

*Environmental Covenant
Former Holiday Oil #2
June 22, 2015*

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08/07/2015 01:21 PM \$0.00
Book - 10350 Pg - 7505-7515
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
UT ST-DEPT OF TRANSPORTATION
BOX 148420 ATT: JASON HENLEY
SLC UT 84114-8420
BY: SSA, DEPUTY - WI 11 P.

When Recorded Return To:

Jason Henley
Program Manager
Right of Way Division
Utah Department of Transportation
4501 South 2700 West
P.O. Box 148420
Salt Lake City, Utah 84120-8420

With Copy To:

J.D. Keetley
Project Manager
Division of Environmental Response and Remediation
Utah Department of Environmental Quality
195 North 1950 West, 1st Floor
P.O. Box 144840
Salt Lake City, Utah 84114-4840

Tax ID No. 21-18-208-010
UDOT Pin No. 8523
UDOT Project No. S-0173(16)5
UDOT Parcel No. 84:T

ENVIRONMENTAL COVENANT

This environmental covenant is made pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. Section 57-25-101, et seq. (the "Utah Act"). Utah Department of Transportation, as grantor ("Grantor") makes and imposes this environmental covenant upon the property more particularly described in Exhibit A attached hereto (the "Property"). The street address of the Property is 4235 West 5415 South, Kearns, Utah. This environmental covenant shall run with the land, pursuant to and subject to the Utah Act.

1. Notice. Notice is hereby given that the Property is or may be contaminated with a regulated substance and therefore this environmental covenant is imposed to mitigate the risk to public health, safety and the environment.
2. Environmental Response Project. An environmental response project was conducted on the Property under the authority of the Utah Underground Storage Tank (UST) Act, Title 19, Chapter 4 of the Utah Code Ann. that is administered by the Division of

Environmental Response and Remediation (“DERR”) in the Utah Department of Environmental Quality.

The environmental response project is identified by DERR as Facility ID No. 4000378, Release KBB. The street address is 4235 West 5415 South, Kearns, Utah. The Property had been a gasoline service station since about 1975, when a 2,000-gallon UST was installed to store gasoline. In 1978 and 1980, two 12,000-gallon USTs were installed to store gasoline. In May 1997, the 2,000-gallon UST was removed and soil sampling indicated that a release of gasoline to the environment had occurred. The DERR opened Release KBB. In 2006, a soil vapor extraction (“SVE”) system was installed to remediate petroleum-contaminated soils in the subsurface. In April 2012, the two 12,000-gallon USTs were removed. In March 2013, confirmation soil samples were collected to determine if the SVE system had cleaned up the subsurface soils to DERR UST Facility Cleanup Standards.

The confirmation soil sampling indicated that there are still subsurface soils (at depths from about 19 to 37 feet below the ground surface) contaminated with petroleum hydrocarbon compounds at concentrations exceeding DERR UST Facility Cleanup Standards. The approximate aerial extent of contaminated subsurface soils is shown on attached Figure 1. The laboratory analytical results and depths are shown on attached Table 1.

3. Grantor. The Grantor of this environmental covenant is also an Owner as defined in Paragraph 4.
4. Owner. The “Owner” of the Property is a person who controls, occupies, or holds an interest (other than this environmental covenant) in the Property at any given time. Because this environmental covenant runs with the land, the obligations of the Owner are transferred to assigns, successors in interest, including without limitation to future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, and any other person or entity who acquires any interest whatsoever in the Property, or any portion thereof, whether or not any reference to this environmental covenant or its provisions are contained in the deed or other conveyance instrument, or other agreements by which such person or entity acquires its interest in the Property or any portion thereof (“Transferees”). Upon transfer of an Owner’s interest in the Property, the Owner shall have no further rights or obligations hereunder. Notwithstanding the foregoing, nothing herein shall relieve Owner during the time it holds an interest in the Property of its responsibilities to comply with the terms hereof and all other provisions of applicable law or of responsibility for its failure to comply during the time it held an interest in the Property.
5. Holder. Utah Department of Transportation shall be the grantee (“Holder”) of this environmental covenant as defined in Sections 57-25-102(6), 103(1), 103(3)(b). Holder may enforce this environmental covenant. Holder’s obligations hereunder are limited to the specific provisions and the limited purposes described herein. Subject to the provisions hereof, Holder’s rights and obligations survive the transfer of the Property.

