



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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November 21, 2019

Lisa Lefeber, Chief Executive Officer
Port of Everett
1205 Craftsman Way
Everett, WA 98201-1588

Re: Preliminary Determination of Liability for Release of Hazardous Substances at the Following Contaminated Site:

- Name: Jeld Wen
- Address: 300 West Marine View Drive, Everett, WA
- County Assessor's Parcel Number: 29050700100500; 29050700100900
- Cleanup Site ID: 4402
- Facility Site ID: 2757

Dear Lisa Lefeber:

Based on credible evidence, the Department of Ecology (Ecology) is proposing to find the Port of Everett (the Port) liable under the Model Toxics Control Act (MTCA), Chapter 70.105D RCW, for the release of hazardous substances at the Jeld Wen facility (Site). Any person whom Ecology finds, based on credible evidence, to be liable is known under MTCA as a "potentially liable person" or "PLP."

This letter identifies the basis for Ecology's proposed finding and your opportunity to respond to that finding. This letter also describes the scope of your potential liability and next steps in the cleanup process at the Site.

Proposed Finding of Liability

Ecology is proposing to find the Port liable under RCW 70.105D.040 for the release of hazardous substances at the Site. This proposed finding is based on the following evidence:

1. The Port of Everett is the current owner or operator of a "facility" as defined in RCW 70.105D.020(8). The Port's ownership of parcel [or parcels] making up part of the in-water portion of this facility located adjacent to 300 West Marine View Drive in Everett, Washington is established by records of the Snohomish County Tax Assessor's office (**Enclosure 1**).

2. Credible evidence exists indicating that a “release or threatened release” of a “hazardous substance” has occurred at the Site as defined in RCW 70.105D.020(13) and (32), which poses a threat to human health or the environment. As a result of environmental non-compliance and recent investigations performed at the Site, Ecology believes that a release of hazardous substances has occurred at the Site, and further action will be required at this Site.

Investigations of the Jeld Wen Site

In 1993, Huckel/Weinmann Associates, Inc., performed an independent review of the Site. The site review identified total petroleum hydrocarbon (TPH) contamination at concentrations greater than the MTCA Method A cleanup levels.

In May 2006, JELD-WEN, Inc. (JELD-WEN) conducted a soil and groundwater investigation at the Site. Results of this investigation revealed that concentrations of TPH, polynuclear aromatic hydrocarbons (PAHs), semivolatile organic compounds (SVOCs), and volatile organic compounds (VOCs) in soil and groundwater at the Site exceeded MTCA Method A cleanup levels.

Ecology has already identified JELD-WEN and W&W Everett Investments (current owner of the facility) as PLPs for releases of hazardous substances at the Jeld Wen Site.

JELD-WEN has been conducting remedial investigations (RI) at the Site between May 2009, to October 2019, as required under Agreed Order # DE 5095. A brief summary of the results is provided below.

- **Soil Exceedances** – Soil samples collected during the RI identified concentrations of TPH, PAHs, SVOCs, VOCs, and dioxins/furans above the preliminary soil cleanup levels.
 - **Groundwater Exceedances** – Groundwater samples collected during the RI identified concentrations of TPH, PAHs, SVOCs, VOCs, polychlorinated biphenyl (PCBs), and dioxins/furans above the preliminary groundwater cleanup levels.
 - **Sediment Exceedances** – Sediment samples collected during the RI identified concentrations of PAHs, PCBs, SVOCs, and dioxin/furans at the Site above the preliminary sediment cleanup levels.
3. Ecology received a letter from JELD-WEN on August 01, 2019 that discussed use of creosote-treated structures located in the north inlet area and adjacent to the Jeld-Wen Site north shoreline (Enclosure 2). Based on historical information presented in the letter, Jeld-Wen believes that the creosote-treated structures in the inlet are associated with a former raw timber sawmill (i.e., Bay Wood Products). These creosote-treated wood structures and pilings are sources of PAH in the inlet and must be removed as part of site cleanup to reduce/prevent recontamination of sediment. The Port is the current owner/operator of the Bay Wood property.

Based on the information presented above, Ecology has identified the Port as a PLP for releases of hazardous substances at the Jeld Wen Site.

Opportunity to Respond to Proposed Finding of Liability

In response to Ecology's proposed finding of liability, you may either:

1. Accept your status as a PLP without admitting liability and expedite the process through a voluntary waiver of your right to comment. This may be accomplished by signing and returning the enclosed form or by sending a letter containing similar information to Ecology; or
2. Challenge your status as a PLP by submitting written comments to Ecology within thirty (30) calendar days of the date you receive this letter; or
3. Choose not to comment on your status as a PLP.

Please submit your waiver or written comments to the following address:

Mahbub Alam
Department of Ecology
Toxics Cleanup Program
PO Box 47600
Olympia, WA 98504-7600

After reviewing any comments submitted, or after 30 days if no response has been received, Ecology will make a final determination regarding your status as a PLP and provide you with written notice of that determination.

Identification of Other Potentially Liable Persons

Ecology has notified the following additional persons that they are potentially liable for the release of hazardous substances at the Site:

1. Dwayne R. Arino
JELD-WEN, Inc.
3250 Lakeport Blvd.
Klamath Falls, OR 97601
2. Ronald Woolworth
W&W Everett Investments, LLC
P.O. Box 973
Anacortes, WA 98221

If you are aware of any other persons who may be liable for the release of hazardous substances at the Site, Ecology encourages you to provide us with their identities and the reason you believe they are liable. Ecology also suggests you contact these other persons to discuss how you can jointly work together to most efficiently clean up the Site.

Responsibility and Scope of Potential Liability

Ecology may either conduct or require PLPs to conduct remedial actions to investigate and clean up the release of hazardous substances at a site. PLPs are encouraged to initiate discussions and negotiations with Ecology and the Office of the Attorney General that may lead to an agreement on the remedial action to be conducted.

Lisa Lefebber
November 21, 2019
Page 4

Each liable person is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release of hazardous substances at a site. If Ecology incurs remedial action costs in connection with the investigation or cleanup of real property and those costs are not reimbursed, then Ecology has the authority under RCW 70.105D.055 to file a lien against that real property to recover those costs.

Next Steps in Cleanup Process

In response to the release of hazardous substances at the Site, Ecology intends to conduct the following actions under MTCA:

On January 2, 2008, Ecology completed an Agreed Order (DE 5095) with JELD-WEN, Inc., in which, a schedule was developed, although not exclusively, for the following:

- Remedial Investigation and Feasibility Study (RI/FS) WAC 173-340-350
- Cleanup Action Plan (CAP) WAC 173-340-380 (1)

For a description of the process for cleaning up a contaminated site under MTCA, please refer to the enclosed fact sheet.

Ecology's policy is to work cooperatively with PLPs to accomplish the prompt and effective cleanup of contaminated sites. Please note that your cooperation in planning or conducting remedial actions at the Site is not an admission of guilt or liability.

Contact Information

If you have any questions regarding this letter or if you would like additional information regarding the cleanup of contaminated sites, please contact Mahbub Alam at (360) 407-6913 or at mahbub.alam@ecy.wa.gov. Thank you for your cooperation.

Sincerely,



Barry Rogowski, Section Manager
HQ Cleanup Section
Toxics Cleanup Program

Enclosures: (4)

By certified mail:

cc: Dwayne R. Arino, JELD-WEN
Ronald Woolworth, W&W Everett Investments, LLC
John Level, Office of the Attorney General

Property Account Summary

11/21/2019

Parcel Number	29050700100900	Property Address	UNKNOWN UNKNOWN , UNKNOWN,
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General Information

Property Description	SEC 07 TWP 29 RGE 05RT-14) COM AT E1/4 COR OF SEC TH WLY ON E & W CTR LN FOR 675.81FT TO WLY LN OF NP R/W TH ANG L56*16 ALG SD R/W LN 1175.41FT TH ANG R101*30 FOR 40.82FT TO TPB TH CONT ON SAME LN FOR 2256.55FTTO E PIER HEAD LN TH ANG L83*12 38 & FOLSD E GOVT PIERHEAD LN 407.21FT TH ANG TOL17*45 ALG SD E GOVT PIERHEAD LN 949.56 FT TH ANG TO L 105*47 39 DIST 2435.82FTTO W BDY LN CITY R/W TH NLY ALG SD W BDY LN CITY R/W DIST 255.12FT TO TPB EXC FDT BEG AT E1/4 COR SEC 7 TH S88*58 38W ALG N LN GOVT LOT 2 SD SEC 675.81FT TO W LN ABOND R/W NPPR COTH S32*42 38W ALG SD W R/W LN DIST 1175.47FT TH N45*47 22W DIST 40.82FT TAP ON W R/W LN OF NORTON AVE & WH PT IS TPB TH CONT N45*47 22W DIST 867.27FTTH S44*12 38W DIST 712.80FT TH S72*32 39E DIST 1028.19FT TAP ON W R/W LN NORTON AVE TH N32*42 38E ALG W R/W SD AVE DIST 255.06FT TO TPB
Property Category	Land and Improvements
Status	Active, Locally Assessed
Tax Code Area	00010

Property Characteristics

Use Code	939 Other Water Areas, NEC
Unit of Measure	Acre(s)
Size (gross)	0.00

Related Properties

No Related Properties Found

Parties

Role	Percent	Name	Address
Taxpayer	100	EVERETT PORT OF	PO BOX 538, EVERETT, WA 98206 United States
Owner	100	EVERETT PORT OF	PO BOX 538, EVERETT, WA 98206 United States

Property Values

Value Type	Tax Year	Tax Year	Tax Year	Tax Year	Tax Year

	2019	2018	2017	2016	2015
Taxable Value Regular					
Exemption Amount Regular	\$546,800	\$497,100	\$497,100	\$497,100	\$497,100
Market Total	\$546,800	\$497,100	\$497,100	\$497,100	\$497,100
Assessed Value	\$546,800	\$497,100	\$497,100	\$497,100	\$497,100
Market Land	\$546,800	\$497,100	\$497,100	\$497,100	\$497,100
Market Improvement					
Personal Property					

Active Exemptions

Government Property

Events

Effective Date	Entry Date-Time	Type	Remarks
No Events Found			

Tax Balance

Installments Payable/Paid for Tax Year(Enter 4-digit Year, then Click-Here):

Distribution of Current Taxes

District	Rate	Amount	Voted Amount	Non-Voted Amount
TOTAL				

Pending Property Values

Pending Tax Year	Market Land Value	Market Improvement Value	Market Total Value	Current Use Land Value	Current Use Improvement	Current Use Total Value
2020	\$662,800.00	\$0.00	\$662,800.00	\$0.00	\$0.00	\$0.00

Levy Rate History

Tax Year	Total Levy Rate
2018	12.168671
2017	12.217961
2016	11.623199

Real Property Structures

Description	Type	Year Built	More Information
No Real Property Structures Found			

Receipts

Date	Receipt No.	Amount Tendered	Amount Due
No Receipts Found			

Sales History

Sale Date	Entry Date	Recording Date	Recording Number	Sale Amount	Excise Number	Deed Type	Transfer Type	Grantor(Seller)	Grantee(Buyer)	Other Parcels
No Sales History Found										

Property Maps

Neighborhood Code	Township	Range	Section	Quarter	Parcel Map
5306000	29	05	07	NE	View parcel maps for this Township/Range/Section

Property Account Summary

11/21/2019

Parcel Number	29050700100500	Property Address	UNKNOWN UNKNOWN , UNKNOWN,
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General Information

