

**ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (ADEQ)**  
**Public Hearing**  
**on Roosevelt Irrigation District**  
**Early Response Action (ERA)**

**March 23, 2010**

My name is Jerry D. Worsham II. I am an environmental attorney with the law firm of Gammage & Burnham, PLC in Phoenix, Arizona and I am here today representing HEAD/Penn Racquet Sports (“Penn”) concerning this matter. My client is currently named as a defendant in the case titled *Roosevelt Irrigation District v. Salt River Project Agricultural Improvement and Power District, et al.*, Case No. 2:01-CV-00290-ROS, United States District Court, District of Arizona (02/09/2010). Allegedly, Penn is named as a defendant by the Roosevelt Irrigation District (“RID”) because of historical operations at a facility located at 306 S. 45<sup>th</sup> Avenue<sup>1</sup> in Phoenix, Arizona. My client is within the geographic confines of the West Van Buren Water Quality Assurance Revolving Fund (“WQARF”) Site administered by the Arizona Department of Environmental Quality (“ADEQ”).

My client generally agrees with the technical and legal positions described today by the other identified defendants, which have presented testimony covering the ill-conceived proposal by the RID as an Early Response Action (“ERA”) under the Arizona Administrative Code (“AAC”) Regulations R18-16-405. Penn requests that the ADEQ reject the proposed ERA. I wish to add the following additional information and comment for the record.

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<sup>1</sup> Penn owns the property which includes a 115,000 square-foot, one-story manufacturing building with a 6,000 square-foot second-story area and smaller administration, development, and storage buildings. The property was initially developed from agricultural land in 1972. The site was previously operated to manufacture tennis balls and racquetballs. Currently, the property is a distribution and warehouse facility for HEAD/Penn products.

## BACKGROUND

Penn received RID's notice letter dated August 19, 2009, and attended the RID meeting on September 16, 2009. At that meeting, RID distributed the "RID Fact Sheet" for Penn (See Exhibit 1). Penn has reviewed the historical facts and the documents on the Penn facility identified by RID. Although the aquifer below the Penn facility is known to be contaminated with chlorinated solvents both up and down gradient from the Penn facility,<sup>2</sup> Penn asserts that it is not a potentially responsible party ("PRP") and certainly does not have any liability to RID.

RID owns and operates approximately 100 groundwater wells in the western portion of Maricopa County. Allegedly, over 20 of those wells have been impacted by contaminated groundwater caused by upgradient facilities that have released hazardous substances or contaminants of concern ("COCs"), including trichloroethene ("TCE"), 1,1,1-trichloroethane ("TCA"), methyl tertiary butyl ether ("MTBE"), and tetrachloroethene ("PCE"). To recover any damages, RID would be required to incur response costs related to Penn's activity for identified contamination that was necessary and consistent with the National Contingency Plan (*See* 42 U.S.C. §§ 9605 and 9607). The identified COCs that the RID has asserted to contaminate their irrigation water have not been associated with the Penn facility. Therefore, cost recovery by RID would not be probable against Penn.

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<sup>2</sup> The property is located within an area of known regional groundwater contamination identified by the ADEQ as the West Van Buren Water Quality Assurance Revolving Fund (WQARF) site. A plume of contamination in the aquifer underlying the subject property stretches the length of the West Van Buren study area, from 7<sup>th</sup> Avenue to 83<sup>rd</sup> Avenue, and is approximately 1.5 miles wide, centered around Van Buren Road. The subject property is approximately 1/2 mile south of Van Buren Road and, therefore, within the area of the West Van Buren WQARF contamination.

### RID's Negotiating Position

The source document which RID relies upon to list Penn in the Draft Complaint is the ADEQ's *Draft West Van Buren Remedial Investigation Report*, p 2-3, Terranext (October 2008) which states:

20. Penn Athletic, 306 S. 45<sup>th</sup> Avenue – Conducted soil investigations associated with UST release which indicated that no COCs released. Preliminary assessment report by ADEQ 6/18/90 recommended no further action under CERCLA. ADEQ Voluntary Remediation Program issued an NFA letter dated 6/4/02. **(See Exhibit 1)**

Clearly, this source document and reference quoted by RID describes a set of facts that support the **deletion** of Penn from the list of defendants. Unfortunately, RID takes a limited view of any legal or factual defense as expressed in RID's following statement to another defendant:

The Roosevelt Irrigation District (RID) disagrees with your interpretation of the relevant caselaw. First, RID believes that it would be nearly impossible for any PRP to establish a reasonable basis for determining its allocation of responsibility for one of the largest contaminated groundwater plumes, which involves hundreds of PRPs and decades of releases of numerous hazardous substances . . . . However, if you possess technical data that rebuts the government documentation that your clients are the owner/operator of a facility that may have contributed to the groundwater contamination, RID would be willing to independently analyze it.<sup>3</sup> (emphasis added)

### Penn's Environmental Compliance

Historically, Penn management has worked with ADEQ concerning environmental compliance matters. Penn has requested and received extensive review and approval from the ADEQ for the environmental remediation at the Penn facility. Since development in 1972, the facility has the following historical incidents listed with the ADEQ.

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<sup>3</sup> E-mail from Stuart S. Kimball to Howard Shanker dated February 3, 2010 2 1:28 p.m. concerning Willmore Manufacturing.