6. Agency. The Utah Department of Environmental Quality (“UDEQ”) is the Agency (as defined in the Utah Act) under this environmental covenant. The Agency may be referred to herein as the Agency or the UDEQ. The Agency may enforce this environmental covenant. The Agency assumes no affirmative duties through the execution of this environmental covenant.
7. Administrative Record. The environmental response project is assigned Facility Identification No. 4000378, Release Site KBB (“Administrative Record”) on file with the DERR.
8. Activity and Use Limitations. As part of the environmental response project described above, the following activity and use limitations imposed on the Property.
 - a. Use Limitations. Residential uses are prohibited.
 - b. Construction Limitations.
 - i. In the event that future construction activities involving soil excavation are planned in the petroleum-contaminated area shown on attached Figure 1, workers will be required to comply with the Occupational Safety and Health Administration (“OSHA”) training for hazardous materials facilities (29 CFR 1910.120).
 - ii. Petroleum-contaminated soil or water that is removed shall be properly treated and/or disposed in accordance with applicable law. It is recommended that the Owner retain a Utah DERR certified underground storage tank consultant to oversee the removal of contaminated soil, and that the owner retain a Utah DERR certified soil and groundwater sampler to conduct sampling.
 - iii. In order to address potential vapor intrusion issues , if structures are placed above the contaminated area, Owner shall install and maintain a vapor mitigation system in any enclosed buildings to be occupied by humans, unless a vapor intrusion risk assessment is conducted and shows that there is no vapor intrusion risk, as determined by agency.
 - c. Prior to construction, Owner shall notify the Agency of its construction plans and document how it will achieve compliance with the construction limitations, including providing Agency with copies of its application for a building permit with its vapor mitigation system plans, and a report and photos documenting installation of the vapor mitigation system, if a vapor mitigation system is required.
 - d. Compliance Reporting. Upon request, Owner shall submit written documentation to the UDEQ verifying that the activity and use limitations remain in place and are being followed.

9. **Compliance Enforcement.** This environmental covenant may be enforced pursuant to the Utah Act. Failure to timely enforce compliance with this environmental covenant or the activity and use limitations contained herein shall not bar subsequent enforcement, and shall not be deemed a waiver of a right to take action to enforce any non-compliance. Nothing in this environmental covenant shall restrict the Agency from exercising any authority under applicable law.
10. **Rights of Access.** The right of access to the Property is permanently granted to the Agency and the Holders and their respective contractors for necessary response actions, inspections, implementation and enforcement of this environmental covenant.
11. **Notice upon Conveyance.** Owner shall notify the Agency and Holder within 20 days after each transfer of ownership of all or any portion of the Property. Owner's notice to the Agency and Holder shall include the name, address and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and an unsurveyed plat that shows the boundaries of the property being transferred. Instruments that convey any interest in the Property (fee, leasehold, easement, encumbrance, etc.) shall include a notification to the person or entity who acquires the interest that the Property is subject to this environmental covenant and shall identify the date, entry no., book and page number at which this document is recorded in the records of the Salt Lake County Recorder, in the State of Utah. Failure to provide notification shall have no effect upon the enforceability and duty to comply with this environmental covenant.
12. **Representations and Warranties.** Grantor hereby represents and warrants to the other signatories hereto:
 - a. that it is the sole fee simple owner of the Property;
 - b. that it has the power and authority to enter into this environmental covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
 - c. that it has identified all other persons that own an interest in or hold an encumbrance on the Property, has notified such persons of its intention to enter into this environmental covenant, and has notified the Agency of the names and contact information of the persons holding such encumbrances as provided in Paragraph 16, below, entitled: "Notice;" and,
 - d. that this environmental covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which it is a party or by which it may be bound or affected.
13. **Amendment or Termination.** This environmental covenant may be amended or terminated pursuant to the Utah Act. Except as set forth herein, Grantor and Holder waive any and all rights to consent or notice of amendment concerning any parcel of the Property to which Grantor or Holder has no fee simple interest at the time of amendment or termination.