Property Description	SEC 07 TWP 29 RGE 05RT 5A-) BEG AT E1/4 CN SEC TH S88*58 38 W 675.81FT TH S32*42 38W 75.41FT TH N45*47 22W 121.70FT TO PT 8.0FT NLY OF & PLLWITH C/L OF RR SPUR SD PT BEING ON CRV TPB TH CONT N45*47 22W 428.04FT TH S44*12 38W 49.0FT TH N45*47 22W 1360.73FT TO INT GOV PIER HEAD LN TH S64*00 00W ALG SD GOV PIER HEAD LN 60.85FT TH S45*47 22E 1631.04FT TO INT LN 8.9FT NLY & PLLWITH C/L OF RR SPUR SD PT BEING ON CRV TO L TH THRU LAST DESC PT ANG L 17*30 00TO PTN TANGENCY OF SD CRV TO L TH ALG TH ARC OF SD CRV TO L HAV RAD OF 513. 67FT & CONS AN ANG 09*13 38 FOR DISTOF 82.75FT TO PT OF COMPOUND WITH CRV TO L TH ALG SD COMP CRV TO L HAV RAD OF 375.06FT & CONS ANG OF 19*25 05 127.11 TO TPB BEING PTN OF GOV LOT 1 & PTN OFEV IMP TDLES IN SEC 7-29-5 CONT 2.67 AC
Property Category	Land and Improvements
Status	Active, Locally Assessed
Tax Code Area	00010

Property Characteristics

Use Code	935 Saltwater Tidelands
Unit of Measure	Acre(s)
Size (gross)	2.66

Related Properties

No Related Properties Found

Parties

Role	Percent	Name	Address
Taxpayer	100	PORT OF EVERETT	PO BOX 538, EVERETT, WA 98206 United States
Owner	100	PORT OF EVERETT	ATTN BANNAN PHILIP B PO BOX 538, EVERETT, WA 98206 United States

Property Values

Value Type	Tax Year 2019	Tax Year 2018	Tax Year 2017	Tax Year 2016	Tax Year 2015
Taxable Value Regular					

Exemption Amount Regular	\$353,500	\$321,400	\$321,400	\$321,400	\$312,800
Market Total	\$353,500	\$321,400	\$321,400	\$321,400	\$312,800
Assessed Value	\$353,500	\$321,400	\$321,400	\$321,400	\$312,800
Market Land	\$353,500	\$321,400	\$321,400	\$321,400	\$312,800
Market Improvement					
Personal Property					

Active Exemptions

Government Property

Events

Effective Date	Entry Date-Time	Type	Remarks
02/06/2006	02/06/2006 15:59:00	Taxpayer Changed	Party/Property Relationship by strsjb

Tax Balance

Installments Payable/Paid for Tax Year(Enter 4-digit Year, then Click-Here):

Distribution of Current Taxes

District	Rate	Amount	Voted Amount	Non-Voted Amount
TOTAL				

Pending Property Values

Pending Tax Year	Market Land Value	Market Improvement Value	Market Total Value	Current Use Land Value	Current Use Improvement	Current Use Total Value
2020	\$53,200.00	\$0.00	\$53,200.00	\$0.00	\$0.00	\$0.00

Levy Rate History

Tax Year	Total Levy Rate
2018	12.168671
2017	12.217961
2016	11.623199

Real Property Structures

Description	Type	Year Built	More Information
No Real Property Structures Found			

Receipts

Date	Receipt No.	Amount Tendered	Amount Due
No Receipts Found			

Sales History

Sale Date	Entry Date	Recording Date	Recording Number	Sale Amount	Excise Number	Deed Type	Transfer Type	Grantor(Seller)	Grantee(Buyer)	Other Parcels
No Sales History Found										

Property Maps

Neighborhood Code	Township	Range	Section	Quarter	Parcel Map
5306000	29	05	07	NE	View parcel maps for this Township/Range/Section



Neighborhood Code	Township	Range	Section	Quarter	Parcel Map
5306000	29	05	07	NE	View parcel maps for this Township/Range/Section



Susannah Edwards
Sediment Cleanup Specialist
Washington State Department of Ecology
300 Desmond Drive SE
Lacey, Washington 98504-7600

Re: **Former Nord Door Facility Cleanup Site - Historic Use of the North Inlet (Log Way) and Potential Liability for In-Water Structures**

Dear Susannah,

This letter provides information regarding an additional potentially liable party for portions of the cleanup at the Former Nord Door Facility located at 300 West Marine View Drive, Everett, Washington (the Site). The Site cleanup is being conducted through Nord Door's successor, JELD-WEN, Inc (dba JELD-WEN). This information is being provided as a follow-up to discussions between JELD-WEN and the Washington State Department of Ecology (Ecology) during the meeting held on June 27, 2019.

Background

JELD-WEN and Ecology signed an Agreed Order No. DE 5095 (Order) on January 2, 2008. The Order addresses potential upland and marine contamination caused by the historic release(s) of hazardous substances at the Site. The Order requires JELD-WEN to conduct an RI/FS and develop a final Cleanup Action Plan (CAP) for the Site.

Since entering into the Order, JELD-WEN has conducted RI/FS activities at the Site; issued an initial Draft RI/FS report to Ecology in 2014; and submitted a revised Draft RI/FS report in 2016. Currently, JELD-WEN and Ecology are working collaboratively to address Ecology's comments on the 2016 RI/FS report and finalize the RI/FS report.

North Inlet Area

One of Ecology's recent comments (June 27, 2019) on the 2016 Draft RI/FS report is that remedial activities in the inlet must include removal of the dilapidated creosote-treated bulkhead that runs along the shoreline approximately 10 to 15 feet from the JELD-WEN uplands and removal of all pilings within the Site boundary. The regulatory basis for this new cleanup requirement is that

creosote-treated wood structures and pilings are a source of polycyclic aromatic hydrocarbons (PAHs).¹

The dilapidated creosote-treated bulkhead runs along the property line between the Site and the adjacent parcel to the north. After reviewing historic data JELD-WEN asserts that historical operations at the Site were not associated with use of the bulkhead; it was part of a former Log Way that was used by the adjacent property owners to 'corral' logs into position for processing. The materials presented to Ecology showing historical aerial photographs demonstrating the use of the inlet are included as Attachment A.

The adjacent property, known as the Bay Wood Products Site (Bay Wood), is the location of a former raw timber sawmill. Releases of hazardous substances at the Bay Wood property are currently being addressed under Agreed Order No. DE 5490 (Bay Wood Order) between the Port of Everett and Ecology (Attachment B).

Supporting Evidence that Creosote-Treated Structures in the North Inlet Are Associated with the Bay Wood Property

There are numerous lines of evidence supporting JELD-WEN's position that the creosote-treated structures and pilings in the North Inlet are associated with former operations at the Bay Wood property and not with operations on the former Nord/JELD-WEN Site. This evidence is presented as follows:

- **Documentation Included in the Agreed Order for the Bay Wood Site:** The Bay Wood Order (Attachment B) indicates that a sawmill operated at this location from at least 1946 until 1979. It includes the following information regarding the North Inlet:
 - The North Inlet area is identified in the Bay Wood Order as a Log Way and is depicted on aerial photographs from 1966 and 1977 (Bay Wood Order, Exhibit A, Figures 2 and 3).
 - A 1957 Sanborn Map included in the Bay Wood Order (Exhibit A, Figure 6) depicts the Log Way for the former Bay Wood property sawmill at the head of the North Inlet.
 - A photograph of the Log Way for the Bay Wood property is included in the Bay Wood Order as Exhibit A, Figure 7.
 - The Findings of Fact section of the Bay Wood Order states: *"As depicted in the aerial photographs, log rafting was extensively practiced in the tidal mud flats that surround the facility, and log transfer activities into and out of the water at the Site occurred for many years. Log transfer activities are the greatest potential source of wood debris and these practices were evident at the western-most end of the site and along the southern*

¹ Washington Department of Ecology, 2019. *Sediment Cleanup User's Manual (SCUM), Guidance for Implementing the Cleanup Provisions of the Sediment Management Standards, Chapter 173-204 WAC*. Publication No. 12-09-057. May 2019 Revised Draft for 60 Day Review and Comment. Available at: <https://fortress.wa.gov/ecy/publications/parts/1209057part1.pdf>.

boundary where logs were floated to the former sawmill feed or 'log way' as shown in the 1966 and 1977 aerial photographs".

- **Historical Documentation from JELD-WEN:** JELD-WEN has documentation indicating that Nord Door made doors from materials that were delivered to the manufacturing facility by barge, trucks, and trains (reference Attachment D – December 14, 1977 Address by Roger Eklund (Nord Door) to Congressman Meeds, the EPA, and Others). Former plant layout drawings for the Nord Door facility (years 1965, 1970, 1973) do not identify any log transfer infrastructure at the North Inlet or elsewhere at the Site (Attachment C). The Bay Wood property sawmill at the head of the North Inlet (Log Way) is depicted on the 1970 Site layout drawing (Attachment C).
- **Historical Aerial Photographs:** Numerous aerial photographs (Attachment A; years 1947, 1955, 1966, 1974, 1977, 1993, and additional undated aerial photographs) show the North Inlet being used as a Log Way by the Bay Wood property. The 1947 aerial shows the Log Way and associated pilings and structures in use prior to the filling of the northeast JELD-WEN shoreline adjacent to the North Inlet. The 1966 aerial photograph shows continued use of the Log Way by the Bay Wood property after the filling of the northeast JELD-WEN shoreline area adjacent the North Inlet. The 1977 aerial photograph shows shoreline vertical piling as bumper piling for the Log Way. The 1993 aerial shows the upland structures were demolished but the marine structures were left in place and shoreline pilings were still in use by the historical operation.
- **Snohomish County:** Tax records indicate that the signatory to the Bay Wood Agreed Order owns the parcel associated with the dilapidated creosote-treated structures and piling in the inlet (Parcel No. 29050700100500).

Summary

The evidence presented in this letter clearly demonstrates that the creosote-treated timber structures and piling located in the North Inlet Log Way were associated with former sawmill operation on the adjacent property. The materials presented in this letter show that only the sawmill on the Bay Wood property operated in the North Inlet area and used these structures; the Nord Door/JELD-WEN operations did not use this area. As such, JELD-WEN believes the removal of these structures required as part of the cleanup actions is the responsibility of another Potentially Liable Party.

Sincerely,



Dwayne R. Arino, PE, ASP, CEA

Vice President Environmental Engineering – Global EH&S



JELD-WEN, Inc.

cc:

Scott Miller, SLR International Corporation

Nathan Soccorsy, Anchor QEA, LLC

Barry Rogowski, Ecology

Sandra Caldwell, Ecology

Lenard Machut, Ecology

Mahbub Alam, Ecology

Andy Kallus, Ecology

Attachments

Attachment A Historical Aerial Photograph Presentation

Attachment B Bay Wood Products Site Agreed Order No. DE 5490 Historical JELD-WEN
Documentation (Nord Door Report and Plant Layout Drawings)

Attachment C Historical JELD-WEN Documentation (Plant Layout Drawings)

Attachment D December 14, 1977 Address to Congressman Meeds and the USEPA (document)