A. Hydraulic Oil Leak. – A release of a small amount of hydraulic fluid from hydraulic lift system basement enclosure was reported on October 22, 1987. The ADEQ Solid Waste Division acknowledged that a small amount of impacted soil was removed from the basement elevator area and ADEQ did not require additional investigation or remediation. The ADEQ Water Pollution Compliance Unit issued a **Case Closure Letter** ADEQ LUST File #0356.01 on November 6, 1987. (See Exhibit 2)

B. Surface Pipeline Leak of No. 2 Fuel Oil. – In the southwest corner of the property, Penn had an above-ground steel tank (“AST”) for storing No. 2 fuel oil. The fuel oil was used for firing two steam boilers within the manufacturing facility. Fuel was piped from the AST into the manufacturing facility. Two breaks, each approximately 1/32-inch wide by 3/4-inch long, were discovered in the supply pipeline near where the line enters the manufacturing building. This surface leak was reported on January 20, 1987 and extensive site investigations have been completed. As part of the Penn leak investigation, three soil borings around the leak were completed and five groundwater monitoring wells surrounding the property were installed. The horizontal extent of the hydrocarbon contamination was defined by a soil gas survey and determined that the contamination was limited to a radius of approximately 30 feet around the leak point. The vertical extent of the hydrocarbon contamination was determined by soil borings and groundwater sampling. Groundwater sampling confirmed that no hydrocarbon contamination was found in up gradient wells (MW-2 and MW-4) or down gradient wells (MW-3 and MW-5) located within the Penn facility boundaries. ADEQ issued a **Case Closure Letter** ADEQ LUST File #4715.0268 on August 29, 1996. (See Exhibit 3)

C. Removal of Underground Storage Tanks (“USTs”). – Three, 10,000-gallon USTs were formerly located on the Penn facility and identified as Tank #1, Tank #2 and Tank #3. Penn removed the easternmost tank at the facility, referred to as Tank #1, on March 27, 1989. The center and western tanks, referred to as Tanks #2 and #3, respectively, were removed on February 13, 1990. Initially, confirmation sampling was not conducted to ensure that there was no loss of product from these tanks to the subsurface environment. In April 2000, the UST Corrective Action Section at ADEQ declined Penn’s request for LUST case closure on the tank removal activities because of limited data.

On August 18, 2000, Penn requested and was approved to be included in the Voluntary Remediation Program (“VRP”). LUST file #1137.01 remained open until July 27, 2000, after Penn submitted the application process for the VRP. The closing of this LUST file was confirmed in a letter to Penn from ADEQ on January 30, 2001.

After the completion of an extensive subsurface investigation and site characterization of the tank area under the VRP, the following conclusion was reached:

**Arizona Revised Statutes (“A.R.S.”) Title 18, Chapter 7 establishes Soil Remediation Levels (“SRL”) to govern the requirements of soil remediation. If detection levels of Extractable Fuel Hydrocarbons, BTEX (including hexane) or Polynuclear Aromatic Hydrocarbons exceed the SRL, then remediation of the soil may be required. The laboratory analysis results of the Extractable Fuel Hydrocarbons (C<sub>10</sub> to C<sub>32</sub>), BTEX (including hexane) and Polynuclear Aromatic Hydrocarbons did not indicate the presence of any constituent at concentrations higher than the SRLS for the respective contaminant.**

Based upon the facts, ADEQ issued a “**No Further Action Letter**” ADEQ Site Code: 501369-00 concerning the removal of these tanks on June 4, 2002. (See Exhibit 4)

#### **Petroleum Exclusion Under CERCLA**

Penn’s three identified spills (hydraulic fluid, No. 2 fuel oil and BTEX, hydrocarbons and PAH) are covered by the “petroleum exclusion” found in the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”). (See 42 U.S.C. § 9601 (14). Under the petroleum exclusion, CERCLA removes “petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated” from the statute’s definition of a “hazardous substance.” EPA interprets “petroleum” to include crude oil or fractions of crude oil containing either “hazardous substances . . . which are indigenous” to petroleum, or “hazardous substances which are normally mixed with or added . . . during the refining process.” (See EPA General Counsel, *Scope of the CERCLA Petroleum Exclusion Under Sections 101(14) and 104(a)(2) 5* (July 31, 1987)). Likewise, courts have determined that petroleum fuel is covered by the petroleum exclusion “even though certain of its indigenous components and certain additives [which are mixed into

petroleum] during the refining process have themselves been designated as hazardous substances within the meaning of CERCLA.” See EPA, *Petroleum Exclusion Frequently Asked Questions (“EPA FAQs”)* (explaining that the petroleum exclusion applies to certain “additives” in “oxygenated gasoline, which may involve the blending of a CERCLA hazardous substance into gasoline”).

### **RID’s Response to Penn’s Information**

In the following response to Penn’s letter with this information dated November 19, 2009 to RID, RID somehow fails to recognize the CERCLA exclusion for petroleum or ADEQ’s review of Penn’s remediation and stated:

We generally agree that Penn is not subject to CERCLA liability for the impact to RID’s wells attributable to petroleum hydrocarbon contamination or the hazardous substances that were blended with the petroleum as fuel additives because of the petroleum exclusion. However, the petroleum exclusion does not apply to the hazardous substances that are generated as a result of release of the petroleum hydrocarbons from the Penn facility that are impacting or threatening to impact the wells owned and operated by RID.<sup>4</sup>

A No Further Action Letter from the State does not provide a defense to Penn’s cost recovery liability under federal law, specifically CERCLA. A No Further Action Letter simply means that the State will not require additional work at Penn’s facility once certain health-based standards are achieved. A No Further Action Letter from the State does not address liability to third parties including RID under state or federal law. For example, liability under CERCLA arises from a facility’s contribution to contamination regardless if Arizona health-based standards are achieved. Furthermore, the No Further Action letters you provided with your November 19, 2009 letter all relate to the “remediation of soils at the Penn facility,” and not to the groundwater contamination that has impacted or threatens to impact RID’s wells.<sup>5</sup>

Penn notes that groundwater was not impacted based upon the data and reports Penn supplied to ADEQ to support the NFA determination.

