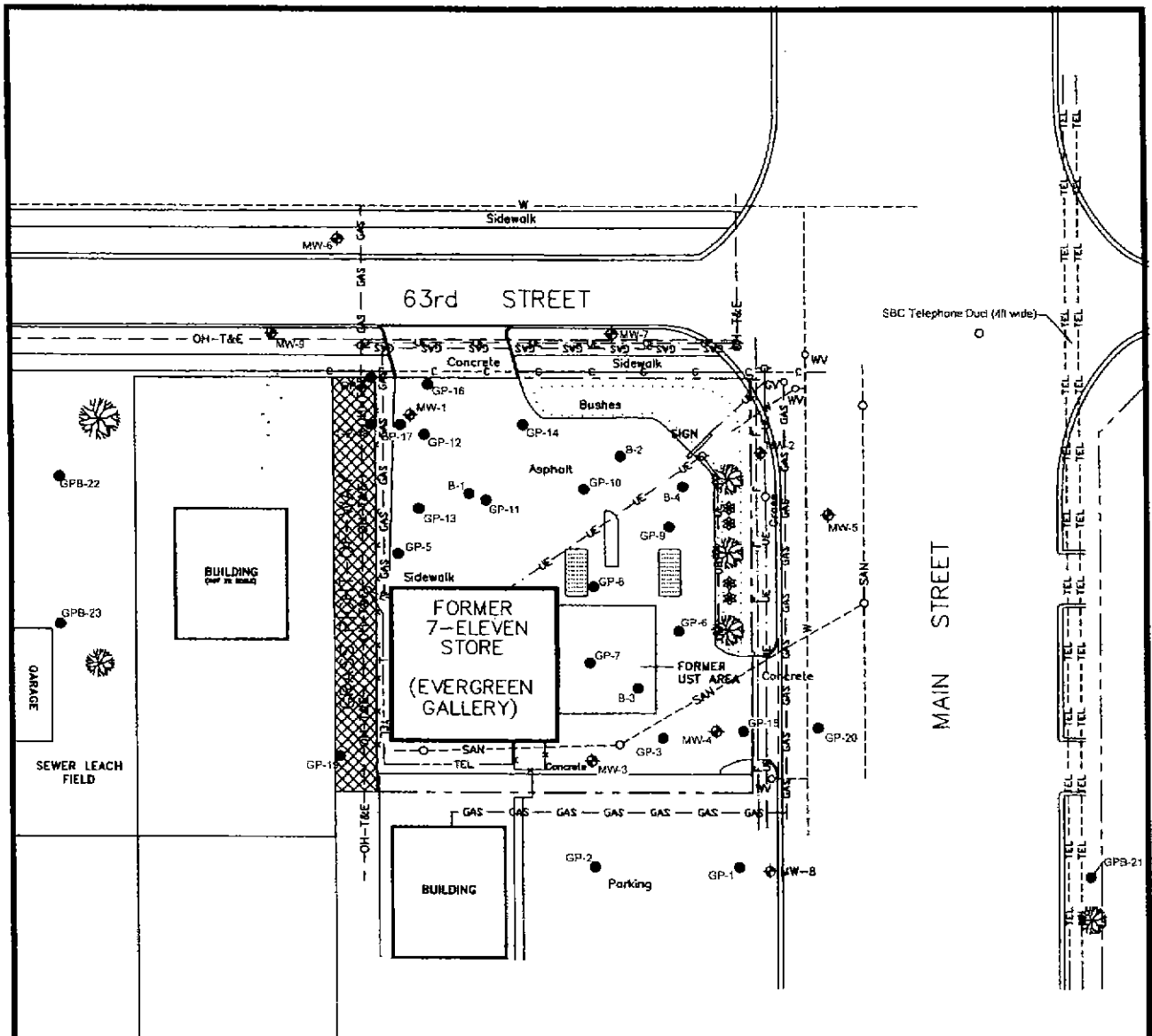
BY: _____

Date: _____

IN WITNESS WHEREOF, Owner/Operator, 7-Eleven, Inc., has caused this Agreement to be signed by its duly authorized representative:

BY: 

Date: 10-7-2005



LEGEND:

- | | | |
|--|---|---|
| <p>--- PROPERTY BOUNDARY</p> <p>◆ MW-1 MONITORING WELL</p> <p>● GPB-21 GEOPROBE BORING</p> <p>▨ FORMER DISPENSER ISLAND</p> <p>--- OH-T&E --- OVERHEAD TELEPHONE & ELECTRIC LINE</p> <p>--- TEL --- TELEPHONE LINE</p> <p>--- W --- WATER LINE</p> | <p>--- GAS --- GAS --- GAS LINE</p> <p>--- SAN --- SANITARY SEWER</p> <p>--- E --- ELECTRIC LINE</p> <p>--- UE --- UNDERGROUND ELECTRIC</p> <p>--- C --- CABLE TELEVISION LINE</p> <p>--- F --- FIBER OPTIC LINE</p> <p>○ MANHOLE</p> <p>○ GV GAS VALVE</p> <p>○ WV WATER VALVE</p> <p>○ UTILITY POLE</p> <p>✻ PLANTS</p> | <p>✻ TREE</p> <p>● BUSHES</p> <p>● B-1 SOIL BORING</p> <p>▨ AREA COVERED BY HIGHWAY AUTHORITY AGREEMENT</p> |
|--|---|---|

Notes:
 • Borings GPB-21, GPB-22 & GPB-23 advanced 02/02/04.

Sources:
 • Groundwater Technology, Inc.'s drawing "Site Map", dated 7/7/83.
 • ENSR field observations 00230-059-PHAA_CITY_05_08.dwg



SCALE: 1" = 45'

**PROPOSED
 HIGHWAY AUTHORITY
 AGREEMENT AREA**

**Former 7-Eleven Store #30141
 Main Street and 63rd Street
 Downers Grove, Illinois**

7-ELEVEN, INC.

August 2005

File No.:06230-059

FIGURE 1



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ATTACHMENT A

Summary of Soil Analytical Results in Milligrams per Kilogram (mg/kg)

Former 7-Eleven Store #30141
6300 S. Main Street
Downers Grove, Illinois

Sample ID (Sample Interval in feet)	Benzene	Toluene	Ethylbenzene	Total Xylenes
GP-4 (4-7)	<0.0071	<0.0071	0.0085	0.023
GPB-18 (4-6')	<0.02	<0.069	<0.069	<0.21
GPB-19 (10-12')	3.0	1.0	45.0	130.0
Tier I Remediation Objectives	0.03	12	13	150

Notes:

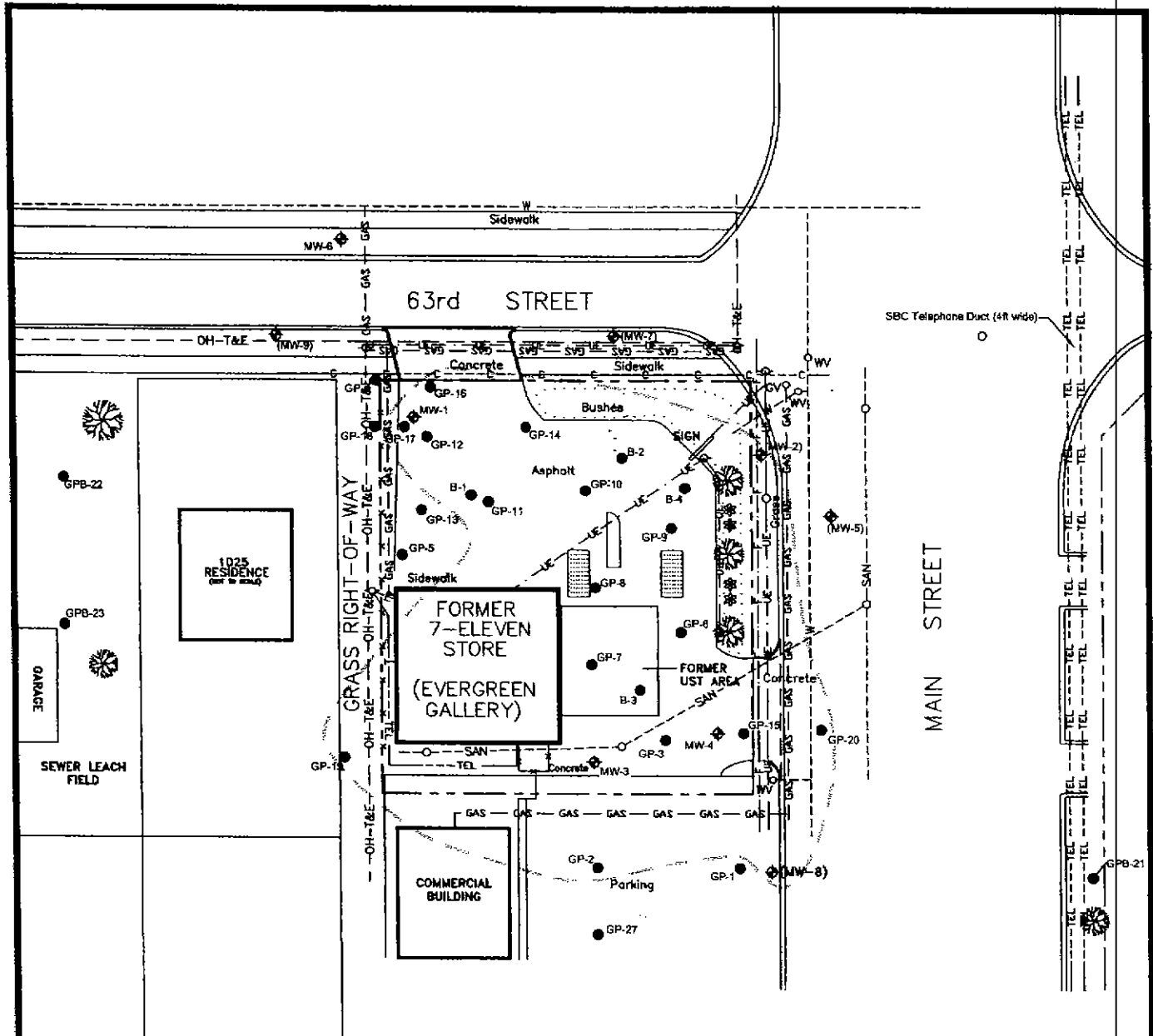
Soil samples collected by ENSR on April 20, 2001 (GP-4) and May 27, 2003 (GPB-18 and GPB-19).