APPENDIX A

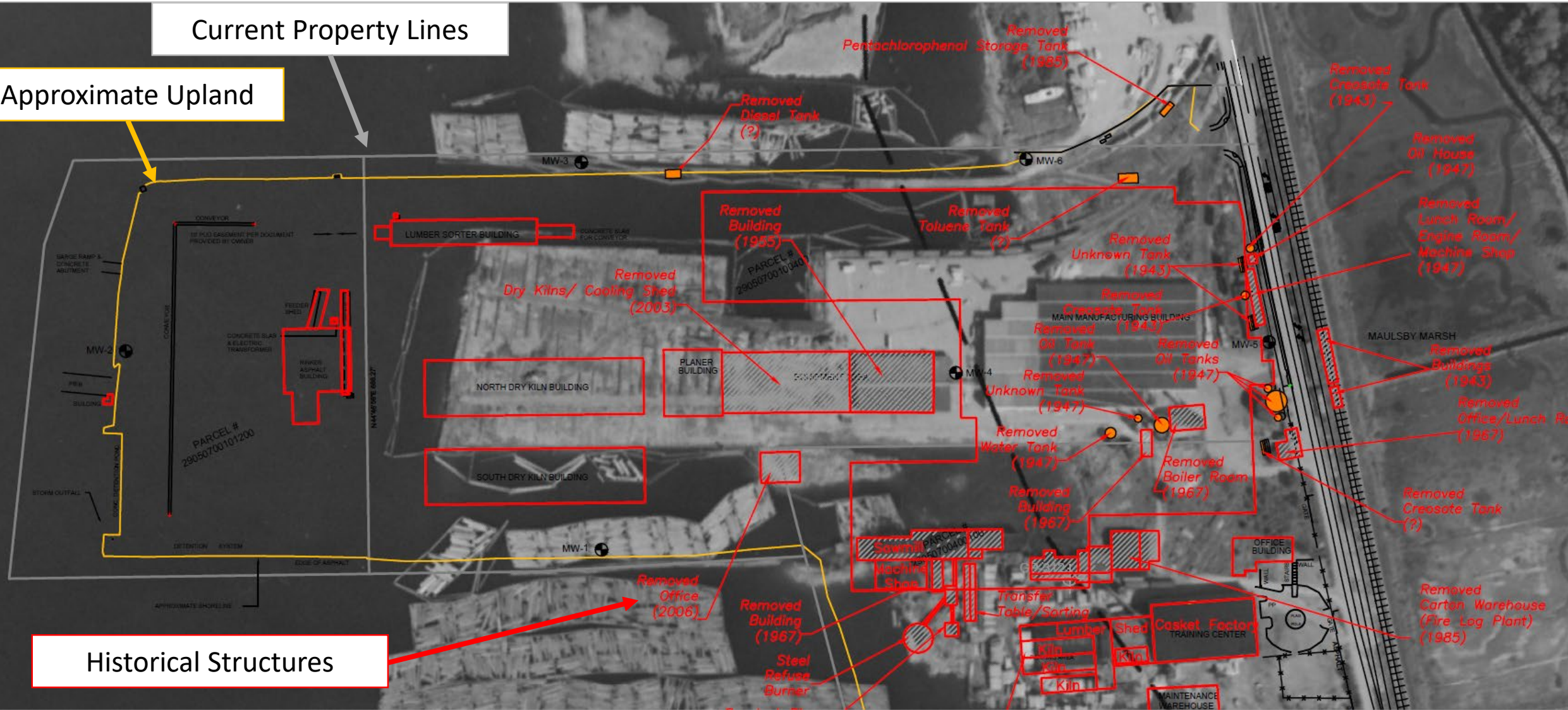
HISTORICAL AERIAL PHOTOGRAPH PRESENTATION

1947 Aerial – Earliest known

Current Property Lines

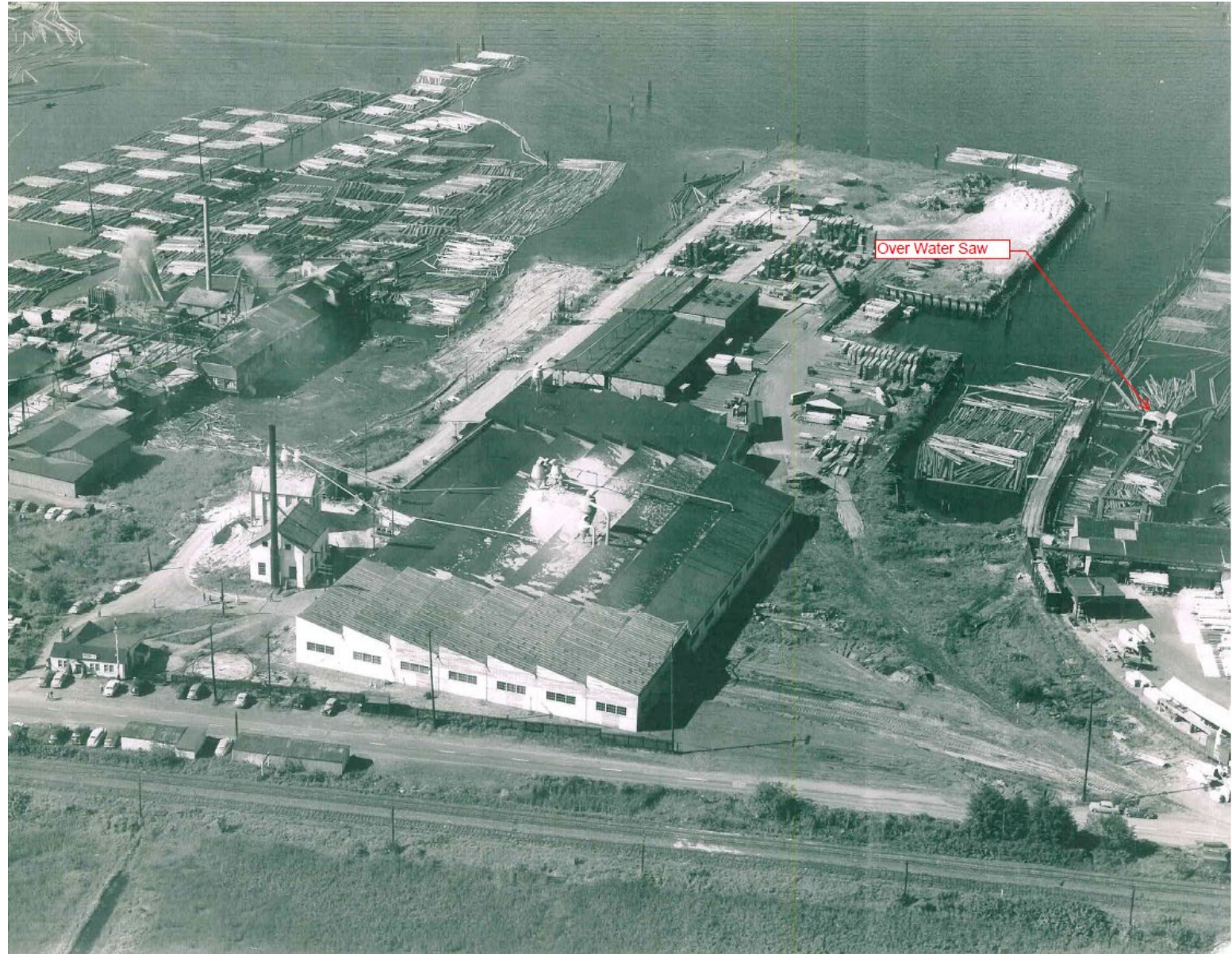
Approximate Upland

Historical Structures

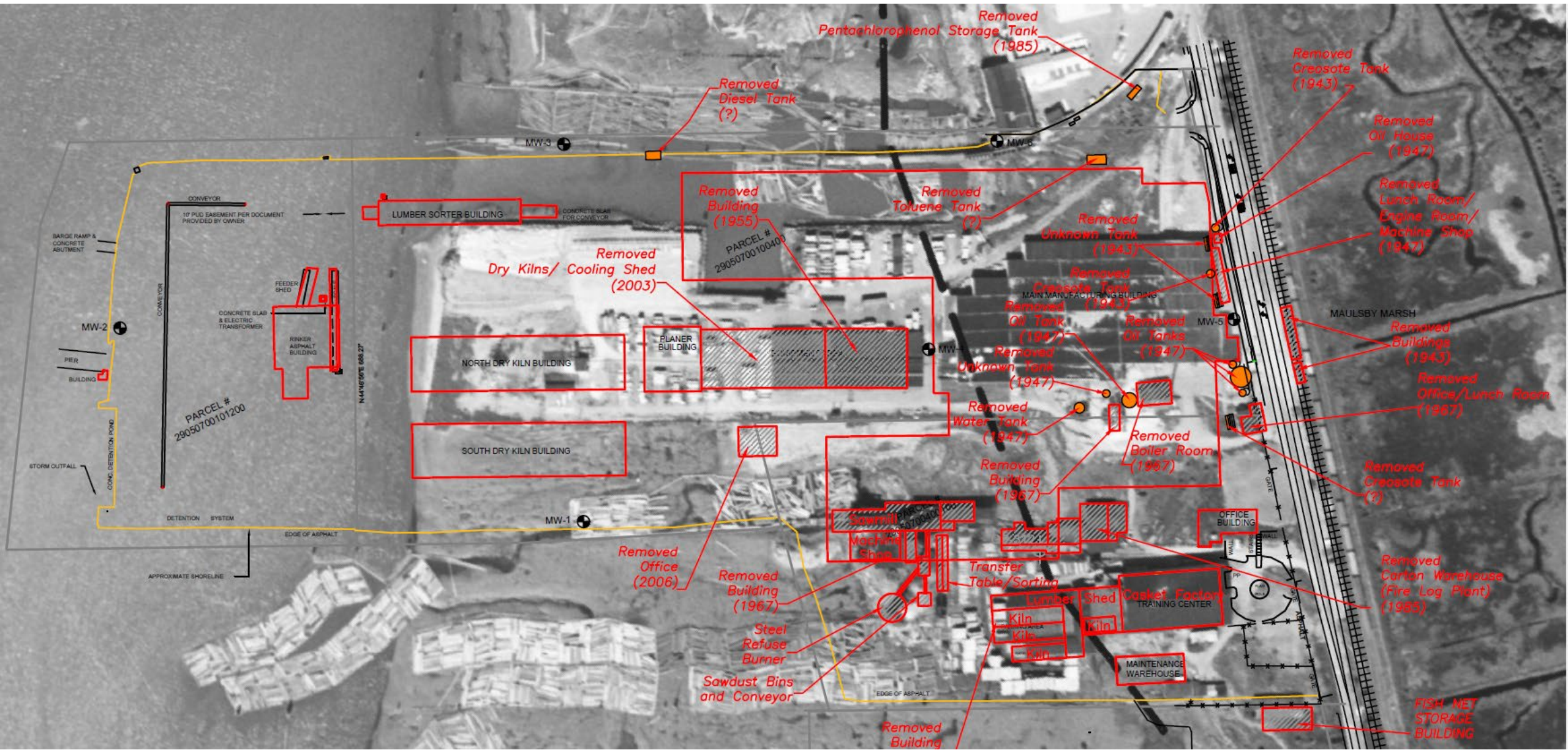


Undated Oblique

- Photo after 1947
- Marine railway used by Baywood Products within current property line (since filled)
- Log way pilings and structures in use along current property line
- From Bay Wood Products RI:
“The western two-thirds of the Site were primarily used for lumber and log storage. A log way was located on the southern portion of the Site and large log rafts were located to the northwest and north of the Site.”



1955 - Log way structures continued use. Piling along property line.