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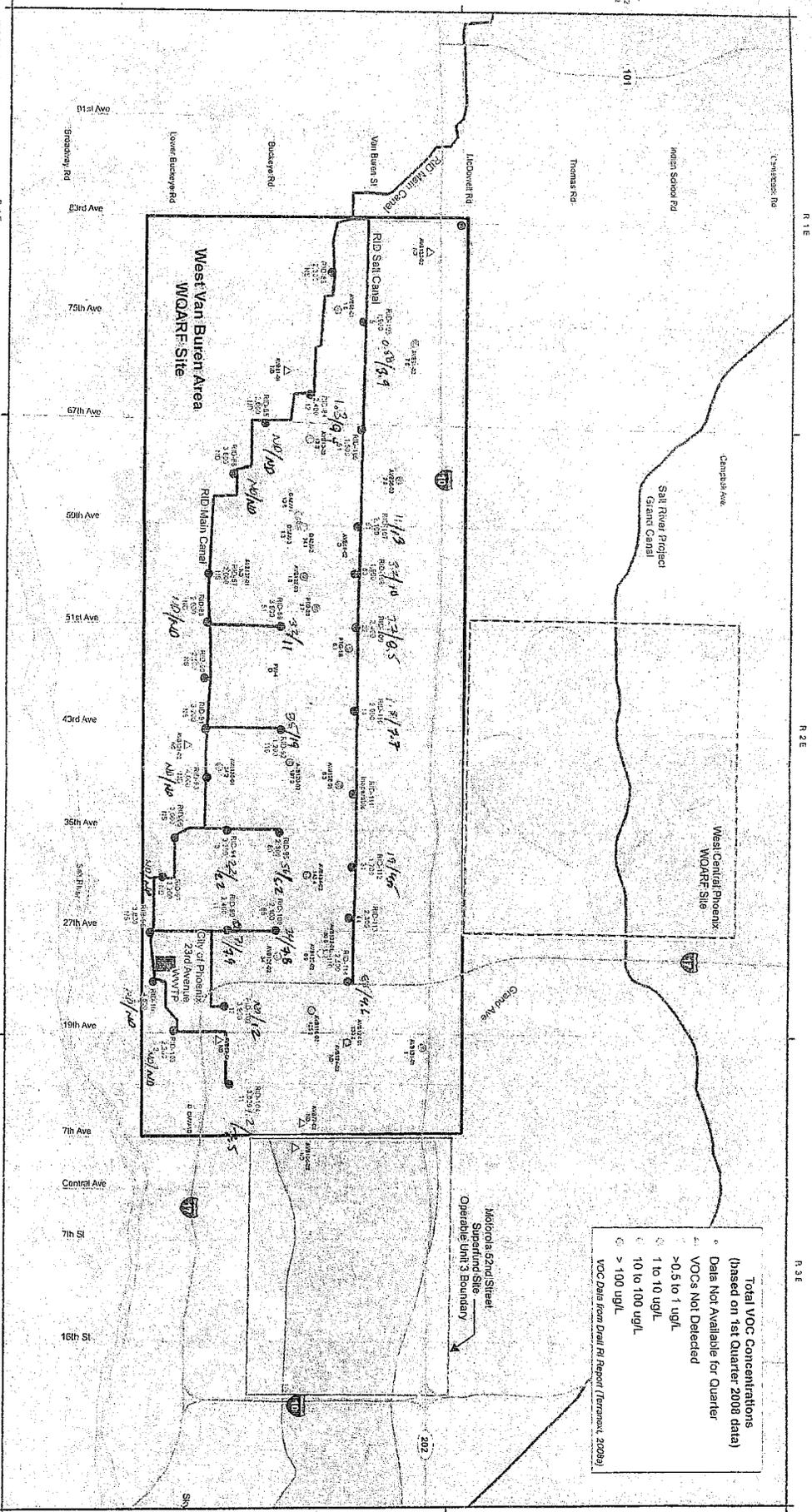
<sup>4</sup> Email dated December 2, 2009 from Stuart S. Kimball to Jerry D. Worsham II at 11:06 a.m. (page 3).

<sup>5</sup> Email dated December 2, 2009 from Stuart S. Kimball to Jerry D. Worsham II at 11:06 a.m. (page 5).

## CONCLUSION

Penn has operated under the environmental regulatory authority of the Arizona Department of Health Services (“ADHS”) or ADEQ since inception. Environmental management, environmental response and permitting have been a key part of the Penn operation from the start of the manufacturing process. Penn requests that ADEQ recognize the significance of those ADEQ regulatory responses and provide Penn, and the regulated community, with some assurance that responsible environmental management will be acknowledged and supported by ADEQ in current and future actions asserted by third parties.

My client generally agrees with the technical and legal positions against the RID as described today by the other identified defendants that have presented testimony covering the ill-conceived proposal by the RID as an ERA under AAC Regulations R18-16-405. Penn requests that ADEQ reject the proposed ERA.