ATTACHMENT A
Groundwater Analytical Results - May 2003
In Micrograms Per Liter (ug/L)
Former 7-Eleven Store #30141
6300 Main Street
Downers Grove, Illinois

Sample ID	Benzene	Toluene	Ethybenzene	Total Xylenes
GPB-18	160	1.6	<1.0	<3.0
GPB-19	2,000	230	4,000	10,000
Remediation Objectives	5	1,000	700	10,000

Notes:

Remediation objective - Tier 1 Groundwater Remediation Objectives for Class 1 Groundwater.
 Groundwater samples were collected on 5/27/03.
 Concentrations are reported as presented in laboratory's analytical report.



LEGEND:

- | | | |
|---|--|---|
| <ul style="list-style-type: none"> --- Property Boundary ◆ MW-1 Monitoring Well ◆ (MW-2) Monitoring Well Destroyed ● GPB-21 Geoprobe Boring ▤ Former Dispenser Island --- OH-T&E --- Overhead Telephone & Electric Line --- TEL --- Telephone Line --- W --- Water Line | <ul style="list-style-type: none"> --- GAS --- GAS --- Gas Line --- SAN --- Sanitary Sewer --- E --- E --- Electric Line --- UE --- Underground Electric --- C --- C --- Cable Television Line --- F --- F --- Fiber Optic Line ○ Manhole ○ GV Gas Valve ○ WV Water Valve ○ Utility Pole | <ul style="list-style-type: none"> ✳ Plants 🌳 Tree ⋯ Bushes ● B-1 Soil Boring ⋯ Inferred Impact Area Above The 8/15/01 Residential Soil Remediation Objectives |
|---|--|---|

Notes:
 • Borings GPB-21, GPB-22 & GPB-23 advanced 02/02/04.
Sources:
 • Groundwater Technology, Inc.'s drawing "Site Map", dated 7/7/93.
 • ENSR field observations

06230-058-Soil Impact above Residential Remediation_04_11.dwg

SCALE: 1" = 45'