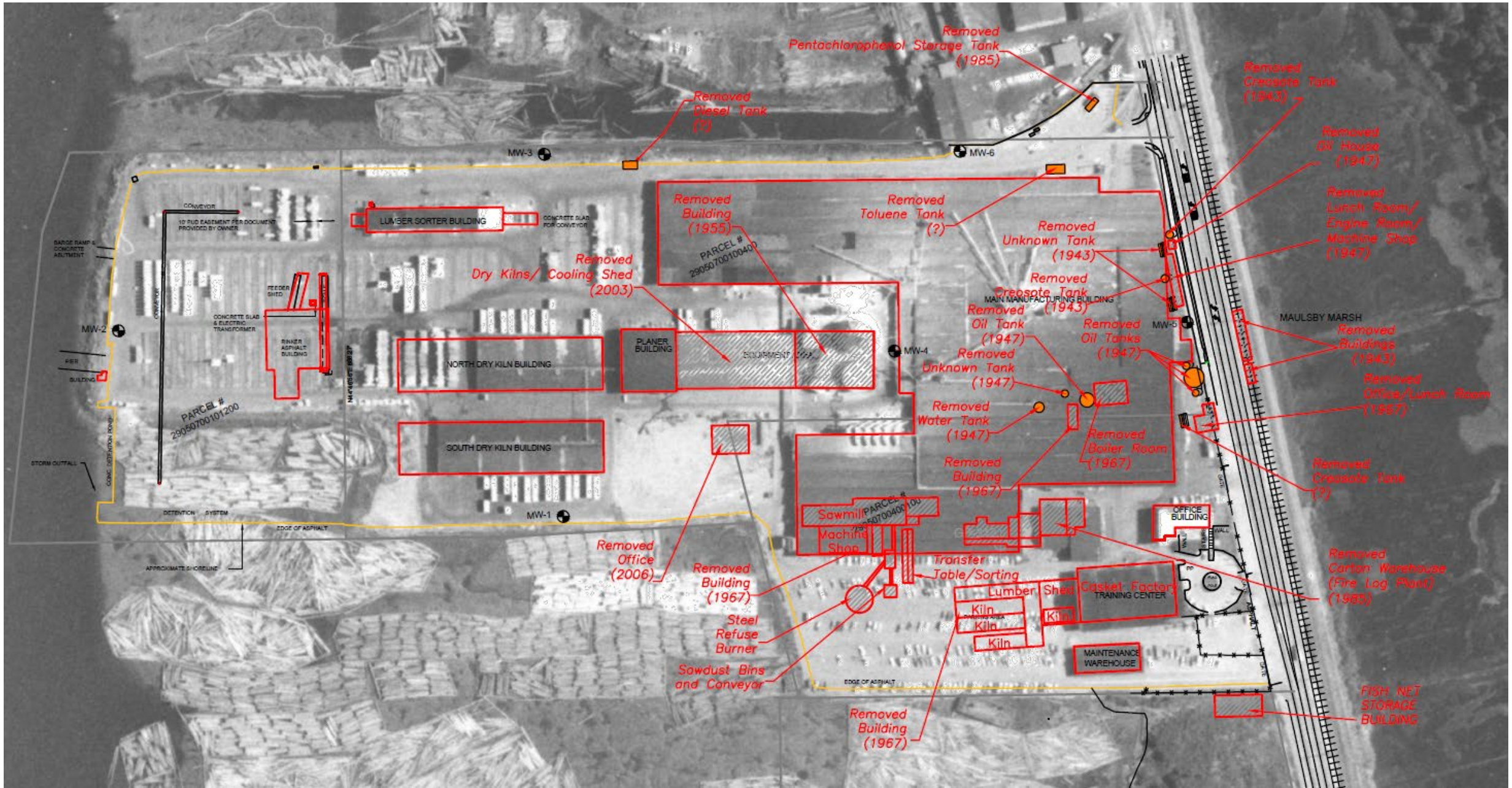


1966

- Fill along north property line complete
- Log way pilings and structures in use along current property line
- Dimensional lumber in use by former Nord operations



1974 - Log way structures continued use. Piling along property line. Southern property fill complete



6-17-1977 – Log way and structures in continued use. Dimensional lumber used on Nord Property. Log rafting throughout tide flats by others.



6-17-1977



1993

- Buildings demolished, however, not all log way structures were removed.
- Log way pilings still in use
- Dimensional lumber in use on former Nord property



Current SCOP1 Screenshot – Structure on Property Line



Current SCOP1 Screenshot –



29050700101200

29050700100300

City of Everett

29050700100500

29050700100400

29050700100800

29050700100900

29050700400100

0 446ft



APPENDIX B

Bay Wood Products Site Agreed Order No. DE 5490

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

The Port of Everett

AGREED ORDER for

**Remedial Investigation/Feasibility Study
and Draft Cleanup Action Plan – Bay Wood
Products Site**

No. DE **5490**

TO: Port of Everett
Attention: Jerry W. Heller, Chief Administrative Officer
2911 Bond Street
Everett, WA 98206

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EXHIBITS

- EXHIBIT A: SITE LOCATION AND PROPERTY LOCATION INFORMATION
- EXHIBIT B: SCOPE OF WORK & SCHEDULE
- EXHIBIT C: ECOLOGY POLICY 840 – DATA SUBMITTAL REQUIREMENTS
- EXHIBIT D: PUBLIC PARTICIPATION PLAN

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Port of Everett (the Port) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the Port to conduct a Remedial Investigation and Feasibility Study (RI/FS) per WAC 173-340-350 and develop a draft Cleanup Action Plan per WAC 173-340-350 through 173-340-380 addressing both potential upland and in-water (i.e., adjacent marine sediment) contamination for the Site. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. The Port agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Port's responsibility under this Order. The Port shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

A. Site: The Site (or Facility) is referred to as the Bay Wood Products Site (the Site) and is generally located at 200 West Marine View Drive, Everett, Snohomish County,

Washington. The Site is owned by the Port and encompasses approximately 13 acres of upland area. The final limits of the Site, which may include both upland and in-water areas, will be determined in the RI/FS. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site and is not limited by property boundaries. The Site includes areas where hazardous substances have been deposited, stored, disposed of, placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is more particularly described in **Exhibit A** to this Order, which includes general site maps and photographs (**Exhibit A**, Figures 1 through 6), a site location description, and information from the Snohomish County Assessor's Office. Based on the results of previous investigations (see Section V, Subsections C-E to this Order), the Site includes both upland and in-water areas (i.e., adjacent marine sediment) as defined below. The Site constitutes a Facility under RCW 70.105D.020(5).

B. Parties: Refers to the State of Washington, Department of Ecology and the Port of Everett.

C. Potentially Liable Person (PLP): Refers to the Port of Everett.

D. Agreed Order or Order: Refers to this Order and each of the exhibits and attachments to the Order. All exhibits and attachments are integral parts of this Order. In addition, **Exhibits A** through **D** are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits and attachments to the Order.

E. Upland Area: Refers to areas of the Site that fall outside the In-Water Area, as generally depicted in **Exhibit A**, Figures 1 through 5.

F. In-Water Area: Refers to the intertidal (areas exposed to air at low tide) and subtidal (areas always covered by water) parts of the Site associated with adjacent marine waters, as generally depicted in **Exhibit A**, Figures 1 through 5.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the Port:

A. The Site is generally located at 200 West Marine View Drive, Everett, Snohomish County, Washington. The Site location is generally depicted in the diagrams attached to this Agreed Order as **Exhibit A**. The facility is generally depicted in **Exhibit A** (Figures 1 through 6). **Exhibit A** also contains a legal description of the property (located after Figure 9 of **Exhibit A**). The Site is located on a fill area of Port Gardner Bay and has no structures or pavement. The Site is listed on the Department of Ecology's Hazardous Sites List as "Bay Wood Products" with the Facility Site ID No. 4438651.

B. The Port is the "owner", as defined in RCW 70.105D.020(17), of the Site.

C. According to a Phase I Environmental Site Assessment (ESA) conducted for Bay Wood Products, Inc. in 1989, a sawmill was operated at the Site beginning sometime prior to 1946 and ending in 1979. Historical lease information for the property presented in the Phase I ESA indicates that the sawmill was initially operated by Washington Wood Products (later known as Washington Timber Products, Ltd) from before 1946 to 1970. A Metsker's Snohomish County Atlas shows that Parker Lumber & Mill Company occupied the Site in 1936. Since 1970, the operation at the Site transitioned between the following companies:

- From 1970 to 1976, Publishers Timber Company operated a sawmill at the Site.
- From 1976 to 1978, West Coast Orient Lumber Mills, Inc. operated a sawmill at the Site.
- From 1978 to 1979, West Coast Lumber Operations, Inc. operated a sawmill at the Site.
- From 1979 to 1994, Bay Wood Products, Inc. used the Site for log handling and storage.

The sawmill and former buildings operated by parties prior to Bay Wood Products were located on the eastern portion of the property. Sometime prior to 1985, Bay Wood Products dismantled

the sawmill, removed the older buildings and constructed three buildings in the southeastern portion of the property, consisting of an office building with an attached shop area, a large covered shed, and a shop building. At the time of the 1989 Phase I ESA, several above ground storage tanks (ASTs) containing diesel fuel and drums containing motor and hydraulic oil were present in and around the buildings and oil staining was observed on the ground near the tanks and drums.

D. Several environmental assessments and associated cleanup actions were conducted at the Site subsequent to the 1989 Phase I ESA. Between 1992 and 1993, a limited soil investigation and subsequent soil cleanup was conducted by Geoengineers, Inc. on behalf of the Port to address a small area of residual polychlorinated biphenyl (PCB) contamination related to a former leaky electrical transformer. According to the 1989 Phase I ESA, an initial cleanup of the PCB contaminated soil was conducted in 1985, but this cleanup did not result in complete removal of PCBs above the Model Toxics Control Act (MTCA) Method A cleanup level for unrestricted site use. About 45 cubic yards of PCB-affected soil was removed in 1993 and associated soil quality data indicate that all soil above the MTCA Method A residential (unrestricted) cleanup level for PCB mixtures was removed and disposed of at an offsite disposal facility.

E. Wood debris deposits were delineated by Landau Associates on behalf of the Port across the upland portion of the site in 1994. Much of the significant deposits of upland wood debris was removed from the upland portion of the Site in 1995 by Forest Industries Engineering Systems on behalf of the Port. Wood debris was present as both surface and subsurface deposits, and was encountered at depths up to elevation -4 ft Mean Lower Low Water (MLLW). Removal of the deeper deposits required construction of dikes along the perimeter of the western two thirds of the upland portion of the Site. More than 100,000 cubic yards of wood debris and intermixed rock and soil were removed from the Site during the 1995 removal action. The area from which the subsurface wood debris was removed was filled with Snohomish River dredge sediments to match the existing Site grades to the east. The Bay Wood Products buildings were also removed from the Site in 1994 or 1995.

F. The Site has remained unoccupied and unused since wood removal and filling activities were performed in 1995. Environmental conditions not previously evaluated at the Site include:

- The potential presence of wood debris within the aquatic portion of the site.
- The potential release of petroleum hydrocarbons related to the former ASTs and drums noted in the 1989 Phase I ESA.
- The potential release of hazardous substances during historic sawmilling operations.

G. The presence of wood debris has been documented at the Site. Previous investigations have documented the extent of wood debris in upland areas and aerial photographs taken in 1966 and 1977 (included in **Exhibit A**, Figures 2 and 3) reveal extensive log rafting and scattered sunken logs in in-water areas of the Site. As depicted in the aerial photographs, log rafting was extensively practiced in the tidal mud flats that surround the facility, and log transfer activities into and out of the water at the Site occurred for many years. Log transfer activities are the greatest potential source of wood debris and these practices were evident at the western-most end of the site and along the southern boundary where logs were floated to the former sawmill feed or “log way” as shown in the 1966 and 1977 aerial photographs (**Exhibit A**, Figures 2 and 3). The “log way” was identified in the revised 1957 Sanborn Map (**Exhibit A**, Figure 6 (Key Sections 96 and 97)).

H. Recent site photographs and observations show the presence of wood debris (logs, branches, small pieces of wood, and bark) in intertidal sediments where the former transfer point or “log way” was located at the terminus of the inlet bounding the southern portion of the property (**Exhibit A**, Figures 7, 8 and 9). The photographs also reveal the discharge of anoxic waters from an area of the bank of the Site during low tide (Figure 8 and the upper left part of Figure 9), possibly from accumulated wood debris.

I. The accumulation of wood debris in an aquatic environment is known to impose physical and chemical impacts to the biological resources that reside on surface sediments. It smothers organisms that are dependent upon access to overlying water for respiration or food (e.g., clams). It also prevents access to the sediment/water interface necessary for recruitment of new year-classes of animals. As wood debris decays it reduces dissolved oxygen from the sediment porewater and from the overlying layers of water. The resulting anoxia is directly toxic to some organisms. In addition, significant volumes of wood debris accumulation in the marine environment are associated with releases of hazardous substances including but not limited to ammonia, hydrogen sulfide, phenol, 4-methylphenol, and 2, 4-dimethylphenol which all impose additional toxicity both individually and collectively to the benthic community.

VI. ECOLOGY DETERMINATIONS

A. The Port is an “owner” as defined in RCW 70.105D.020(17) of a “facility” as defined in RCW 70.105D.020(5).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to the Port dated December 19, 2007, pursuant to RCW 70.105D.040, RCW 70.105D.020(21), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the Port is a PLP under RCW 70.105D.040 and notified the Port of this determination by a letter dated February 5, 2008.