**Total VOC Concentrations**  
 (based on 1st Quarter 2008 data)

- Data Not Available for Quarter
- VOCs Not Detected
- >0.5 to 1 ug/L
- 1 to 10 ug/L
- 10 to 100 ug/L
- > 100 ug/L

VOC Data from Detail PI Report (Formal, 2008a)

**EXPLANATION**

• Roosevelt Irrigation District Well

• Well ID  
 • Estimated Pumping Rate (gpm)  
 • Total 2008 VOC Concentration (ug/L)  
 • ND = Not Detected, NS = Not Sampled

• Estimated Extent of Impacted Groundwater in West Central Phoenix WQARF Site

• Estimated Extent of Impacted Groundwater in Mescalita 52nd Street Superfund Site

--- Existing Canal or Pipeline

--- Interstates

--- Local Streets

Abbreviations

WQARF - Water Quality Assurance Receiving Fund

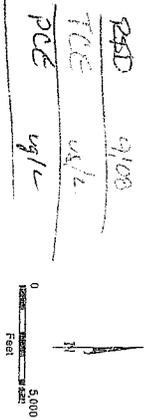
WWD - Waste Water Treatment Plant

RII - Roosevelt Irrigation District

MI - Microbial Peril Liber

VOC - Volatile Organic Compound

RI - Remedial Investigation



PEWUBURBURET  
 SPORTS FACILITY

	Roosevelt Irrigation District Groundwater Response Action Upper Alluvial Unit 2 First Quarter 2008	2008 FIGURE 5
	MONTGOMERY S ASSOCIATES	

# **EXHIBIT 1**

# ROOSEVELT IRRIGATION DISTRICT POTENTIALLY RESPONSIBLE PARTY FACT SHEET

## Background:

Roosevelt Irrigation District ("RID") owns and operates approximately 100 groundwater wells in the western portion of Maricopa County. The wells are used to supply water to public and private entities and individuals for industrial, agricultural and residential uses. Over 20 of these wells have been impacted by contaminated groundwater caused by upgradient facilities that have released or threaten to release hazardous substances, including, but not limited to, trichloroethene ("TCE"); 1,1,1-trichloroethane ("TCA"); methyl tertiary butyl ether ("MTBE"); and tetrachloroethene ("PCE").

## Research:

RID has reviewed numerous public documents in order to identify facilities that are potentially responsible for the groundwater contamination that has impacted or threatens to impact its wells. Some of these documents include remedial investigation reports, summary source reports, ADEQ fact sheets, site assessments, work plans, PRP searches and soil and groundwater reports. RID's research revealed the following information in identifying **Penn Racquet Sports, Inc.** as a potential owner or operator of a facility that released or threatened to release hazardous substances for which RID has incurred response costs:

### FACILITY ADDRESS

306 S. 45th Ave.

### CONTAMINATION AND MEDIA

UST release of Hydrocarbons

Soil

The release of petroleum hydrocarbons into contaminated groundwater generates new hazardous substances and, therefore, subject to CERCLA liability

### SOURCE DOCUMENT(S)

WEST VAN BUREN RI REPORT: 2-3

## Conclusion:

RID is considering remedial alternatives that will utilize RID's impacted wells and existing pipelines and easements to design and operate a single, regional "pump and treat" system that could effectively address the groundwater contamination that currently impacts and/or threatens to impact RID wells. More significantly, if the necessary funding can be obtained for well field integration, the required water treatment facility(ies), and a separate delivery system for the treated water, RID is prepared to enter into consent decrees with settling parties that could eliminate liability for the very significant future long-term "pump and treat" operation and maintenance costs. Participation in the consent decree by ADEQ also could provide protection from any contribution claims from any non-settling potentially responsible party under Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2); and A.R.S. § 49-292(C).



*A Woman Owned Business Enterprise*

4050 E. Cotton Center Blvd., Suite 73, Phoenix, AZ 85040

**DRAFT  
REMEDIAL INVESTIGATION REPORT  
West Van Buren Area WQARF Registry Site  
Phoenix, Arizona**

**Volume I**

**Terranext Project No. 03103154**

**Prepared For:**

**Arizona Department of Environmental Quality  
1110 West Washington  
Phoenix, Arizona 85007**

**October 2008**

12. CoStar Corp/Data Packaging Corp, 425 S. 67<sup>th</sup> Ave – Investigated soil release at oil separator and at drywell where contaminated soil excavated to 25 feet below ground surface (bgs). Soil remediation confirmed and groundwater monitor wells requested by ADEQ in letter dated 9/9/93 but were never completed.
13. Grow Group, Inc. 4940 W. Jefferson St. – During a preliminary site assessment, soils were sampled and analyzed for pesticides, herbicides, PCBs, and petroleum hydrocarbons, ADEQ requested copies of report. Not sampled for WVBA COCs.
14. Hi-Tech Plating, Inc., 4313 W. Van Buren St. – PCE & TCE detected in drywell. Investigated drywell area but found no VOCs in soil or groundwater. No letter issued by ADEQ.
15. Jacquay's Equipment Co., 1219 S. 19<sup>th</sup> Ave. – Recommended for physical testing in Kleinfelder Phase I report but no record of testing in file. No letter from ADEQ.
16. Joe's Diesel Repair, 6316 W. Van Buren St. – TCA and TCE detected at concentrations slightly greater than the detection limits in soil sample collected during Phase I investigation but less than concentrations detected in background samples.
17. LaSalle Draperies, 710 W. Buchanan St. – PCE and TCE detected in soil gas but not soil samples. Tom Curry, former ADEQ project manager for WVBA, telephone record dated 7/30/92 indicated that additional sampling could result in issuing a no action letter.
18. Maricopa By-Products Inc., 3602 W. Elwood St. – TCA and TCE detected at concentrations slightly greater than the detection limits in soil sample collected during Phase I investigation but less than concentrations detected in background samples.
19. Owens-Corning Fiberglass Corp., 1880 W. Fillmore St. – Submitted preliminary site assessment report as part of questionnaire request response to ADEQ. ADEQ letter dated February 9, 1990 stated that the facility was not considered for further evaluations.
20. Penn Athletic, 306 S. 45<sup>th</sup> Ave – Conducted soil investigations associated with UST release which indicated that no COCs released. Preliminary assessment report by ADEQ 6/18/90 recommended no further action under CERCLA. ADEQ Voluntary Remediation Program issued a NFA letter dated 6/4/02.
21. Petco, Inc., W. Side of 67<sup>th</sup> Ave. N. of railroad – TCA and TCE detected at concentrations slightly greater than the detection limits in soil sample collected during Phase I investigation but less than concentrations detected in background samples.
22. Phoenix Vegetable Distribution, S. Side of Buckeye Rd. E. of 83<sup>rd</sup> Ave. – TCE detected at concentration slightly greater than the detection limit in soil sample collected during Phase I investigation but less than concentrations detected in background samples.
23. Phoenix Tank Farm, 51<sup>st</sup> Ave/Van Buren St. – Not under WQARF jurisdiction.

