

**ORIGINAL OPEN MEETING ITEM**



0000088176

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

2008 SEP 17 A 9:16

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

IN THE MATTER OF THE  
INVESTIGATION OF THE SOUTHWEST  
GAS INCIDENT THAT OCCURRED AT  
2710 W. BELL ROAD, PHOENIX,  
ARIZONA, ON SEPTEMBER 28, 2007.

DOCKET NO. G-01551A-08-0255

**NOTICE OF FILING**

Staff of the Arizona Corporation Commission hereby provides notice of filing the Proposed Settlement Agreement in the above-referenced matter.

*Nancy L. Scott*

Nancy L. Scott, Attorney  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007  
(602) 542-3402

The original and thirteen (13) copies of the foregoing were filed this 16<sup>th</sup> day of September, 2008 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Arizona Corporation Commission  
**DOCKETED**

SEP 17 2008

Copy of the foregoing mailed this 16<sup>th</sup> day of September, 2008 to:

Justin Lee Brown, Esq.  
Andrew Bettwy, Esq.  
P.O. Box 98510  
Las Vegas, Nevada 89193-8510  
Counsel for Southwest Gas Corporation

DOCKETED BY

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**PROPOSED SETTLEMENT AGREEMENT**  
**Docket No. G-01551A-08-0255**

The Arizona Corporation Commission (Commission) Safety Division Staff (Staff) and Southwest Gas Corporation (Southwest), collectively referred to in this proposed Settlement Agreement (Agreement) as the "Parties," hereby submit this proposed Agreement to the Commission for review and approval. The purpose of the proposed Agreement is to resolve Docket No. G-01551A-08-0255 in a manner consistent with the best interests of the public.

**FACTUAL BACKGROUND**

1. On Friday, September 28, 2007, at 2:31 p.m. Arizona Standard Time, Southwest Gas Dispatch (Dispatch) received a report by the Phoenix Fire Department (PFD) of a fire at 2710 West Bell Road, in Phoenix, Arizona. Between 3:06 p.m. and 3:24 p.m. on that date, the Southwest Gas Service Technician (Southwest Technician) confirmed that (1) there had been a fire at that location that was not intentionally set by Southwest, and (2) there was an underground leak at the location.

2. The structure located at 2710 West Bell Road is an outdoor retail business plaza, or strip mall, consisting of multiple individual business suites. Each suite shares a common fire wall with the adjoining suite. There is no other physical separation between the suites in this structure. (A map and photographs depicting this area are attached hereto as Attachment 1.)

3. Upon his arrival, the Southwest Technician was contacted by an Arizona Public Service Company troubleman, who informed him of a small fire, which was confined to an electrical conduit inside the electrical panel that serves suite 18 of the mall, a restaurant under renovation at the time of the incident. This fire had been extinguished by PFD personnel, who notified Dispatch before leaving the scene.

4. Directly to the north of suite 18 is a large vacant retail space (suite 19), and directly to the south of suite 18 is the Cinema, a multi-screen discount movie theater (suite 17), which was occupied at the time of the incident.

5. A Southwest construction crew also responded to the scene and discovered and repaired a leak in a one-inch plastic polyethylene service line. Gas from the leak had entered into an electrical conduit that terminated inside the electrical panel serving suite 18. It was determined that the gas in the electrical conduit ignited, resulting in the small fire.

6. The Southwest Technician conducted an exterior leak investigation, which identified flammable concentrations of gas at the building foundation, inside the electrical conduit, inside the electrical panel box, and inside the storm drain system located behind the building. The investigation also identified subsurface gas concentration readings indicating a spread pattern of two hundred feet radiating from the electrical panel under the paved areas behind the building. Gas concentration readings detected in the paved area using a combustible gas instrument registered as high as eighty-three percent gas-in-air.

7. The Southwest Technician checked for gas readings and odor at the open rear doorway of suite 18 and found no evidence of gas. He did not conduct an interior leak investigation, did not initiate an evacuation of persons inside the adjacent suites and did not request assistance from fire or police.

8. Removal of residual underground gas continued through the weekend and was completed on Monday morning, October 1, 2007.

9. Commission Staff was not notified of the fire and gas leak until October 1, 2007, at about 4:00 p.m., approximately seventy-two (72) hours after Southwest had first learned of the incident.