14. **Effective Date, Severability and Governing Law.** The effective date of this environmental covenant shall be the date upon which the fully executed environmental covenant has been recorded as a document of record for the Property with the Salt Lake County Recorder. If any provision of this environmental covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. This environmental covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.
15. **Recordation and Distribution of Environmental Covenant.** Within thirty (30) days after the date of the final required signature upon this environmental covenant, Grantor shall file this environmental covenant for recording in the same manner as a deed to the Property, with the Salt Lake County Recorder's Office. Grantor shall distribute a file-and-date stamped copy of the recorded environmental covenant to the Agency.
16. **Notice.** Unless otherwise notified in writing by or on behalf of the pertinent party any document or communication required by this environmental covenant shall be submitted to:

If to the UDEQ:

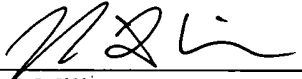
J.D. Keetley, Project Manager
Facility Identification No. 4000378, Release Site KBB
Division of Environmental Response and Remediation
UDEQ
195 North 1950 West, 1st Floor
P.O. Box 144840
Salt Lake City, Utah 84114-4840

If to the Utah Department of Transportation:
Jason Henley, Program Manager
Right of Way Design
Right of Way Division
Utah Department of Transportation
4501 South 2700 West
P.O. Box 148420
Salt Lake City, Utah 84120-8420

17. **Governmental Immunity.** In executing this covenant, the Agency does not waive governmental immunity afforded by law. The Grantor, Owner, and Holder, for themselves and their successors, assigns, and Transferees, hereby fully and irrevocably release and covenant not to sue the State of Utah, its agencies, successors, departments, agents, and employees ("State") from any and all claims, damages, or causes of action arising from, or on account of the activities carried out pursuant to this environmental covenant except for an action to amend or terminate the environmental covenant pursuant to Sections 57-25-109 and 57-25-110 of the Utah Code Ann. or for a claim against the State arising directly

or indirectly from or out of actions of employees of the State that would result in (i) liability to the State of Utah under Section 63G-7-301 of the Governmental Immunity Act of Utah, Utah Code Ann. Section 63G-7-101, et seq. or (ii) individual liability for actions not covered by the Governmental Immunity Act as indicated in Sections 63G-7-202 and -902 of the Governmental Immunity Act, as determined in a court of law.

Utah Department of Transportation
as Grantor, Owner, and Holder

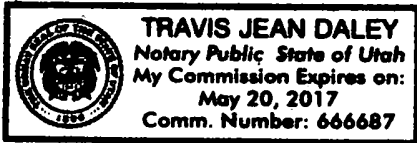


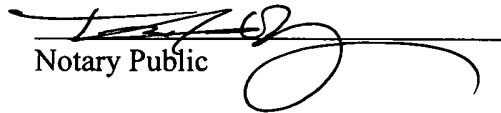
Lyle McMillan
Director of Right of Way

Date July 21, 2015

State of UTAH)
) : ss.
County of SALT LAKE)

On this 21st day of JULY, 2015 appeared before me, Lyle McMillan, Director of Right of Way, Utah Department of Transportation, Grantor, Owner and Holder herein, who, his identity and position having been satisfactorily established to me, affirmed to me upon oath that the governing body of the Utah Department of Transportation has authorized him to execute the foregoing environmental covenant, and did duly acknowledge before me having executed the same for the purposes stated therein.





Notary Public

Utah Department of Environmental Quality

The Utah Department of Environmental Quality authorized representative identified below hereby approves the foregoing environmental covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

Brent H. Everett
Brent H. Everett, Director
Division of Environmental Response and Remediation
Utah Department of Environmental Quality

23 July 2015
Date

State of Utah)
 : ss.
County of Salt Lake)

On this 23 day of July, 2015 appeared before me Brent H. Everett, an authorized representative of the Utah Department of Environmental Quality, personally known to me, or whose identity has been satisfactorily established to me, who acknowledged to me that he executed the foregoing environmental covenant.