# **EXHIBIT 2**



## ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Fife Symington, Governor      Russell F. Rhoades, Director

July 10, 1996  
REF: ICU96-758

Mr. Jerry Geering  
Penn Racquet Sports  
306 South 45th Avenue  
Phoenix, Arizona 85043

RE: Penn Racquet Sports Facility, 306 South 45th Avenue, Phoenix  
PCS# 1579-H; LUST File No. 0356.01

Dear Mr. Geering:

The Arizona Department of Environmental Quality has recently adopted new standards regarding the remediation of soils contaminated with petroleum. In an effort to insure proper closure of existing cases, the Solid Waste Section, Inspections and Compliance Unit (ICU), is reviewing all cases which involved the remediation of soils contaminated with petroleum. The ICU has completed its review of the above referenced file and has the following comments:

A letter from Richard Thielen, dated November 3, 1987, indicating that all soils contaminated with hydraulic fluid had been excavated and stored in "two 55 gallon drums". However, there was no evidence indicating that these soils were removed from the site.

A telephone call from you on July 9, 1996, indicated that the drummed soils were removed from the site for incineration prior to the start of your employment with Penn in 1988.

Based on the above documentation, the ICU considers this case to be closed and no additional environmental investigations, sampling, or remedial action will be required at this time. However, if future evidence comes forth which indicates the existence of contamination above regulatory levels, this case may be reopened.

If you have any questions, please call me at (602) 207-2368 or toll free in Arizona 1-800-234-5677 ext. 2368.

Sincerely,

A handwritten signature in cursive script that reads "Deborah A. Garron".

Deborah A. Garron  
PCS Compliance  
Solid Waste Inspections and Compliance Unit  
Waste Programs Division



ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Fife Symington, Governor      Russell F. Rhoades, Director

UST Ref. #96-0037030  
July 5, 1996

Mr. Jerry Geering  
Penn Racquet Sports  
306 South 45th Avenue  
Phoenix, Arizona 85043

**RE: CASE REFERRAL TO THE ADEQ SOLID WASTE SECTION**  
LUST File #0356.01      Penn Racquet Sports Facility  
Facility ID #0-003656      306 South 45th Avenue  
Maricopa County      Phoenix, Arizona 85043

Dear Mr. Geering:

The Arizona Department of Environmental Quality (ADEQ) Underground/Leaking Underground Storage Tank (UST/LUST) Section staff have reviewed the information contained within the referenced case file. Based on this review, it has been determined that this case contains information concerning a **release of hydraulic fluid from a hydraulic lift system.**

Based upon federal and/or State law excluding such systems and related releases, this case is not within the jurisdiction of Arizona's UST Section. As a result, this case is being transferred to the ADEQ Solid Waste Section for any follow-up action. If you have any questions about Solid Waste Section requirements or need further assistance, please contact Eric Lewis, Inspection & Compliance Unit, Solid Waste Section at (602) 207-4119.

This incident was discovered on or about October 23, 1987. The release information was reported to the ADEQ on October 22, 1987. This site had confirmed soil contamination due to the release of hydraulic fluid at this facility. The ADEQ Water Pollution Compliance Unit staff issued a case closure letter on November 6, 1987.

To obtain copies of any UST program case file information, contact UST file room staff at (602) 207-4345. The UST program will maintain jurisdiction of any regulated UST issues at this facility. This letter does not affect the status of any other ADEQ program or ADEQ UST Section case file. If you have any questions regarding this case referral, please contact me at (602) 207-4292.

Sincerely,

Quinn Thacker, RES  
Environmental Program Specialist  
UST Section Technical Support Unit  
QRT:cd

- cc: Sandy Vargas, AA II, UST/LUST Section Inspections & Compliance Unit
- Eric Lewis, EPS, Solid Waste Section
- Les Glascoe, UST/LUST Section SAF Administrator
- Lisa Swisher, Peterson Consulting Limited Partnership
- Chris Long, Manager, UST/LUST Section Financial Programs Unit