10. There were no injuries, fatalities, or significant property damage as a result of this incident.

### **STATEMENT OF PARTIES' POSITIONS**

#### 1. Requirement for Interior Leak Investigation

a. Staff contends that Southwest should have conducted an interior leak investigation of the entire structure affected by this incident or, at the very least, an investigation of the adjacent business suites. The Southwest Technician identified flammable concentrations of gas at the building foundation, inside the electrical conduit, inside the electrical panel box, and inside the storm drain system located behind the structure. As noted above, based on the absence of any physical separation, except the firewall, between business suites, Staff contends that after securing vacant suites 18 and 19, Southwest personnel should have entered suites 17 and 20 to take readings and determine if gas concentration levels existed inside those suites.

b. Southwest contends that its actions complied with all applicable regulations and with Southwest's emergency response procedures. Although the Southwest Technician detected underground gas concentration at the foundation of suite 18, he did not detect any readings at the foundation of the Cinema (suite 17), and he did not detect any gas reads or odor of gas in the open rear doorway of the vacant restaurant (suite 18). The nearest underground gas concentrations to the Cinema (suite 17) were 80 feet away. Southwest contends that, under its policies, there was no requirement to conduct an internal leak investigation of the affected suites or of the adjacent suites and that the Southwest Technician appropriately concluded that such an investigation was not necessary under these circumstances.

c. Southwest acknowledges the concerns raised by Staff regarding Southwest's failure to conduct an interior leak investigation beyond the open doorway of suite 18 or of any

adjoining premises that share a common wall; and Southwest acknowledges that with certain modifications to its operations manual and to its training program it believes improvements can be made to better inform and guide the judgment of the first responder in future similar situations.

2. Requirement for Evacuation

a. Staff contends that Southwest personnel should have contacted fire and/or police for assistance in determining the extent of evacuation. Gas readings taken at the foundation of the building behind suites 18 and 19 exceeded safe levels for entry, and Staff contends that this posed a potential risk of an explosion or fire that could have resulted in injury to persons in adjacent suites or in property damage to the building. Although adjacent suites were separated by a fire wall, Staff contends that they all shared a common foundation and concrete flooring, with no gaps or breezeways that would constitute a physical separation of businesses, and that in the event of an explosion, any collapse of one fire wall would directly impact any adjacent business. Therefore, Staff maintains that the entire structure should be considered as one “building” and that an evacuation of the entire structure was warranted.

b. Southwest contends that it complied with all applicable regulations and that Southwest’s emergency response procedures did not require personnel to evacuate the entire structure in this instance. Southwest contends that by virtue of each suite being separated by a firewall, each suite should be considered to be its own distinct “premise,” thereby making the suite served by the affected electrical panel the only affected premise. Southwest further contends that the circumstances of this case did not require evacuation of the entire business plaza and that a partial evacuation was appropriate. Based upon the amount and extent of the underground gas concentrations being found to be limited to the pavement/foundation areas behind suites 18 and 19, the measurement of 0% of the Lower Explosive Limit (LEL) gas concentrations in the open

rear doorway to suite 18, the absence of any smell of gas at the rear doorway, and following conversation with facility management, the Southwest Technician exercised his judgment in determining the extent of the evacuation. He concluded that all affected suites were unoccupied and that, therefore, no further evacuation was necessary.

c. Southwest acknowledges the concerns raised by Staff regarding Southwest's failure to request fire department and/or police assistance and to evacuate any occupied adjoining premises; and Southwest acknowledges that with certain modifications to its operations manual and its training program, it believes improvement can be made to better inform and guide the judgment of the first responder in future similar situations.

3. Reporting Requirement

a. Staff contends that, pursuant to Arizona Administrative Code R14-5-203, Southwest should have reported this incident on Friday, September 28, 2007 immediately upon discovery. Staff acknowledges that, while Southwest may have had reporting violations in the past, for the last five years Southwest has been commendable in its compliance with notification requirements.

b. Southwest acknowledges that it should have reported this incident immediately upon discovery. Southwest contends that it reported the incident the following business day, Monday, October 1, 2007, three calendar days after it occurred, and that this reporting was not timely under the applicable administrative rule. Southwest further contends that it promptly notified Staff on the following business day, after a review of the documentation and investigation revealed that the incident was not timely reported..

c. Both Parties acknowledge the importance of reporting requirements and that, over the past five years, Southwest has typically communicated reportable incidents in a

timely manner. In light of all the circumstances surrounding this incident, Southwest's previous overall performance in reporting incidents, and the remedial actions agreed to by Southwest, both Parties believe Southwest is taking sufficient actions to prevent recurrence of this reporting issue in future similar situations.