Jennifer S. Nelson
Notary Public



Exhibit A

Property

Former Holiday Oil
4235 West 5415 South, Kearns, Utah
Facility ID No. 4000378, Release KBB

Salt Lake County Parcel No. 21-18-208-010
0.36 acres

Legal Description

A tract of land in fee, being all of an entire tract of property, situate in the NW1/4NE1/4 of Section 18, T.2S., R.1W., S.L.B.&M. The boundaries of said tract of land are described as follows:

Beginning at a point South 0°05'30" West 140.0 feet and North 89°54'30" West 1466.85 feet from the Northeast Corner of Section 18, Township 2 South, Range 1 West, Salt Lake Base and Meridian, Kearns Townsite, Salt Lake County, Utah; said point being the intersection of the south line of 5415 South Street and the west line of 4220 West Street; running thence South 0°05'30" West 125.0 feet along the west line of 4220 West Street; thence North 89°54'30" West 125.0 feet; thence North 0°05'30" East 125.0 feet; thence South 89°54'30" East 125.00 feet along the south line of 5415 South Street to the point of beginning. Salt Lake County, State of Utah.

Less and Excepting therefrom the following conveyed to Salt Lake County by document recorded as Entry No. 10893401 in Book 9802 at Page 3248 of official records.

Beginning at the Northeast corner of Block 1, S1-E3 Kearns Townsite Plat 1, said point being S 88°00'20" W 2753.17 ft. to a street monument at the intersection 4420 W and 5415 S and S 89°54'30" E 1284.50 ft. along the 5415 S Street monument line and S 0°05'30" W 40.00 feet from the NE corner of Section 18, T2S, R1W, SLB&M and running; thence S 0°05'30" W 20.00 ft. along the West line of 4220 W Street; thence Northwesterly 31.42 ft. along the arc of a 20.00 ft. radius curve to the left (center bears N 89°54'30" W and the long chord bears N 44°54'30" W 28.28 ft. with a central angle of 90°00'00") to the South line of 5415 S Street; thence S 89°54'30" E 20.00 ft. along the South line of said 5415 S Street to the point of beginning.

The above described tract of land contains 15,539 square feet in area or 0.357 acre, more or less.

Tax Description:

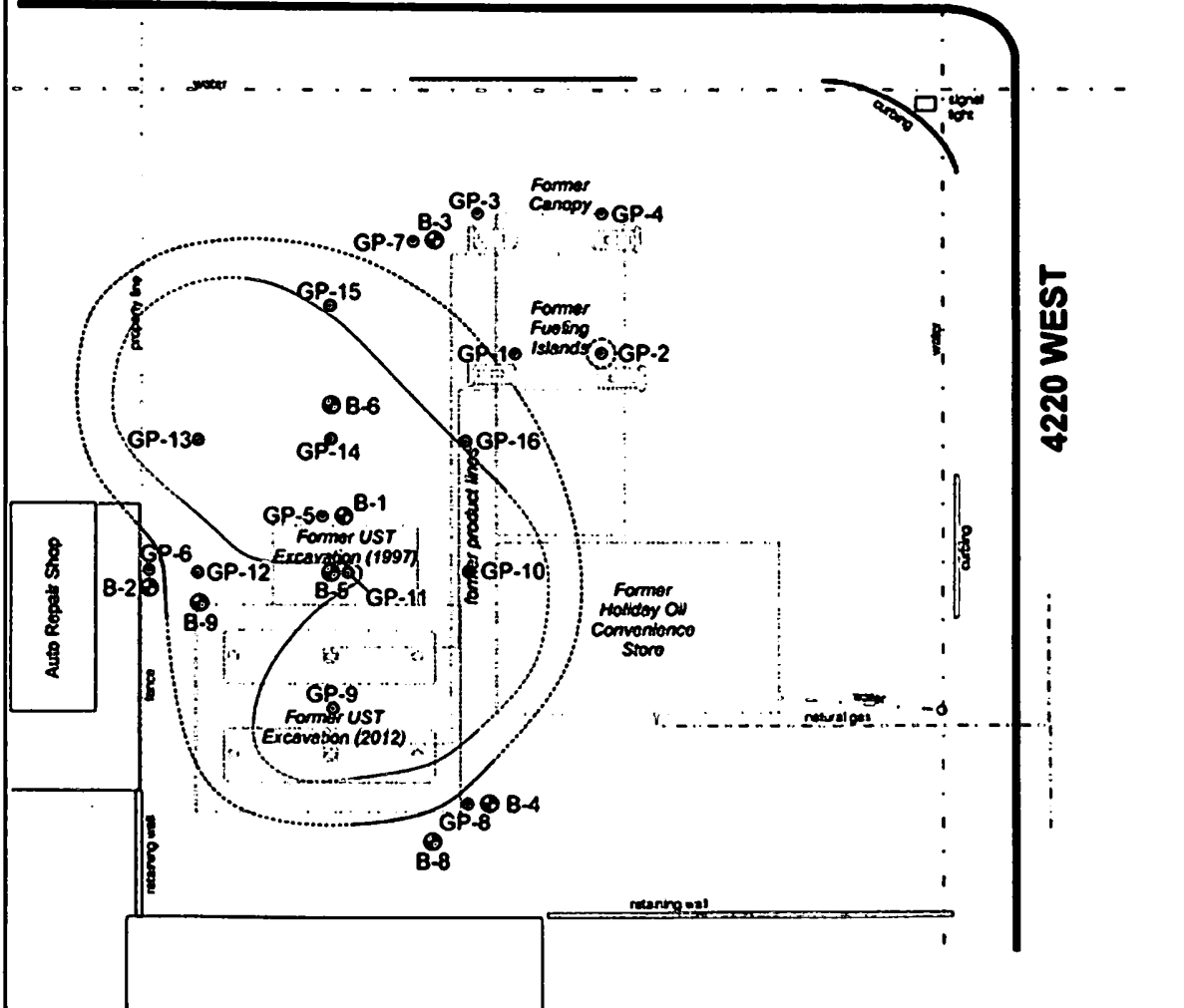
BEG AT NE COR BLK 1, S1-E3 KEARNS TOWNSITE PLAT 1; S 0°05'30" W 125 FT; N 89°54'30" W 125 FT; N 0°05'30" E 125 FT; S 89°54'30" E 125 FT TO BEG. LESS & EXCEPTING BEG AT NE COR BLK 1, S1-E3 KEARNS TOWNSITE PLAT 1; S 0°05'30" W 20 FT; NW'LY ALG A 20 FT RADIUS CURVE TO L 31.42 FT; S 89°54'30" E 20 FT TO BEG. 0.36 AC M OR L.
5532-0789 6583-2006 9802-3248 9969-0680

UDOT - Former Holiday Oil #2 Site, Soil Sampling

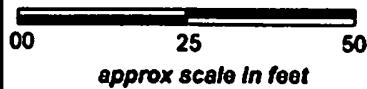
WEI 1581-030E

5400 SOUTH

4220 WEST



**UST Facility I.D. 4000378
Release Site KBB
4235 West 5415 South
Kearns, Utah**



- TPH-GRO Initial Screening Level
- TPH-GRO RBCA Tier 1 Screening Level
- B-1 ⊕ 1997 Subsurface Investigation Boring Location
- B-5 ⊕ 2000 Subsurface Investigation Boring Location
- GP-1 ⊕ 2012 Boring Locations (Wasatch)
- GP-9 ⊕ 2013 Boring Locations (Wasatch)

Site Map

Figure 1



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Table 1
Soil Analytical Data
Former Holiday Oil #2
4235 West 5414 South
Kearns, Utah

all concentrations are expressed in milligrams per kilogram (mg/kg)