*Closure letter  
sent by  
Debra Gorman  
7/10/96.  
207 2368*

f:\qrtlwp\referral\03563656.sw

*Contacted  
Chris Conley 7/10*

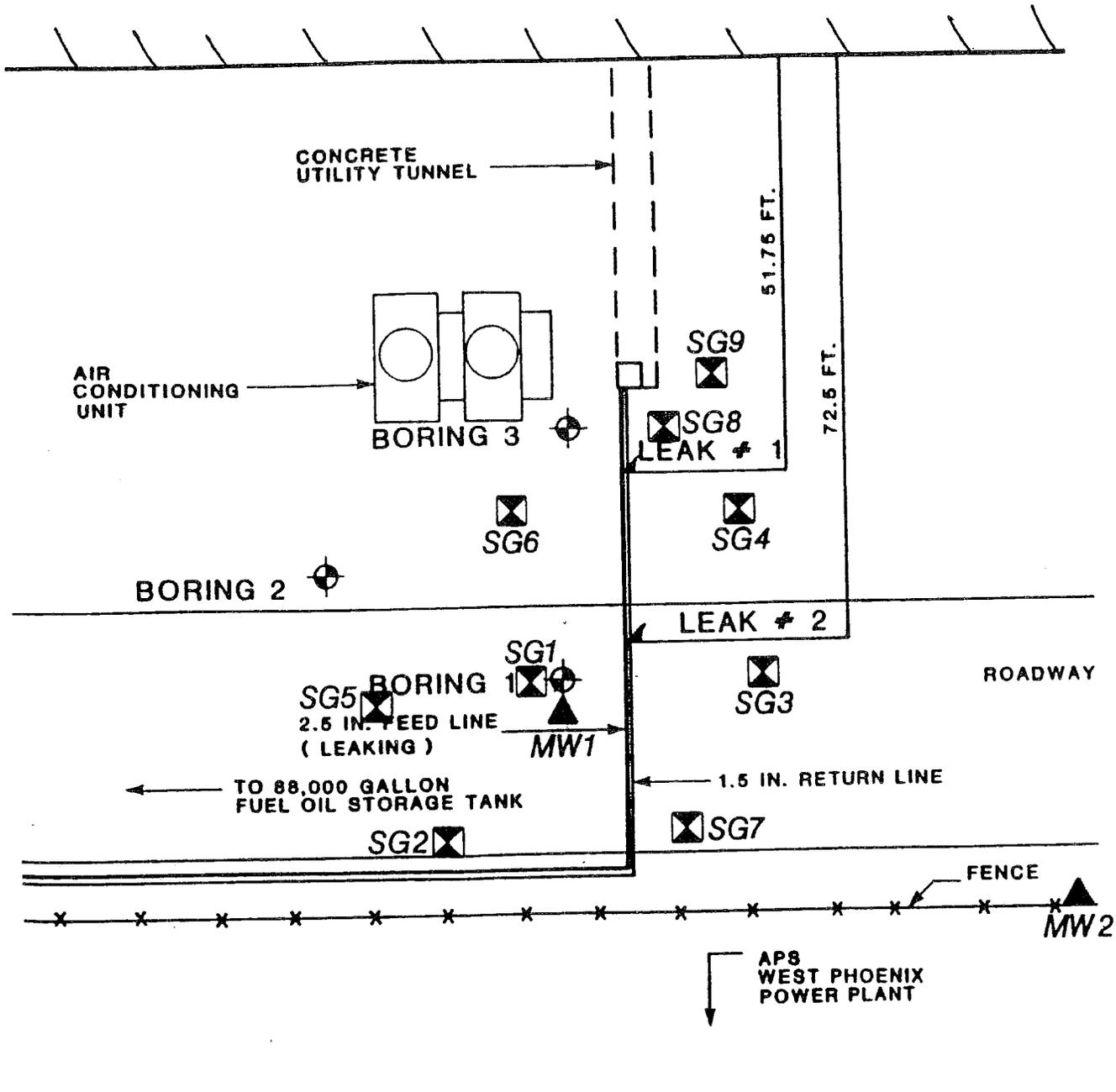
# **EXHIBIT 3**

# PENN ATHLETIC PRODUCTS Environmental Site Assessment

## SOIL GAS SURVEY

Figure 2

MANUFACTURING BUILDING  
(SOUTH WALL)



⊕ BORING LOCATION (DAMES & MOORE)

▲ MONITORING WELL LOCATION

⊠ SOIL GAS SURVEY LOCATION

REVIEWED  
W. SHONERD, P.E.