D. Pursuant to RCW 70.105D.030(1) and RCW 70.105D.050(1), Ecology may require the Port to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public

interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. The limited amount of investigative information presented in previous site reports is not sufficient to show that all of the potential contamination at this Site has been adequately characterized or cleaned up.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Port take the following remedial actions at the Site, as more fully described in the Scope of Work & Schedule attached to this Order as **Exhibit B**, and that these actions be conducted in accordance with Chapters 173-340 and 173-204 WAC unless otherwise specifically provided for herein:

A. The Port shall conduct the remedial actions fully described in **Exhibit B** to this Order. Generally, the Port shall perform the following:

- Develop a work plan for an RI/FS.
- Perform an RI/FS study.
- Prepare an RI/FS report.
- Develop a draft cleanup action plan (CAP) for the Site.

B. The Port shall perform the remedial actions required by this Order according to the work schedule set forth in **Exhibit B**.

C. If at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required under the Scope of Work & Schedule (**Exhibit B**), Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notices

RCW 70.105D.030(2)(a) requires that at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations that indicate to Ecology that the Order is inadequate or improper in any respect.

B. Remedial Action Costs

The Port shall pay to Ecology, costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of the Order. The Port shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly. Pursuant to Chapter 70.105D.055 RCW, Ecology also has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial action.

C. Implementation of Remedial Action

If Ecology determines that the Port has failed without good cause to implement the remedial action in whole or in part, Ecology may, after notice to the Port, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of the Port's failure to comply with their obligations under this

Order, the Port shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that the Port is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, the Port shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs in writing with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Isaac Standen
Toxics Cleanup Program
PO Box 47600, Olympia, WA 98504
Phone: 360-407-6776
E-Mail: ista461@ecy.wa.gov

The project coordinator for the Port of Everett is:

R. Scott Miller
SLR International Corp.
1800 Blankenship Road, Suite 440
West Linn, OR 97068
Phone: 505-723-4423
E-mail: smiller@slrcorp.com

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the Port, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinator(s). The project coordinators may designate, in writing, working-level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Ecology and the Port may change their respective project coordinators. Written notification shall be given to other party at least ten (10) days prior to the change.

E. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted that contain geologic, hydrologic, or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

The Port shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s), and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

F. Access

Ecology or any Ecology-authorized representative shall have the full authority to enter and freely move about all property at the Site that the Port either owns or controls, and have access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the Port's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary-type equipment to record work done pursuant to this Order; and verifying the

data submitted to Ecology by the Port. The Port shall make all reasonable efforts to secure access rights for those properties within the Site not controlled by the Port where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology-authorized representative shall give reasonable notice before entering any Site property owned or controlled by the Port unless an emergency prevents such notice. All persons who access the Site pursuant to this paragraph shall comply with the approved health and safety plan, if any. Ecology employees and their representative shall not be required to sign any release or waiver as a condition of site property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the Port shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal. Attached as **Exhibit C** is Ecology Policy 840, Data submittal Requirements.

If requested by Ecology, the Port shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by the Port pursuant to implementation of this Order. The Port shall notify Ecology seven (7) days in advance of collecting samples or work activity at the Site pursuant to this Order. However, Ecology may waive this notification requirement and accept samples when they were collected during construction projects or other circumstances where sampling was prudent or necessary but unplanned. Ecology shall upon request, allow the Port and/or their authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F (Access) of this Order, Ecology

shall notify the Port prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved in writing by Ecology.

H. Public Participation

A Public Participation Plan (see WAC 173-340-600) that is required for this Site, has been developed and is included as **Exhibit D**. Ecology shall maintain the responsibility for public participation at the Site. However, the Port shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, draft cleanup action plan, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify the Port prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the Port that do not receive prior Ecology approval, the Port shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Everett Public Library
2702 Hoyt Ave
Everett, WA 98201
- b. Department of Ecology
Toxics Cleanup Program
Headquarters Office
300 Desmond Drive SE
Olympia, Washington 98504-7600

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order and for ten (10) years from the date of completion of work performed pursuant to this Order, the Port shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order. Upon request of Ecology, the Port shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator or an itemized billing statement under Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

- a. Upon receipt of the Ecology project coordinator's decision or the itemized billing statement, the Port has fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. The Port may then request regional management review of the decision. This request shall be submitted in writing to the Headquarters Land and Aquatic Lands Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the Port's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to utilize the dispute resolution process only in good faith and agree to expedite to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended.
- b. The length of the extension sought.
- c. The reason(s) for the extension.

d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the Port to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause includes, but may not be limited to:

a. Circumstances beyond the reasonable control and despite the due diligence of the Port including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the Port.

b. Acts of God, including fire, flood, blizzard, extreme temperatures, earthquake, storm, or other unavoidable casualty.

c. Endangerment as described in Section VIII.M (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the Port.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the Port written notification in a timely fashion of any extensions granted pursuant to the Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L (Amendment of Order) when a schedule extension is granted.

4. An extension shall be granted only for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

a. Delays in the issuance of a necessary permit which was applied for in a timely manner.

- b. Other circumstances deemed exceptional or extraordinary by Ecology.
- c. Endangerment as described in Section VIII.M (Endangerment).

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within fourteen (14) days of verbal agreement.

Except as provided in Section VIII.N (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may be formally amended only by the written consent of both Ecology and the Port. The Port shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to the Order represents a substantial change, Ecology will provide additional public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes) of this Order.

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the Port to cease such activities for such period of time as it deems necessary to abate the danger. The Port shall immediately comply with such direction.

In the event the Port determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the Port may cease such activities. The Port shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, the Port shall provide Ecology with documentation of the basis for the

determination or cessation of such activities. If Ecology disagrees with the Port's cessation of activities, it may direct the Port to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the Port's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.K (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against the Port to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the Port regarding remedial actions required by this Order, provided the Port complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the Port without provision for continued

implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the Port's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the Port shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the Port shall notify Ecology of said transfer. Upon transfer of any interest, the Port shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by the Port pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), the Port is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the Port shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

The Port has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the Port determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the Port shall be responsible to contact the

appropriate state and/or local agencies. If Ecology so requires, the Port shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the Port and on how the Port must meet those requirements. Ecology shall inform the Port in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Port shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and the Port shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Indemnification

The Port agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of the Port, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the Port shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon the Port's receipt of written notification from Ecology that the Port has completed the remedial activity required by this Order, as amended by any modifications, and that the Port has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

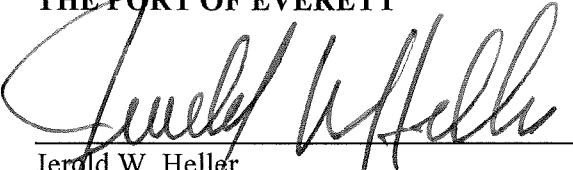
Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

1. The Attorney General may bring an action to enforce this Order in a state or federal court.
2. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.
3. In the event the Port refuses without sufficient cause, to comply with any term of this Order, the Port will be liable for:
 - a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.
 - b. Civil penalties of up to \$25,000 per day for each day it refuses to comply.
4. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.


Effective date of this Order: October 3, 2008

THE PORT OF EVERETT



Jerold W. Heller
Chief Administrative Officer
The Port of Everett
2911 Bond Street

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY



Tim L. Nord, Manager
Land and Aquatic Lands Cleanup Section
Toxics Cleanup Program
Headquarters Office

Everett, Washington 98206
(425) 259-3164

300 Desmond Drive Southeast
Lacey, Washington 98503
(360) 407-7226

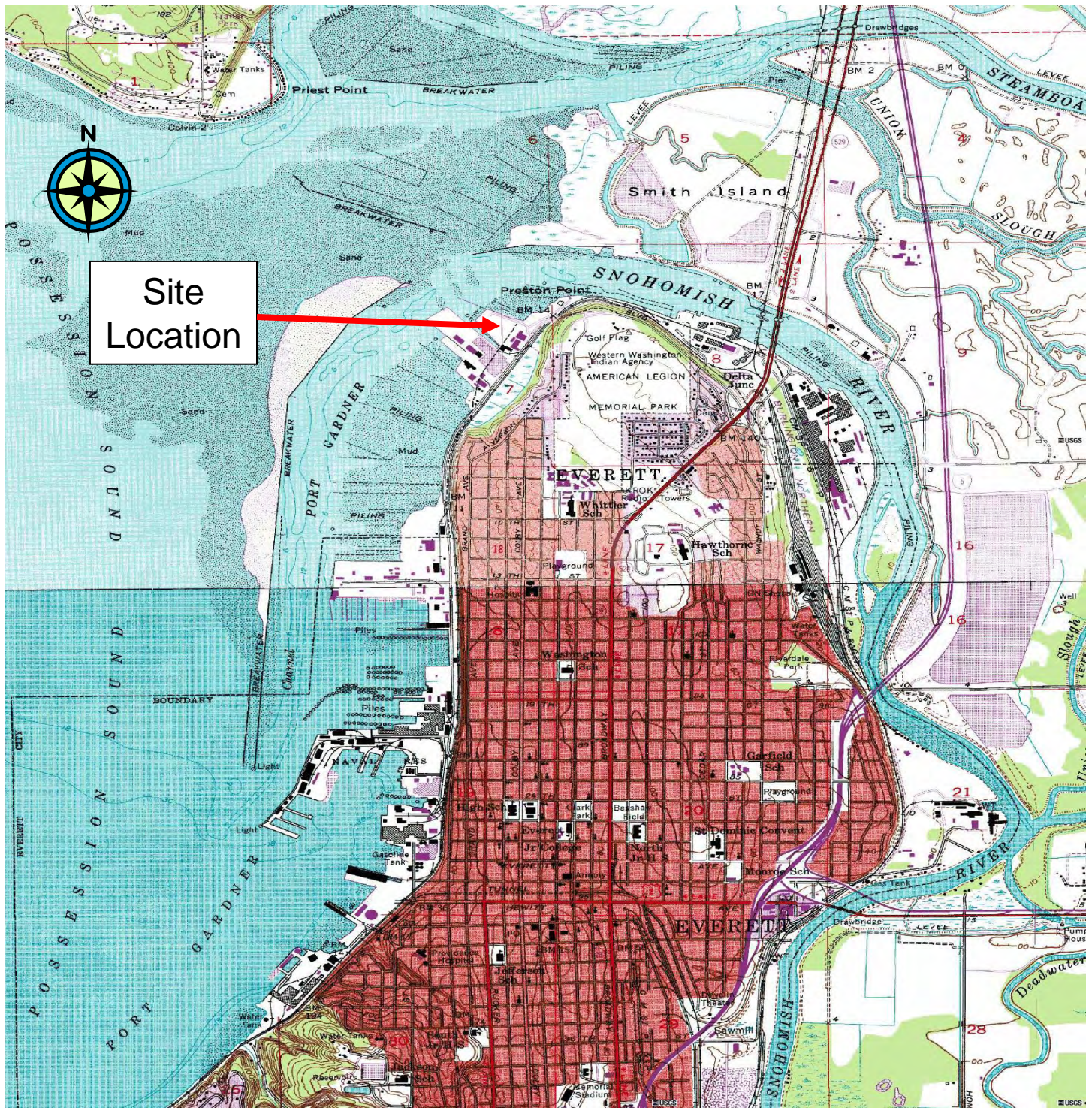


Exhibit A – Figure 1

Vicinity Map

Bay Wood Products Site



QUADRANGLE LOCATION

Source: USGS 7.5 Minute Quadrangle Maps (Everett and Marysville Quadrangle Maps; Photo Revised – 1968 and 1973)



Exhibit A – Figure 2 1966 Aerial Photo – Bay Wood Products Site

Source: Washington State Department of Transportation, Negative ID: 3103 1-5, 7/29/1966.