Boring Number	Depth (feet)	Date	TPH-GRO	MTBE	Benzene	Toluene	Ethylbenzene	Xylenes	Naphthalene	TPH-DRO	Total TPH
B-1	19 - 21	7/1/97	--	ND	35.8	499	75	629	17.8	--	10,400
B-1	23 - 27	7/1/97	--	ND	60.6	626	99.8	646	29.6	--	14,600
B-1	27 - 29	7/1/97	--	ND	47.8	396	62.3	655	13.7	--	7,040
B-1	33 - 35	7/1/97	--	ND	70	519	74	647	15.7	--	8,090
B-1	37 - 39	7/1/97	--	ND	0.371	ND	0.0278	0.2467	0.03779	--	9.6
B-2	17 - 19	7/1/97	--	ND	0.0183	0.0551	0.0622	0.1178	0.13	--	4.3
B-2	25 - 27	7/1/97	--	ND	0.499	ND	0.069	0.261	0.0372	--	21.6
B-3	17 - 19	7/1/97	--	ND	0.0165	0.0383	0.00739	0.0668	0.0911	--	2.3
B-3	29 - 28	7/1/97	--	ND	0.0244	ND	0.0326	0.228	0.0491	--	1.3
B-4	14 - 15	7/1/97	--	ND	0.0331	0.029	0.0135	0.0679	0.204	--	0.3
B-4	24 - 29	7/1/97	--	ND	0.651	ND	ND	0.26	0.0424	--	25.5
B-5	17 - 19	12/1/00	6,800	ND	26	180	64	480	32	920	--
B-5	24 - 24.5	12/1/00	1,700	ND	150	1,100	220	1,400	71	2,400	--
B-6	17 - 18.5	12/1/00	6,800	ND	29	470	110	920	42	1,100	--
B-6	24 - 24.5	12/1/00	11,000	ND	160	740	140	810	44	1,200	--
B-9	7 - 8.5	12/1/00	38	ND	0.02	0.081	0.053	0.66	0.13	7.6	--
B-9	17 - 18.5	12/1/00	1,100	ND	0.69	20	8.2	61	7.2	220	--
B-9	24 - 25.5	12/1/00	6,800	ND	24	260	72	490	23	600	--
GP-1	2 - 3	12/21/11	<0.0680	<0.00580	<0.00290	<0.00580	<0.00580	<0.00580	<0.00580	--	--
GP-2	6.5 - 7.5	12/21/11	215	<0.129	<0.0646	<0.129	<0.129	6.21	0.165	--	--
GP-3	4 - 5	12/21/11	<0.0684	<0.00664	<0.00332	<0.00664	<0.00664	<0.00664	<0.00664	--	--
GP-4	4 - 5	12/21/11	0.453	<0.00650	<0.00325	<0.00744	<0.00650	0.0612	0.0909	--	--
GP-5	19-21	6/21/12	0.0745	<0.00809	0.0190	0.0119	<0.00809	<0.00809	<0.00809	--	--
GP-5	24-26	6/21/12	2,200	<12.2 ¹	<6.1 ¹	82.0	78.2	661	26.6	--	--
GP-5	27-29	6/21/12	5,830	<12.6 ¹	20.7	385	116	661	35.2	--	--
GP-5	33-35	6/21/12	2,480	<11.8 ¹	6.92	210	71.4	664	19.6	--	--
GP-5	37-39	6/21/12	0.564	<0.00814	0.0320	0.0313	<0.00814	0.0672	0.0563	--	--
GP-5	43-45	6/21/12	0.384	<0.00815	0.0793	0.0418	<0.00815	0.106	0.0656	--	--
GP-6	17-19	6/21/12	<0.0021	<0.00621	0.00739	<0.00621	<0.00621	<0.00621	<0.00621	--	--
GP-6	25-27	6/21/12	2.63	<0.00816	0.0122	0.0116	0.0129	0.215	0.135	--	--
GP-6	33-35	6/21/12	0.569	<0.00821	0.0239	0.0575	0.0661	0.115	0.268	--	--
GP-7	17-19	6/21/12	<0.0805	<0.00805	0.00584	0.00693	<0.00805	<0.00805	<0.00805	--	--
GP-7	28-28	6/21/12	0.0958	<0.00627	0.0391	0.0452	<0.00627	0.0114	<0.00627	--	--
GP-7	33-35	6/21/12	<0.0811	<0.00811	0.0169	0.00925	<0.00811	<0.00811	<0.00811	--	--