4. Southwest Compliance

a. Staff acknowledges and appreciates the efforts and cooperation on the part of Southwest in addressing the issues identified as a result of this incident.

b. Staff acknowledges and appreciates that the actions taken by Southwest during this incident are not typical of Southwest actions normally taken in similar circumstances. Staff therefore views this incident as uncharacteristic of Southwest's typical actions and believes that Southwest personnel, in general, are appropriately conscious of safety concerns.

c. Staff furthermore acknowledges and appreciates that following the 2007 Code Compliance Audit and throughout the 2008 Code Compliance Audit, Southwest has taken steps to correct and prevent a recurrence of all issues identified by Staff in those audits.

5. Resolution. The Parties believe that a resolution of this matter in accordance with the terms of this Agreement will serve the public interest by addressing and resolving each of the concerns identified by Staff in this investigation in a fair, reasonable, efficient, and timely manner.

a. Both Parties believe that certain modifications to Southwest's training as identified below will enhance public safety by reducing risk in any future similar circumstances.

b. By entering this Agreement, both Parties emphasize their commitment to public health and safety, as well as their commitment to effective and timely communication with one another.

c. Both Parties agree that resolution of this matter through settlement will avoid any protracted litigation, allowing Southwest to focus its energies on reviewing its operations manual, implementing all necessary modifications to its operations manual, and completing the agreed-upon training as soon as possible, and saving both parties the substantial time and resources associated with litigation.

### **TERMS AND CONDITIONS**

Southwest and Staff agree that the following terms will provide a just and reasonable resolution of the issues presented in this matter and will serve the public interest by promoting public safety, health, and welfare, and by avoiding litigation which unnecessarily diverts the resources of all parties.

1. Operational Clarifications/Training.

a. Southwest hereby agrees to perform training to mandate interior inspections of occupied premises that share a common wall with premises that have been evacuated or secured. Southwest shall perform the training and provide Staff with documentation of compliance within 180 days of the Commission's approval of this Agreement.

b. Southwest hereby agrees to perform training to require that police and/or fire departments be consulted in determining the extent of an evacuation whenever gas readings at the foundation of a commercial building comprised of multiple suites are at levels that preclude Southwest personnel from entering the structure to take interior gas readings. Southwest shall perform the training and provide Staff with documentation of compliance within 180 days of the Commission's approval of this Agreement.

c. Southwest hereby agrees to perform additional training reinforcing the importance of the Arizona Corporation Commission notification requirements. Southwest shall perform the training and provide Staff with documentation of compliance within 180 days of the Commission's approval of this Agreement.

d. In addition, Southwest shall perform a comprehensive review of its operations manual to ensure consistency with the above-stated policies. Southwest shall make all necessary modifications to that manual to reflect the procedures stated in paragraphs a through c above. Southwest shall provide Staff with documentation of compliance within 180 days of the Commission's approval of this Agreement. Notwithstanding the foregoing, this Agreement shall not be construed to prohibit Southwest from making future changes to its operations manuals in compliance with R14-5-202 D.

2. Voluntary Payment of Civil Penalty. Southwest voluntarily submits to the imposition of a monetary civil penalty payable to the state general fund in the amount of \$85,000.

3. No Recovery in Rates. Southwest shall not be permitted to recover from its customers the payment of the civil penalty referred to in paragraph 2. above, the costs related to the Commission proceeding regarding this incident, nor the cost(s) related to the initial development and implementation of training and modifications to its operations manual referred to in paragraphs 1. a. through d. above. However, this provision is not intended to preclude Southwest from recovering future costs following the initial development and implementation of the training and modifications to its operations manual referred to in paragraphs 1. a. through d. above

## MISCELLANEOUS PROVISIONS

1. This Agreement represents the Parties' mutual desire to compromise and resolve this docket in a manner consistent with the public interest. This Agreement represents a compromise of the positions of the Parties. Acceptance of this Agreement is without prejudice to any position taken by any party, and none of the provisions may be referred to, cited, or relied upon by any other party as precedent in any proceeding before this Commission, any other regulatory agency, or any court of law for any purpose except in furtherance of the purposes and results of this Agreement.