Locations of site features will need to be independently confirmed using historical records, photos, and Sanborn Maps along with georeferencing techniques. Features were identified based on Sanborn Maps (Revised 1957 – Key Sections 96 and 97).



Exhibit A – Figure 3 1977 Aerial Photo – Bay Wood Products Site

Source: Washington State Department of Ecology Shorelands & Environmental Assistance Program. Oblique Aerial Photos, June 1977
Locations of site features will need to be independently confirmed using historical records, photos, and Sanborn Maps along with georeferencing techniques. Features were identified based on Sanborn Maps (Revised 1957 – Key Sections 96 and 97).



Exhibit A – Figure 4 2000 Aerial Photo – Bay Wood Products Site

Source: Washington State Department of Ecology Shorelands & Environmental Assistance Program Oblique Aerial Photos, 2000 Series. Photo taken on September 25, 2000.



Exhibit A – Figure 5 2006 Aerial Photo – Bay Wood Products Site

Source: Imagery: I-Cubed, 2006; Acquired: Via ArcGIS Explorer by ESRI on 1/25/2008.

SECTION OF SHEET
LIMITS

NO

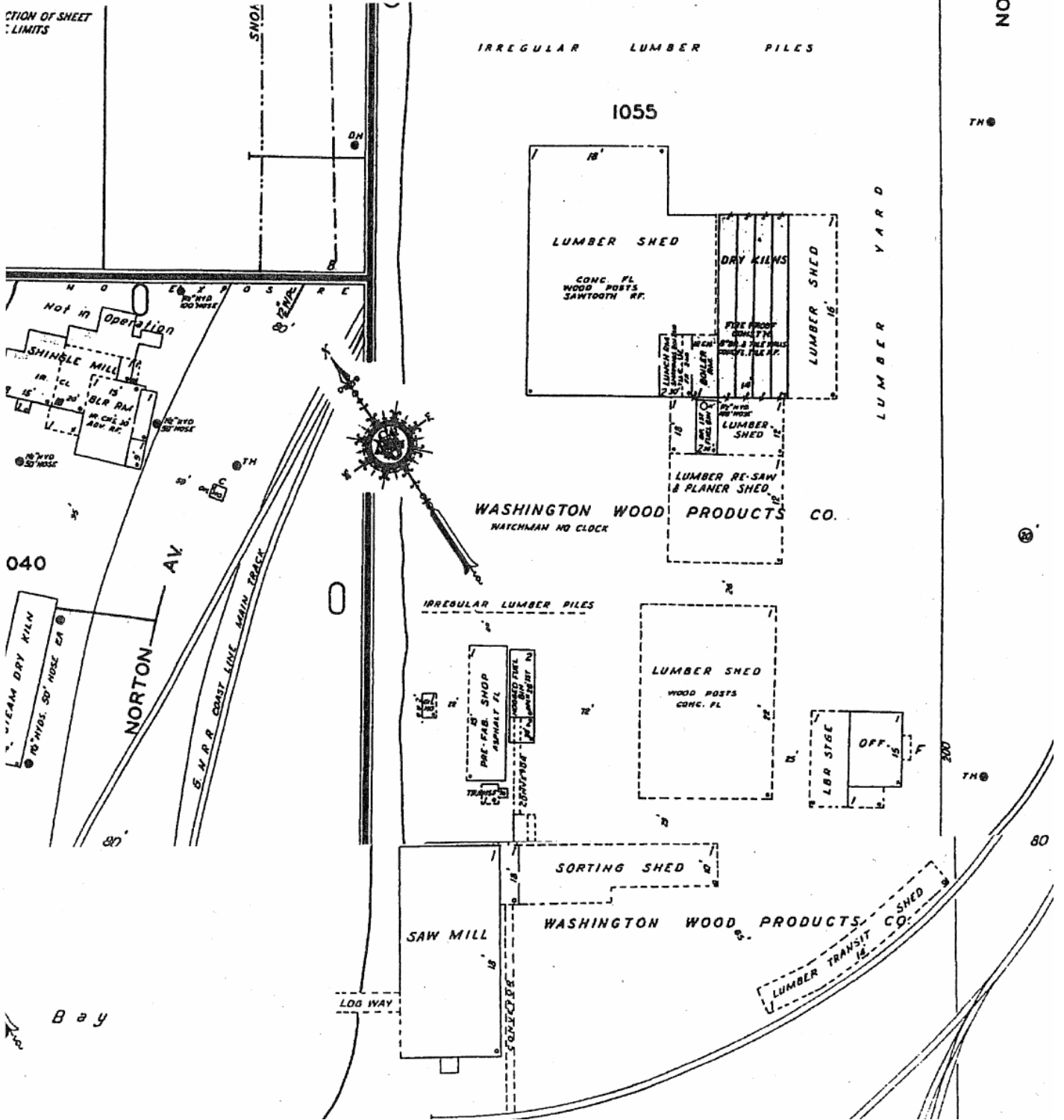


Exhibit A – Figure 6
1957 Sanborn Map – Bay Wood Products Site
 Source: Sanborn Maps (Revised 1957 – Key Sections 96 and 97).



Exhibit A – Figure 7

Photo of Logway– Bay Wood Products Site

Source: Washington State Department of Ecology, Toxics Cleanup Program. June 27th 2007
Photo Direction – Southeast



Exhibit A – Figure 8

Photo of Logway– Bay Wood Products Site

Source: Washington State Department of Ecology, Toxics Cleanup Program. June 27th 2007
Photo Direction – North



Exhibit A – Figure 9
Photo of Logway– Bay Wood Products Site

Source: Washington State Department of Ecology, Toxics Cleanup Program. June 27th 2007
Photo Direction – North

EXHIBIT B

SCOPE OF WORK & SCHEDULE

Pursuant to the Agreed Order to which this Scope of Work & Schedule is attached, the Port of Everett (Port) shall take the following remedial actions at the Bay Wood Products Site. These actions shall be conducted in accordance with Chapters 173-340 and 173-204 WAC unless otherwise specifically provided for herein:

A. Remedial Actions To Be Performed

The Port of Everett shall conduct the remedial actions generally described below.

- Remedial Investigation/Feasibility Study (RI/FS Work Plan) – Prepare a work plan for RI/FS Study in accordance with the specifications described in Section A(1) of this Exhibit. The Port shall submit the RI/FS Work Plan to Ecology for review and approval.
- RI/FS Study – The Port shall conduct field data collection (as part of the RI) as described in the approved RI/FS Work Plan. The Port shall conduct an FS based on the results of the field RI. Elements of the RI/FS study have been further described in Sections A(1)(f) and A(1)(g) of this Exhibit.
- RI/FS Report – Prepare an RI/FS report. The Port shall submit the draft RI/FS Report (combined as a single document) to Ecology for review and approval.
- Draft Cleanup Action Plan (CAP) – Upon Ecology approval of the final RI/FS report, the Port shall prepare draft CAP. The Port shall submit the draft CAP to Ecology for review and approval.

Additional details regarding the remedial actions to be performed by the Port are provided below.

(1) Preparation Of An RI/FS Work Plan

The Port shall develop an RI/FS Work Plan (including draft, draft final, and final versions) that includes a scope of work to delineate and quantify (i.e., identify the levels of contamination) the potential contaminants in all media (i.e., soil, groundwater, surface water, and adjacent marine sediments) and any toxic effects or other deleterious substances in marine sediment. The work plan shall also address the proper handling of all wastes generated from the site during the RI/FS

(e.g., soil cuttings, groundwater development and purge water, excess sediment sample material, free-product, etc.). In addition, exempt permits or approvals and the applicable substantive requirements of those permits or approvals will be identified in the work plan. Note that all draft documents for Ecology review may be submitted in redline strike-out format (preferably in Microsoft® WORD format) to facilitate the review. The RI/FS Work Plan shall be conducted meeting the requirements of WAC 173-350 and should include the elements listed below.

(a) Development Of A Site-Specific Health and Safety Plan (HSP) And Sampling And Analysis Plan (SAP)

A site-specific HSP describing worker safety during the project will be developed in accordance with WAC 173-340-810 and included in the RI/FS Work Plan. A site-specific SAP, which includes quality assurance/quality control requirements, will be included in the RI/FS Work Plan. The SAP should be based on the type, quality, and quantity of data necessary to support selection of a cleanup action. The SAP should provide the details on numbers and locations of samples for each media and the analytical requirements. The SAP shall conform to the requirements specified in WAC 173-340-820.

Additional sediment sampling is also required under the Sediment Management Standards (SMS; WAC chapter 173-204) to fully investigate the extent and magnitude of potential marine sediment contamination released at the Site. A separate sediment SAP (i.e., separate from the upland SAP) must be submitted to Ecology for review and approval before any sampling is conducted. In addition, any sampling of the marine sediments must be done in accordance with the SMS and the Sediment Sampling and Analysis Plan Appendix, Ecology Publication No. 03-03-043¹.

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¹ See URL: <http://www.ecy.wa.gov/biblio/0309043.html>.

(b) Investigation of Site Background and Setting

This section will include detailed descriptions of the following:

- (i) The property and site operational/industrial history (including current and previous ownership).
- (ii) All previous investigations and past remedial actions. Note that any prior remedial actions are considered to be interim and not a final cleanup action.
- (iii) Historical sources and releases of contamination (include a review of historical photos and Sanborn Maps).
- (iv) Current site conditions (including descriptions of surface features, geology, soil and the vadose zone, surface water hydrology, hydrogeology, and meteorology).
- (v) Current and future land and water use (including descriptions of human populations).
- (vi) The terrestrial/aquatic ecological setting including a description of ecological receptors and potentially threatened/endangered species.

(c) Previous Investigations/Cleanup Actions

The results of past investigations and cleanup actions (i.e., past interim remedial actions) should be described in the RI/FS Work Plan along with identifying data gaps that need filled.

(d) Development of Preliminary CSM

The CSM should describe release mechanisms from the potential primary sources of hazardous substances to secondary and tertiary sources, the exposure media and routes, and the potential human and ecological receptors. The CSM should reflect both current conditions and potential future development in assessing exposure pathways.

(e) Establishment of Preliminary Cleanup Levels

Based on the CSM, identify appropriate preliminary cleanup levels (e.g., levels established under MTCA (see WAC 173-340-700 through 173-340-760), Chapter 173-204 WAC, Sediment Management Standards for Puget

Sound Marine sediments, and applicable state and federal laws) under a residential (unrestricted) land use scenario. Note that the cleanup levels must consider all applicable pathways including direct contact (including inhalation), media transfer pathways (e.g., leaching to groundwater, groundwater migration to surface water, and sediment, etc.), and exposure to terrestrial and/or aquatic ecological and human receptors.

(f) Evaluation of Existing Data

Any existing analytical data, including data points impacted by prior interim remedial actions (if any), should be plotted (as accurately as possible) on both historical and current aerial photographs using georeferencing techniques. Review the sample locations with respect to identified sources and areas where suspected releases (e.g., outfalls, storm water drains, spills, dumping, leaks, etc.) have occurred. All of the existing analytical data collected at the Site should be evaluated in terms of data usability (analytical methods used to evaluate the effectiveness of a cleanup action shall comply with the requirements in WAC 173-340-830) and be screened against the most protective applicable preliminary cleanup levels identified under an unrestricted land use scenario. Both non-detect and detected data should be included in the screening. Identify sampling points containing exceedances on a map, and also discuss the adequateness of the reporting limits (i.e., Method Detection and Practical Quantitation Limits) in terms of achieving the preliminary cleanup levels for the Site. Chemicals exceeding the preliminary cleanup levels should be identified as indicator hazardous substances for the Site.