GP-8	14-16	6/21/12	<0.0696	<0.00696	0.00680	<0.00696	<0.00696	<0.00696	<0.00696	--	--
GP-8	24-26	6/21/12	4.81	<0.00694	0.00341	0.150	0.0345	0.512	0.161	--	--
GP-8	33-35	6/21/12	0.0835	<0.00598	<0.00299	<0.00598	<0.00598	<0.00598	<0.00598	--	--
GP-9	19-20	3/22/13	2.06	<0.00594	0.00363	0.0285	0.0173	0.271	0.171	--	--
GP-9	22-23	3/22/13	3,740	<1.30 ¹	<0.651 ¹	199	92.8	649	31.1	--	--
GP-9	32-33	3/22/13	0.804	<0.00592	0.0162	0.107	0.0120	0.170	0.110	--	--
GP-10	19-20	3/22/13	7.07	<0.00631	<0.00315	0.0293	0.0352	0.609	0.495	--	--
GP-10	21-22	3/22/13	7,660	<1.31 ¹	1.66	319	189	1,400	63.4	--	--
GP-10	37-37.5	3/22/13	2.68	<0.00630	0.280	0.705	0.244	0.593	0.245	--	--
GP-11	21-22	3/22/13	141	<0.0251	<0.0125	1.28	2.12	14.5	3.68	--	--
GP-11	25-26	3/22/13	692	<0.0262	0.666	29.4	12.3	108	19.8	--	--
GP-11	37-38	3/22/13	0.509	<0.00610	0.0112	0.0363	<0.00610	<0.00610	0.180	--	--
GP-12	21-22	3/22/13	424	<0.127	<0.0634	0.355	1.92	38.5	19.6	--	--
GP-12	24-25	3/22/13	5.30	<0.00627	0.0910	0.295	0.0779	1.06	0.601	--	--
GP-13	20-21	3/22/13	6.01	<0.0126	<0.00630	0.0835	0.0819	0.993	0.947	--	--
GP-13	25-26	3/22/13	3,490	<12.9 ¹	<6.44 ¹	110	83	689	31.0	--	--
GP-13	36.5-37.5	3/22/13	3.33	<0.00618	0.672	0.0664	0.136	1.29	0.204	--	--
GP-14	20-21	3/22/13	0.607	<0.00590	<0.00295	<0.00590	<0.00590	<0.00590	0.00646	--	--
GP-14	34-35	3/22/13	24,600	<12.5 ¹	197	1,410	268	1,810	63.6	--	--
GP-14	36.5-37.5	3/22/13	2,230	<12.4 ¹	6.69	164	61.3	399	23.9	--	--
GP-15	23-24	3/22/13	0.650	<0.00625	<0.00312	<0.00625	<0.00625	<0.00625	0.00668	--	--
GP-15	27-28	3/22/13	378	<0.118	<0.0588	4.02	6.42	73.2	13.0	--	--
GP-15	38-39	3/22/13	1.68	<0.00629	0.213	0.456	0.0373	0.430	0.235	--	--
GP-16	21-22	3/22/13	123	<0.0240	0.0235	0.621	1.42	9.98	1.13	--	--
GP-16	34-35	3/22/13	2.68	<0.00627	0.610	0.119	0.111	1.10	0.264	--	--
GP-16	39-40	3/22/13	2.48	<0.00647	0.170	0.379	0.0972	1.36	0.185	--	--
Utah RCRA Tier 1 Screening Level ¹			1,500	0.3	0.9	25	23	142	51	5,000	--
Utah ISL ¹			150	0.3	0.2	9	5	142	51	500	--

TPH-GRO = total petroleum hydrocarbons as gasoline range organics

MTBE = methyl tertiary-butyl ether

RCRA = Risk-Based Corrective Action

ISL = Initial Detection Level

< = concentration was below the detection limit

BOLD ITALICS = measured concentration exceeds ISL

bolded = measured concentration exceeds RCRA Tier 1 screening level

ND = non-detect

-- = not analyzed

¹ = the reported detection limit exceeds the ISL and/or RCRA Tier 1 screening level