PREPARED  
SANTIAGO

JOB NO. 2177J218

NOT TO SCALE

**WESTERN TECHNOLOGIES INC.**

The Quality People

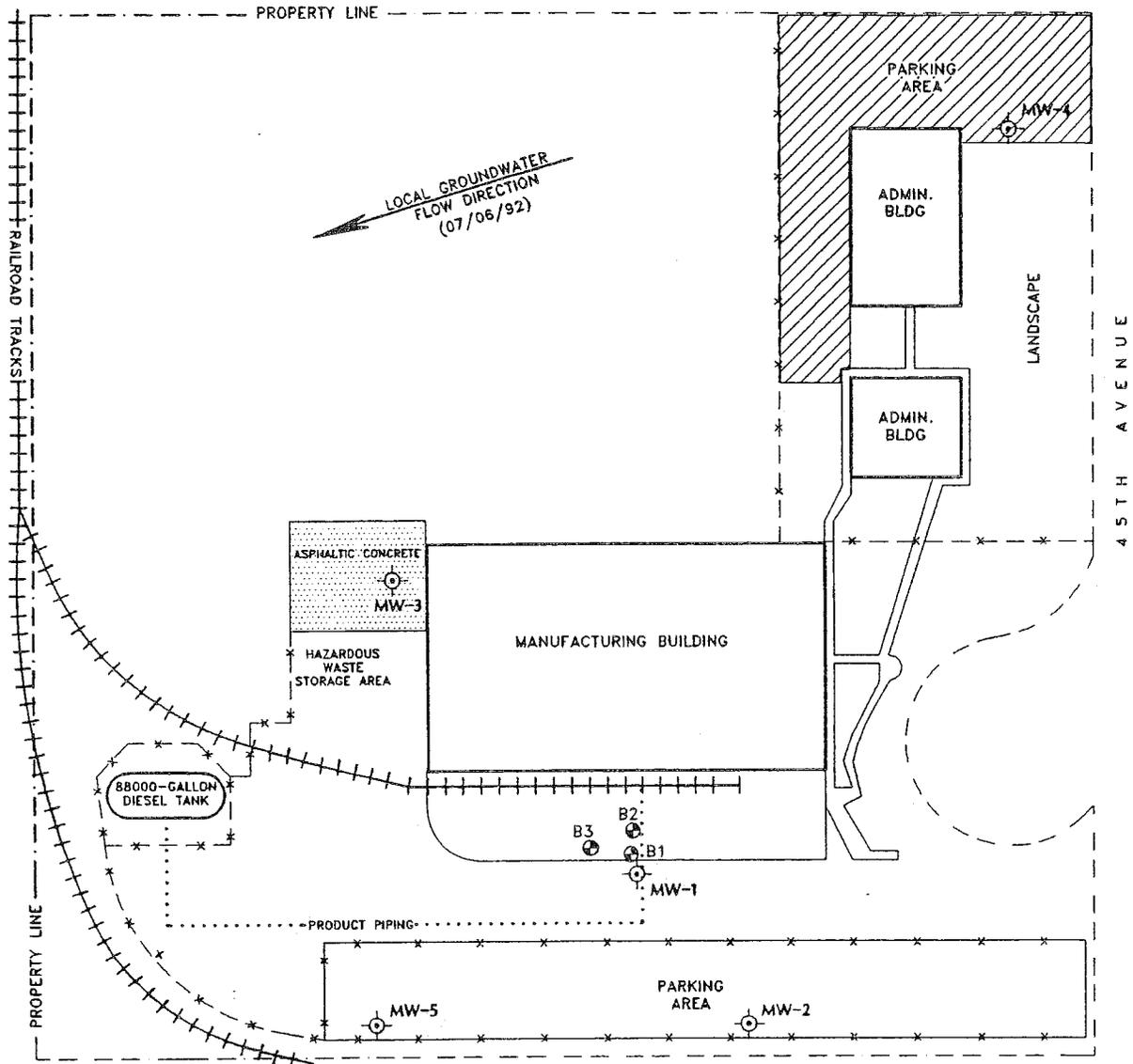


# Figure 2

Penn Racquet Sports

306 South 45th Avenue - Phoenix, Arizona

Site Diagram



LEGEND:	
MW-1	MONITORING WELL LOCATION
B1	DAMES & MOORE BORING LOCATION



NOT TO SCALE

Reviewed: D. Pettigrew	Review Date: 7/6/92
Client: Penn Racquet Sports	Prepared: K. Eppley
<b>Western Technologies Inc.</b>	
Job No. 7172JC150	Figure: 2 of 5



## ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Fife Symington, Governor      Russell F. Rhoades, Director

August 29, 1996  
REF: ICU96-944

Mr. Gerald Geering, Director  
Safety, Health & Environmental Engineering Services  
Penn Racquet Sports  
306 South 45th Avenue  
Phoenix, Arizona 85043

RE: Penn Racquet Sports AST Facility, 306 South 45th Avenue, Phoenix  
PCS# 1580-A; LUST File #4715.0268

Dear Mr. Geering:

The Arizona Department of Environmental Quality has recently adopted new standards regarding the remediation of soils contaminated with petroleum. In an effort to insure proper closure, the Solid Waste Section, Inspections and Compliance Unit (ICU) is reviewing all existing cases which involved the remediation of soils contaminated with petroleum. The ICU has completed its review of the closure report, dated August 28, 1996, and analytical sampling results for the above referenced facility. Results indicate levels for total petroleum hydrocarbons to be below residential levels pursuant to the *Interim Soil Remediation Standards*.

Based on the supporting documentation, the ICU considers this case to be closed and no additional environmental investigations, sampling, or remedial action will be required at this time. However, if future evidence comes forth which indicates the existence of contamination above regulatory levels, this case may be reopened.

Thank you for your submittal. If you have any questions, please call me at (602) 207-2368 or toll free in Arizona 1-800-234-5677 ext. 2368.