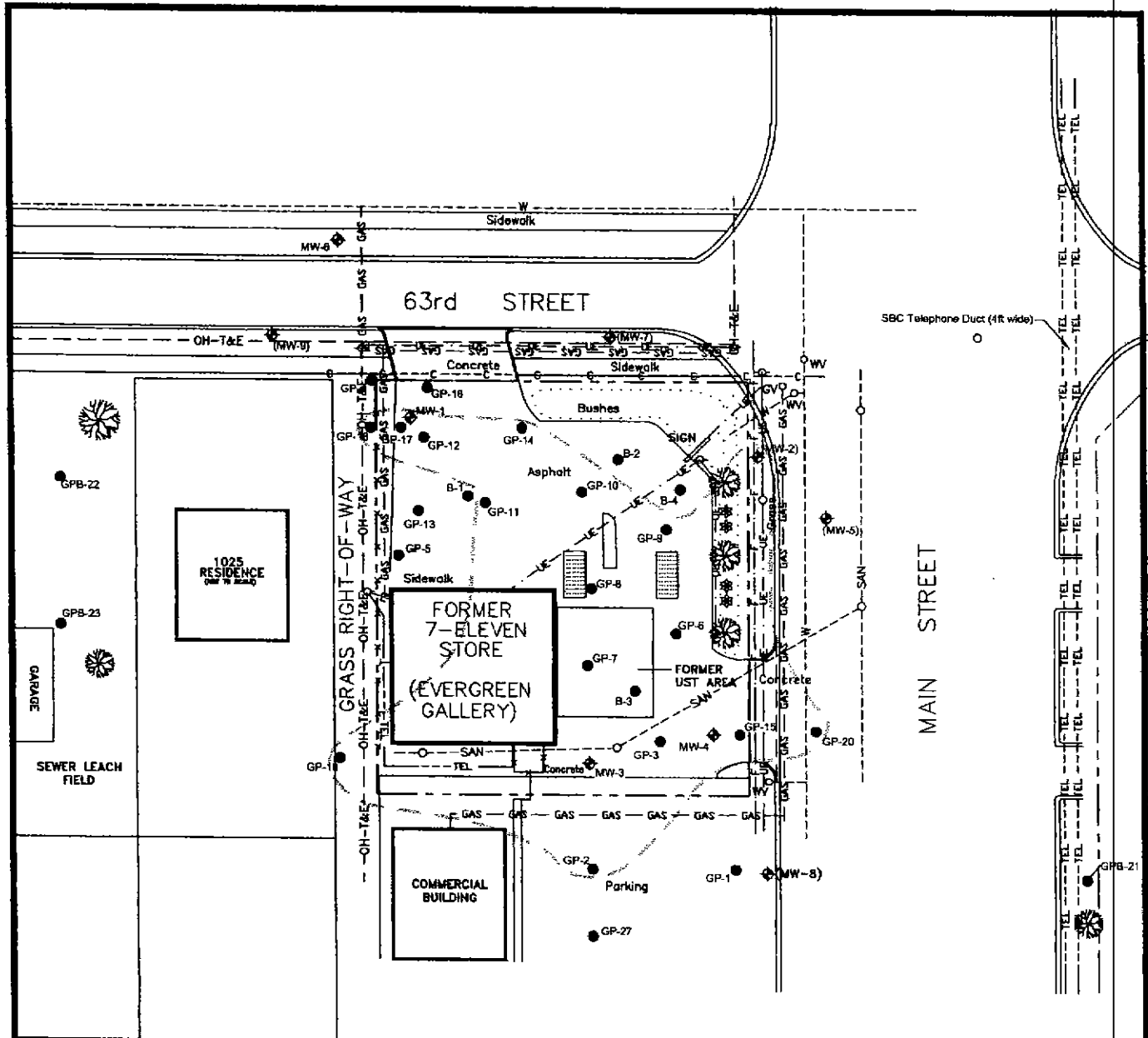
SOIL IMPACT ABOVE RESIDENTIAL REMEDIATION OBJECTIVE

Former 7-Eleven Store #30141
Main Street and 63rd Street
Downers Grove, Illinois

7-ELEVEN, INC.

November 2004 File No.:06230-059

FIGURE 2



LEGEND:

- | | | |
|---|---|--|
| <ul style="list-style-type: none"> — — — — — Property Boundary ◆ MW-1 Monitoring Well ◆ (MW-2) Monitoring Well Destroyed ● GPB-21 Geoprobe Boring ▤ Former Dispenser Island — OH-T&E — Overhead Telephone & Electric Line — — — — TEL — Telephone Line — — — — W — Water Line | <ul style="list-style-type: none"> — GAS — GAS — Gas Line — — — — SAN — Sanitary Sewer — — — — E — E — Electric Line — — — — UE — UE — Underground Electric — — — — C — C — Cable Television Line — — — — F — F — Fiber Optic Line ○ Manhole ○ CV Gas Valve ○ WW Water Valve ○ Utility Pole | <ul style="list-style-type: none"> ✻ Plants ✻ Tree ⊙ Bushes ● B-1 Soil Boring ⊙ Inferred Impact Area Above The 8/15/01 Class I Groundwater Remediation Objectives |
|---|---|--|

Notes:
 • Borings GPB-21, GPB-22 & GPB-23 advanced 02/02/04.
Sources:
 • Groundwater Technology, Inc.'s drawing "Site Map", dated 7/7/93.
 • ENSR field observations

06230-059-GW Impact Above Class I Remediation_04_11.dwg

**GROUNDWATER
 IMPACT ABOVE CLASS I
 GROUNDWATER
 REMEDIATION
 OBJECTIVE**

Former 7-Eleven Store #30141
 Main Street and 63rd Street
 Downers Grove, Illinois

7-ELEVEN, INC.

November 2004 File No.:06230-059

FIGURE 4