(g) RI Study Approach

This section of the RI/FS Work Plan shall provide an overview of the methods that will be used in conducting the RI for the Bay Wood Products Site. Based on the background information gathered, past interim remedial actions at the Site, and the evaluation of existing data, discuss by

media (e.g., soil, sediment, surface water, etc.) the data required to complete an RI for the Bay Wood Products Site. The RI approach shall be consistent with WAC 173-340-350. Identify data gaps and the overall approach for conducting the RI. The SAP(s) will provide the details on numbers and locations of samples for each media and the analytical requirements. The RI field investigation will be designed to identify the full extent and magnitude of contaminants and toxic effects in upland and in-water areas. The Port shall provide Ecology with the results of the investigation (in the form of a technical memo) so that a determination can be made with regard to whether additional investigation is required to define the full extent and magnitude of contamination. The information provided to Ecology should describe the analytical results of the field activities including the identification of indicator hazardous substances, the affected media, preliminary cleanup levels, the extent of contamination (plotted on maps), and any data gaps that need to be filled to define the extent and magnitude of contamination and toxic effects. Additional field investigation (if necessary based on initial results) will be conducted to further define the extent and magnitude of contamination and toxic effects based on findings during the initial investigation.

(h) FS Approach

This section of the RI/FS Work Plan shall provide an overview of the methods that will be used in conducting the FS for the Bay Wood Products Site. The FS approach shall be consistent with WAC 173-340-350 and should consist of the following sections:

- (i) Establishment of Cleanup Levels, Points of Compliance, and Remediation Levels.** Unless otherwise specified under this Order, cleanup levels and points of compliance should be established for each hazardous substance in each medium and for each exposure pathway. The Port may also consider establishing potential remediation levels as defined per WAC 173-340-355.

- (ii) **Applicable or Relevant and Appropriate Requirements.** The FS should include additional information or analyses to comply with the State Environmental Policy Act (SEPA) or other applicable laws to make a threshold determination per WAC 197-11-335(1) or to integrate the RI/FS with an environmental impact statement per WAC 197-11-262.
- (iii) **Delineation of Media Requiring Remedial Action.** Based on the results of the RI, determine areas and/or volumes of affected media to which remedial action objectives might be applied.
- (iv) **Development of Remedial Action Objectives.** Remedial Action Objectives should provide general descriptions of what the Site cleanup is designed to accomplish, which is media-specific. Remedial action objectives are established on the basis of extent and magnitude of the contamination, the resources that are currently and potentially threatened, and the potential for human and ecological (both terrestrial and aquatic) exposures at the Site. Clearly define a basis and rationale for Remedial Action Objectives for each media at the Site.
- (v) **Screening and Evaluation of Cleanup Action Alternatives.** A reasonable number and type of cleanup action alternatives should be evaluated, taking into account the characteristics and complexity of the Site, including current site conditions and physical constraints. Evaluation of cleanup action alternatives and the selection of preferred cleanup alternative must meet the requirements of WAC 173-340-360.
- (vi) **Habitat Restoration.** Evaluate opportunities to perform remedial actions in a fashion that coincidentally enhances habitat. Elements of the remedial action will be evaluated for restoration opportunities in consultation with Ecology as plans for cleanup are developed.²

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² The Site is being overseen by Ecology and work is being done in an expedited manner under the Governor's Puget Sound Initiative. The Initiative focuses on cleaning up contamination as well as restoring Puget Sound. Ecology recognizes that site cleanups can be designed and implemented in a manner that improves habitat values and provides for shoreline restoration in conjunction with remedial actions. While planning the cleanup, and making cleanup decisions, Ecology and the Port will evaluate opportunities to perform remedial actions in a fashion that coincidentally enhances habitat. Elements of the remedial action will be evaluated for restoration opportunities in consultation with Ecology as plans for cleanup are developed.

(i) Public Involvement

This section of the RI/FS Work Plan shall present the general process for public involvement (in accordance with WAC 173-340-600) along with a reference to the Public Participation Plan presented in this Order as Exhibit D.

(j) Project Management

This section of the RI/FS work plan will discuss project staffing and coordination associated with the RI/FS activities for the Bay Wood Products Site. The organizational structure and responsibilities are designed to provide project control and quality assurance for the duration of the project.

(k) Schedule & Reporting

This section should contain the schedule and reporting requirements for the RI/FS project as defined in this Order.

(2) Prepare Draft RI/FS Report

A draft, draft final, and final RI/FS report that meets the requirements of WAC 173-340-350 shall be prepared. The RI/FS report shall contain the results of the RI and will provide information regarding the full extent and magnitude of soil, groundwater, surface water, and/or adjacent marine sediment contamination including toxic effects. The FS portion of the report will present and evaluate cleanup action alternatives to address the identified contamination at the Site. Based on the evaluation of alternatives (WAC 173 340-350[8]), the FS will identify a preferred cleanup action alternative for the Site in compliance with WAC 173-340-360.

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(3) Develop A Draft Cleanup Action Plan (CAP)

Upon Ecology approval of the final RI/FS report, the Port shall prepare a draft and draft final CAP in accordance with WAC 173-340-380 and 173-204-580 that provides proposed cleanup action alternatives to address potential contamination at all impacted media in both upland and in-water areas (i.e., adjacent marine sediment) based on the results of RI/FS. The draft CAP shall include a general description of the proposed cleanup actions along with following sections:

- A general description of the proposed cleanup action alternatives and rationale for selection including results of any remedial technology pilot studies if necessary.
- A summary of other cleanup action alternatives evaluated in the RI/FS.
- A summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions.
- Cleanup standards and rationale regarding their selection for each hazardous substance and for each medium of concern at the Site based on the results of the RI/FS.
- Descriptions of any institutional/engineering controls if proposed.
- A schedule for implementation of field construction work.

B. Schedule

The Port shall perform the actions required by this Order according to the schedule below.

(1) RI/FS Work Plan Submittal

- Draft Document – The draft RI/FS Work Plan shall be due 75 calendar days after finalization of this Order. The draft Work Plan will then undergo a 30-day review period by Ecology.
- Draft Final Document – The draft final RI/FS Work Plan shall address any comments/suggestions submitted by Ecology. The draft final RI/FS Work Plan shall be due 30 days after Ecology provides its comments. The draft final version will undergo a 20-day review period by Ecology.
- Final Document – The final RI/FS Work Plan shall address comments/suggestions submitted by Ecology. The final RI/FS Work Plan shall be due 20 days after Ecology provides its comments.

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(2) Field RI/FS

- Field RI/FS – RI field activities shall be commenced within 30 days of submittal of the final RI/FS work plan to Ecology. The field RI results should be provided to Ecology 30 calendar days after the validation of all RI/FS analytical data.
- Additional field RI activities (if needed) – These additional field RI activities are to adequately delineate the extent and magnitude of contamination at the Site. The scope, schedule and submittal requirements for additional field RI activities shall be developed by the Port, and shall be submitted to Ecology for final review and concurrence.

(3) RI/FS Report Submittal

- 1st Draft RI/FS Report – The first draft RI/FS report shall be due to Ecology 120 calendar days after receipt of all analytical data collected during the RI/FS. This draft will then undergo a 30-day review period by Ecology.
- 2nd Draft RI/FS Report – The second draft RI/FS report shall be due to Ecology 60 calendar days after receipt of Ecology comments on the 1st draft RI/FS report. This draft will then undergo a 30-day review period by Ecology.
- Draft Final RI/FS Report – The draft final RI/FS report shall be due 15 days after receipt of Ecology comments on the 2nd draft RI/FS report. This draft final RI/FS report will then go to a 30-day public comment period.
- Final RI/FS Report – The final RI/FS report shall be submitted to Ecology 30 days after Ecology's completion of the responsiveness summary to public comment on the draft final RI/FS report.

(4) Cleanup Action Plan (CAP) Submittal

- Draft CAP – The draft CAP shall be submitted to Ecology 30 days after the draft final RI/FS Report is finalized and ready for public comment. This draft CAP will then undergo a 30-day review period by Ecology.
- Draft Final CAP – The draft final CAP shall address comments/suggestions submitted by Ecology on the draft CAP. This draft final shall be due 15 days after submittal of Ecology comments of the draft CAP.



Toxics Cleanup Program Policy

Policy 840

Resource Contact: Policy and Technical Support Staff *Effective:* August 1, 2005

References: WAC 173-340-840(5) *Revised:* September 9, 2005

<http://www.ecy.wa.gov/eim/>

<http://www.ecy.wa.gov/programs/tcp/smu/sedqualfirst.htm>

<http://www.ecy.wa.gov/biblio/0309043.html>

Replaces: Procedure 840

Policy 840: Data Submittal Requirements

Purpose: Contaminated site investigations and cleanups generate a large volume of environmental monitoring data that need to be properly managed to facilitate regulatory decisions and access to this data by site owners, consultants, and the general public. The purpose of this policy is to describe the requirements for submitting environmental monitoring data generated/collected during the investigation and cleanup of contaminated sites under the Model Toxics Control Act (MTCA) and the Sediment Management Standards.

Application: This policy applies to Ecology staff, potentially liable parties, prospective purchasers, state and local agencies, and Ecology contractors that investigate or manage the cleanup of contaminated sites.

1. Unless Otherwise Specified by Ecology, all Environmental Monitoring Data Generated during Contaminated Site Investigations and Cleanups shall be Required to be Submitted to Ecology in both a Written and Electronic Format.

Environmental monitoring data include biological, chemical, physical, and radiological data generated during site investigations and cleanups under the Model Toxics Control Act Cleanup Regulation (WAC 173-340) and the Sediment Management Standards (WAC 173-204).

Data generated/collected during site investigations and cleanups conducted under an order, agreed order or consent decree, permit, grant, loan, contract, interagency agreement, memorandum of understanding or during an independent remedial action, are considered environmental monitoring data under this policy.

Data generated/collected for non site-specific studies, site hazard assessments that result in no further action and initial site investigations are not considered environmental monitoring data under this policy.

2. Orders, Agreed Orders, Consent Decrees, or Permits Issued After the Effective Date of this Policy Shall Include a Condition that Site-Specific Data be Submitted in Compliance with this Policy.

Reports on such work that do not include documentation that the data have been submitted in compliance with this policy shall be deemed incomplete and a notice of such provided to the

submitter. These reports generally should not be reviewed until that information is provided. The assistant attorney general assigned to the site should be consulted in these situations.

3. Reports on Independent Remedial Actions Submitted for Review After October 1, 2005, Under Ecology's Voluntary Cleanup Program Shall Not be Reviewed Until the Data Have Been Submitted in Compliance with this Policy.

Such reports shall be deemed incomplete, and a notice to this effect provided to the submitter.

4. Grants, Contracts, Interagency Agreements or Memoranda of Understanding Issued After the Effective Date of this Policy Shall Include a Condition that Site-Specific Data be Submitted in Compliance with this Policy.

Reports on such work shall not be accepted as complete until the data have been submitted in compliance with this policy. If a payment or transfer of funds is involved in the transaction, the relevant payment or transfer shall be withheld until this requirement has been met.

Example language to include in these documents is attached in Appendix A.

5. Data Generated During Upland Investigations and Cleanups Shall be Submitted Electronically Using Ecology's Environmental Information Management System (EIM).

EIM is Ecology's main database for environmental monitoring data. Proper submission of data through this system meets the requirement of submitting such data in an electronic format. Electronic data shall be submitted to Ecology simultaneously with the accompanying printed report.

Additional information on EIM, including instructions for data submittal, can be found on Ecology's EIM web site at <http://www.ecy.wa.gov/eim/>. TCP's EIM Coordinator also is available for technical assistance to site managers and consultants using EIM.

6. Data Submitted Electronically Using EIM Shall be Checked by the Toxics Cleanup Program's EIM Coordinator Prior to Loading the Data into EIM.

Normally, notice that data have been submitted through EIM will come to TCP's EIM Coordinator. Upon receipt of such a notice the EIM Coordinator should notify the site manager. Similarly, if the Ecology site manager receives a notice of an EIM submittal, they should notify TCP's EIM Coordinator. Upon receipt of the data, TCP's EIM Coordinator reviews the submittal for quality control and officially loads the data into the system.

7. Data Generated During Sediment Investigations and Cleanups shall be Submitted Electronically Using Ecology's Sediment Quality Information System (SEDQUAL).