2. All negotiations relating to or leading to this Agreement are privileged and confidential, and no party is bound by any position asserted in negotiations, except to the extent expressly stated in this Agreement. As such, evidence of conduct or statements made in the course of negotiation of this Agreement are not admissible as evidence in any proceeding before the Commission, any other regulatory agency, or any court.

3. This Agreement represents the complete agreement of the Parties. There are no understandings or commitments other than those specifically set forth herein. The Parties acknowledge that this Agreement resolves all issues that were raised in connection with this incident and is a complete and total settlement between the Parties.

4. Except for paragraph 3(b) of the Statement of Parties' Positions, nothing included in the Agreement is intended to constitute an admission by either party that any of the positions asserted, or that might be asserted, in the above-referenced docket, is unreasonable or unlawful. Additionally, execution of the Agreement by the Parties is without prejudice to any position asserted by either party in the above-referenced docket.

5. The Parties recognize that (1) Staff does not have the power to bind the Commission and (2) for purposes of proposing a settlement agreement, Staff acts in the same manner as a party to proceedings before the Commission.

6. The Parties further recognize that (1) the Agreement functions as a procedural device to propose its terms to the Commission and (2) the Agreement has no binding force or effect unless and until finally approved in an order of the Commission.

7. The Parties further recognize that the Commission will evaluate the terms of the Agreement and that, after such evaluation, the Commission may require modifications to the terms of the Agreement as a condition of Commission approval.

8. In the event the Commission adopts an order approving substantially all of the terms of the Agreement, such action by the Commission constitutes approval of the Agreement and, thereafter, the Parties shall abide by the terms approved by the Commission.

9. In the event that Southwest objects to any Commission modification(s) of the Agreement, Southwest shall timely file an application for rehearing pursuant to A.R.S. § 40-253. In the event that Southwest does not file such an application, Southwest shall be deemed (1) to have accepted any Commission modification(s) and (2) to have conclusively and irrefutably acknowledged that any Commission modification(s) are not substantial and that, therefore, the Commission order has adopted substantially all of the terms of the Agreement.

10. In the event that Southwest files an application for rehearing and alleges that the Commission has not adopted substantially all of the terms of the Agreement, such application shall be deemed a withdrawal of Southwest's execution of the Agreement, and the Parties may proceed without any prejudice to any of the positions asserted by the Parties.

11. In the event that a party's application for rehearing is denied, either by Commission order or by operation of law, and the party continues to object to any Commission modification(s), the party shall timely appeal the Commission's order pursuant to A.R.S. § 40-254 and/or §40-254.01, as appropriate. In the event the party does not file such an appeal, the party shall be deemed (1) to have accepted any Commission modification(s) and (2) to have conclusively and irrefutably acknowledged that any Commission modification(s) are not substantial and that, therefore, the Commission's order has adopted substantially all of the terms of the Agreement.

12. The definitive text of the Agreement shall be the text adopted by the Commission in an order approving substantially all of the terms of the Agreement, including any Commission modification(s).

13. Each of the terms of the definitive text of the Agreement is in consideration and support of all other terms. Accordingly, the terms are not severable.

14. Each signatory party will actively defend this Agreement before the Commission, any other regulatory agency, or court in the event of any challenge to its validity or implementation. The parties expressly recognize, however, that Staff shall not be obligated to file any document or take any position that is inconsistent with a Commission order in this matter before any other regulatory agency, or before any court in which it may be at issue.

15. There is no other agreement between the Parties regarding the issues to be resolved in the above-referenced docket. Upon Commission approval of the Agreement, the Parties shall treat Docket No. G-01551A-08-0255 as closed.

Executed by the Parties this 12<sup>th</sup> day of September 2008.