Sincerely,

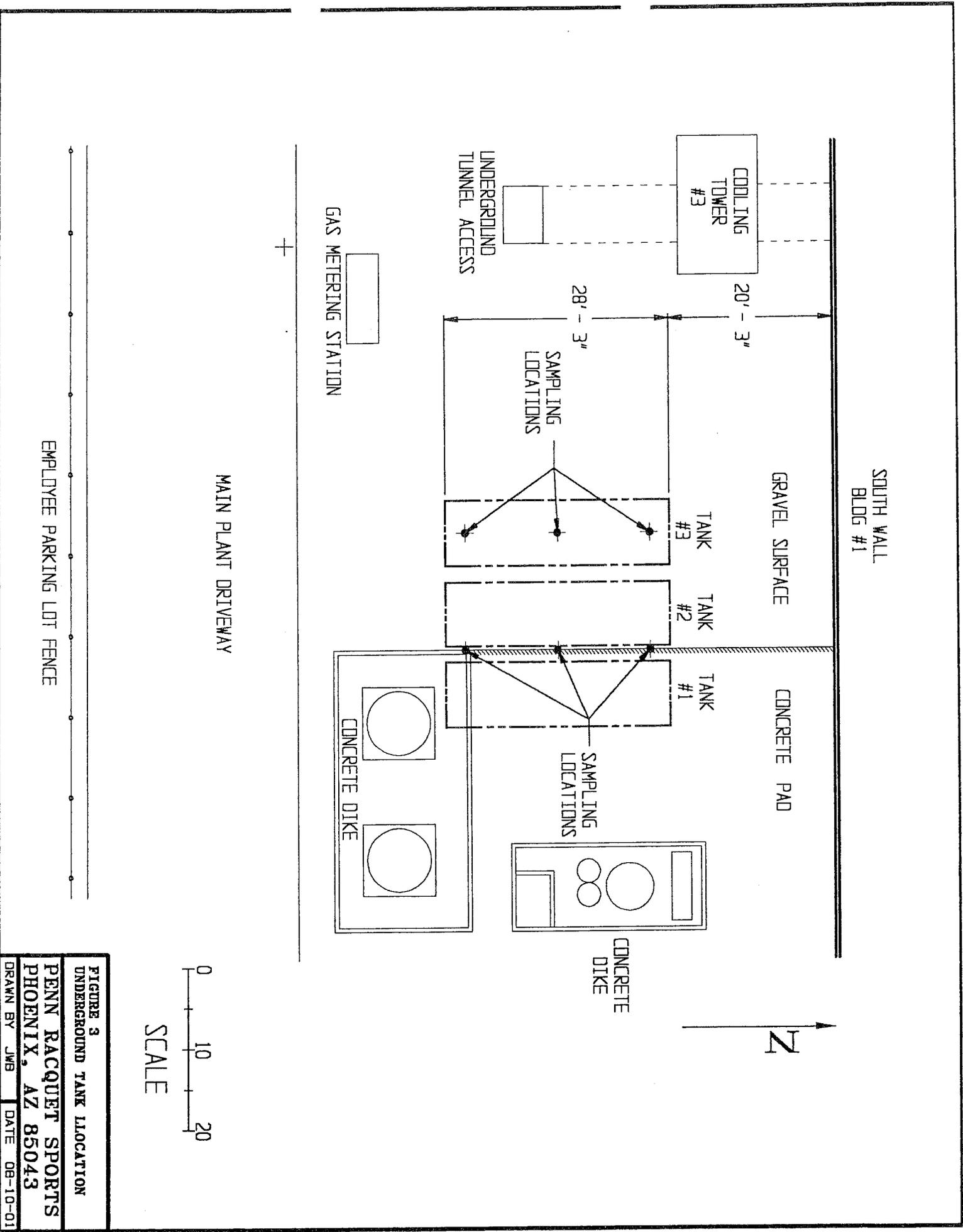
A handwritten signature in cursive script, appearing to read "Deborah A. Garron".

Deborah A. Garron  
PCS Compliance  
Solid Waste Inspections and Compliance Unit  
Waste Programs Division

DAG:dag

cc: Facility file

# **EXHIBIT 4**



**FIGURE 3**  
**UNDERGROUND TANK LOCATION**  
**PENN RACQUET SPORTS**  
**PHOENIX, AZ 85043**  
 DRAWN BY JWB DATE 08-10-01



Jane Dee Hull  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

3033 North Central Avenue • Phoenix, Arizona 85012-2809  
(602) 207-2300 • www.adeq.state.az.us



Jacqueline E. Schafer  
Director

June 4, 2002

VSU:246

Mr. Wayne Bushnell, Manager  
Environmental, Safety and Health  
Penn Racquet Sports  
306 South 45<sup>th</sup> Avenue  
Phoenix, Arizona 85043

**RE: No Further Action Determination for Soil Only: Former Underground Storage Tank  
Excavation Area, Penn Racquet Sports, 306 South 45<sup>th</sup> Avenue, Phoenix, Arizona.  
Site Code: 501369-00.**

Dear Mr. Bushnell:

Pursuant to Arizona Revised Statute (A.R.S.) §49-181, the Arizona Department of Environmental Quality (ADEQ) grants Penn Racquet Sports' request for a No Further Action (NFA) determination for soil only at the former underground storage tank (UST) excavation (approximately 27 feet by 30 feet).

This NFA determination applies only to the soil portion of the former UST excavation area located south of the Office and Manufacturing Building No. 1, southeast of Cooling Tower No.3 and immediately to the west of the volatile organic compound recovery system. The location of the UST excavation area is shown in Figures 1 and 2 (attached), as identified in the request for a NFA determination to the ADEQ Voluntary Remediation Program. The Department's determination is based upon the submittals of Penn Racquet Sports. Information relating to the NFA request may be found in the ADEQ files for this applicant.

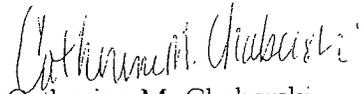
Analyses of all soil samples by U.S. EPA Method 8260 for benzene, toluene, ethylbenzene and xylenes (BTEX) modified for hexane (CAS No. 110-54-3), hydrocarbons (HC10 - 32) following Arizona Department of Health Services (ADHS) Method 8015 AZR1, and polynuclear aromatic hydrocarbons (PAHs) following U.S. EPA Method 8310 demonstrated that none of those chemical compounds were present above laboratory detection limits and, therefore, are not contaminants of concern at this site.

Pursuant to A.R.S. §49-181(G), this NFA determination means that no further action shall be taken by the Department to remediate or require remediation at the identified portion of the site except that the Department may rescind or amend this NFA determination and require remedial actions at this site pursuant to A.R.S. §49-181(F). The Department reserves the right to remediate or require remediation for future releases of contamination which occur after the effective date of this determination.

Mr. Wayne Bushnell  
June 4, 2002  
Page 2

Please note that the NFA determination does not address any other area of land, media or any other contaminants. Pursuant to A.R.S. §49-184, the Department reserves the right to recover penalties or to take any action authorized by law for any violation of A.R.S. Title 49.

Sincerely,



Catherine M. Chaberski  
Manager, Voluntary Remediation Program  
Waste Programs Division

c: Amanda Stone, Section Manager, Capacity Development Section  
Juan M. Velasco, VRP Specialist