SOUTHWEST GAS CORPORATION



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James F. Wunderlin  
Vice President/Engineering

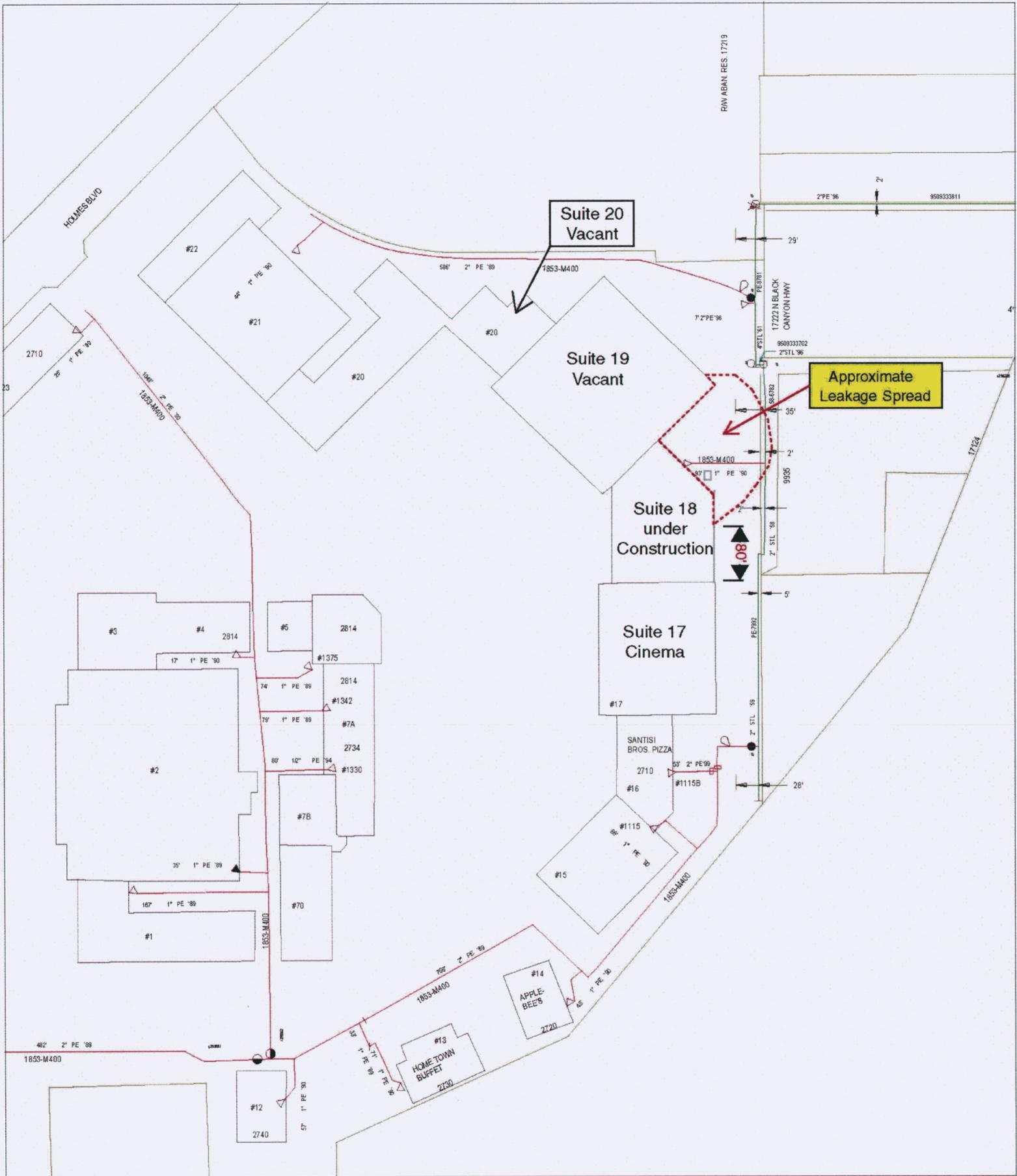
ARIZONA CORPORATION COMMISSION  
SAFETY DIVISION STAFF



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Dave Raber  
Director of Safety Division

# **Attachment 1**



Southwest Gas WMS  
01/31/08 17:26

TITLE: 2710 W. Bell Road  
DRAWN BY: gdd1

SCALE  
1 IN = 152 FT