SEDQUAL is Ecology's data management system for sediment-related data. Proper submission of data through this system meets the requirement of submitting such data in an electronic format. Electronic data shall be submitted to Ecology simultaneously with the accompanying printed report.

8. Sediment Sampling Data Shall be Submitted to Ecology Using the SEDQUAL Data Entry Templates.

At a minimum, the following SEDQUAL data entry templates must be completed:

1. **Reference & Bibliography:** Describes lab reports and publications that relate to the data being entered;
2. **Survey:** Sample number;
3. **Station:** Specifies geographic location of the sediment sample. Sample latitude/longitude coordinates must be entered using the North American Datum of 1983 in U.S. Survey feet (NAD 83, U.S. feet);
4. **Sample:** Describes sample characteristics such as depth; and
5. **Sediment Chemistry:** Reports chemical concentration data in dry weight units.

The following additional templates must also be completed where these measurements/observations have been made:

1. **Bioassay:** Bioassay test results;
2. **Bioassay Control:** Bioassay control test results;
3. **Benthic Infauna:** Species abundance & diversity;
4. **Tissue:** Describes the organism collected;
5. **Bioaccumulation:** Reports tissue chemical concentrations; and
6. **Histopathology:** Reports tissue pathology such as tumors or lesions.

9. Electronic Data Formats Shall be Verified to be Compatible with SEDQUAL Prior to Submittal.

Because SEDQUAL uses ASCII protocol and comma delimited text files, data format verification shall be conducted prior to submittal to Ecology. Data shall be verified by downloading the SEDQUAL database, importing the data into the database, correcting errors, and then exporting the corrected templates.

For additional information on sediment sampling and analysis plan requirements, see Ecology publication 03-09-043 "Sediment Sampling and Analysis Plan Appendix", April, 2003. A copy of this document can be obtained from Ecology's publication office or downloaded from the following web site: <http://www.ecy.wa.gov/biblio/0309043.html>

Additional information on SEDQUAL can be found at:

<http://www.ecy.wa.gov/programs/tcp/smu/sedqualfirst.htm>. ICP's SEDQUAL Coordinator is also available for technical assistance to site managers and consultants using SEDQUAL.


10. Sediment Sampling Data Shall Also be Submitted to Ecology in a Printed Report.

Printed reports shall present the data in both dry weight and total organic carbon normalized units in data tables that compare the results to applicable state regulatory criteria.

11. Data Submitted Electronically Using SEDQUAL Shall be Checked by the Toxics Cleanup Program's SEDQUAL Coordinator Prior to Loading the Data into SEDQUAL.

Normally, SEDQUAL data submittals will come to TCP's SEDQUAL Coordinator. Upon receipt of a submittal, the Coordinator should notify the site manager. Similarly, if the Ecology site manager receives a SEDQUAL submittal, they should notify TCP's SEDQUAL Coordinator. Upon receipt of the data, TCP's SEDQUAL Coordinator reviews the submittal for quality control and officially loads the data into the system.

Approved



James J. Pendowski, Program Manager
Toxics Cleanup Program

Policy Disclaimer: This policy is intended solely for the guidance of Ecology staff. It is not intended, and cannot be relied on, to create rights, substantive or procedural, enforceable by any party in litigation with the state of Washington. Ecology may act at variance with this policy depending on site-specific circumstances, or modify or withdraw this policy at any time.

APPENDIX A: MODEL GRANT AND PERMIT CONDITION

The following condition is to be inserted in permits, grants, loans, contracts, interagency agreements, memorandum of understandings where site-specific environmental monitoring data is expected to be generated:

All sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with WAC 173-340-840(5) and Ecology Toxics Cleanup Program Policy 840: Data Submittal Requirements. Electronic submittal of data is not required for site hazard assessments that result in no further action and initial site investigations. (FOR GRANTS & CONTRACTS ADD: Failure to properly submit sampling data will result in Ecology withholding payment and could jeopardize future grant funding)

Site Cleanup:

BAY WOOD PRODUCTS SITE

200 West Marine View Drive
Everett, Washington

DRAFT PUBLIC PARTICIPATION PLAN

Prepared by:

Washington State Department of Ecology



WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

August 2008

This plan is for you!

This Public Participation Plan is prepared for the Bay Wood Products Site cleanup as part of the requirement of the Model Toxics Control Act (MTCA). The plan provides information about MTCA cleanup actions and requirements for public involvement, and identifies how Ecology and the Port of Everett will support public involvement throughout the cleanup. The plan is intended to encourage coordinated and effective public involvement tailored to the community's needs at the Bay Wood Products Site.

For additional copies of this document, please contact:

Washington State Department of Ecology
Isaac Standen, Site Manager
Toxics Cleanup Program
PO Box 47600
Olympia, WA 98504-7600
(360) 407-6776
Email: ista461@ecy.wa.gov

If you need this publication in an alternate format, please call the Toxics Cleanup Program at (360) 407-7170. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call (877) 833-6341 (TTY).

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1.0: Introduction and Overview of the Public Participation Plan

This Public Participation Plan explains how you can become involved in improving the health of your community. It describes public participation opportunities that will be conducted during cleanup of a site on the Everett waterfront - the Bay Wood Products Site (Site). These opportunities are part of a cooperative agreement between the Washington State Department of Ecology (Ecology) and the Port of Everett (Port). The current agreement, called an Agreed Order, is a legal document in which the Port and Ecology agree to decide on cleanup actions for the Bay Wood Products Site. Bay Wood Products is located at 200 West Marine View Drive, on Port Gardner Bay, Everett, Washington.

Cleanup actions and the public participation process that helps guide them are established in Washington's Model Toxics Control Act (MTCA).¹ Under MTCA, Ecology is responsible for providing timely information and meaningful chances for the public to learn about and comment on important cleanup decisions before they are made. The goals of the public participation process are:

- To promote understanding of the cleanup process so that the public has the necessary information to participate.
- To encourage involvement through a variety of public participation opportunities.

This Public Participation Plan provides a framework for open dialogue about the cleanup among community members, Ecology, cleanup site owners, and other interested parties. It outlines basic MTCA requirements for community involvement activities that will help ensure that this exchange of information takes place during the investigation and cleanup, which include:

- Notifying the public about available reports and studies about the site.
- Notifying the public about review and comment opportunities during specific phases of the cleanup investigation.
- Providing appropriate public participation opportunities such as fact sheets to learn about cleanup documents, and if community interest exists, holding meetings to solicit input and identify community concerns.
- Considering public comments received during public comment periods.

¹ The Model Toxics Control Act (MTCA) is the hazardous waste cleanup law for the State of Washington. The full text of the law can be found in Revised Code of Washington (RCW), Chapter 70.105D. The legal requirements and criteria for public notice and participation during MTCA cleanup investigations can be found in Washington Administrative Code (WAC), Section 173-340-600.

In addition to these basic requirements, the plan may include additional site-specific activities to meet the needs of your community. Based upon the type of the proposed cleanup action, the level of public concern, and the risks posed by the site, Ecology may decide that additional public involvement opportunities are appropriate.

These opportunities form the basis for the public participation process. The intent of this plan is to:

- Provide complete and current information to all interested parties.
- Let you know when there are opportunities to provide input.
- Listen to concerns.
- Address those concerns.

Part of the Puget Sound Initiative

Bay Wood Products is one of several sites in the Everett area and is part of a larger cleanup effort called the Puget Sound Initiative (PSI). Governor Chris Gregoire and the Washington State Legislature authorized the PSI as a regional approach to protect and restore Puget Sound. The PSI includes cleaning up 50-60 contaminated sites within one-half mile of the Sound. These sites are grouped in several bays around the Sound for “baywide” cleanup efforts. As other sites in the Everett baywide area move forward into investigation and cleanup, information about them will be provided to the community as well as to interested people and groups.

Roles and Responsibilities

Ecology will lead public involvement activities, with support from the Port. Ecology maintains overall responsibility and approval authority for the activities outlined in this plan. The Port is responsible for cleanup at this site. Ecology will ultimately oversee all cleanup activities, and ensure that contamination on this site is cleaned up to concentrations that are established in state regulations and that protect human health and the environment.

Organization of this Public Participation Plan

The sections that follow in this plan provide:

- Section 2: Background information about the Bay Wood Products Site.
- Section 3: An overview of the local community that this plan is intended to engage.

- Section 4: Public involvement opportunities in this cleanup.

This Public Participation Plan addresses current conditions at the site, but it is intended to be a dynamic working document that will be reviewed at each phase of the cleanup, and updated as needed. Ecology and the Port urge the public to become involved in the cleanup process.

2.0: Site Background

Site Description and Location

The Bay Wood Products Site is generally located at 200 West Marine View Drive, in Everett, Snohomish County, Washington (see Figures 1 and 2). It is west of the Legion Memorial Golf Course and the American Legion Memorial Park (see Figure 1). The upland portion of the site is about 13 acres in size. It is bounded by the JELD-WEN facility (also a PSI cleanup site) to the south, mudflats to the north, Burlington Northern Railroad and West Marine View Drive to the east, and Port Gardner Bay to the west. The site is located in the vicinity of where the Snohomish River flows into Port Gardner Bay. It is currently vacant industrial property.

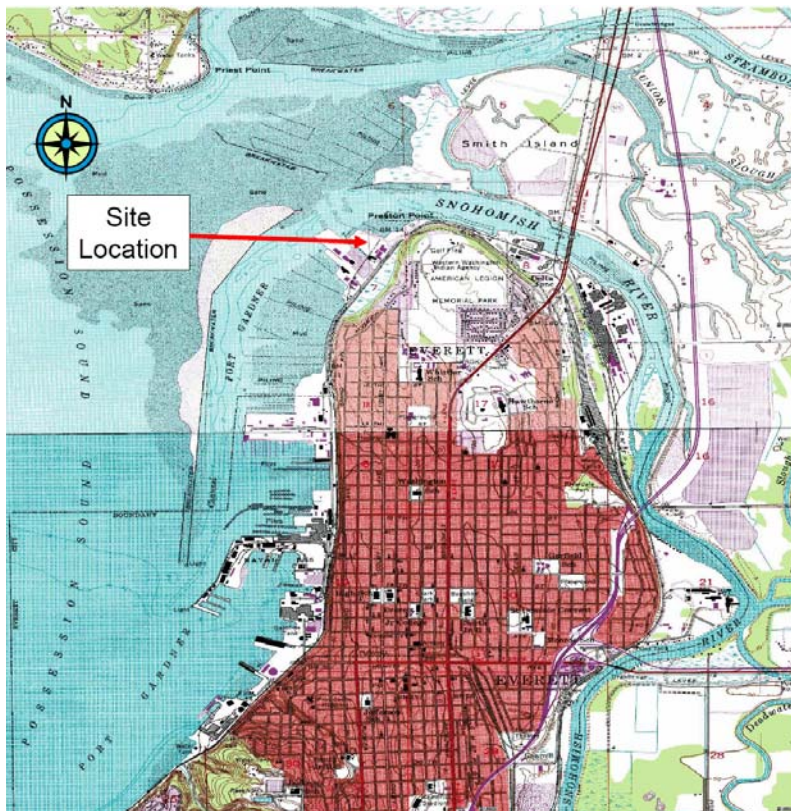


Figure 1: The Bay Wood Products Site, shown in the above map with an arrow, is generally located at 200 West Marine View Drive, on Port Gardner Bay, Everett, WA. (Photo Source: USGS 7.5 Minute Quadrangle Maps (Everett and Marysville Quadrangle Maps; Photo Revised – 1968 and 1973)



Figure 2: An enlarged view of the Bay Wood Products Site.
(Photo Source: Imagery: I-Cubed, 2006; Acquired: Via ArcGIS Explorer by ESRI on 1/25/2008)

The City of Everett Comprehensive Plan land use map² indicates that the site is zoned industrial, for maritime services. Zoning to the east includes a small agricultural area and residential single-family homes. Zoning to the west includes open water and parks (Jetty Island). The site is not located within the Everett Smelter area of historic arsenic contamination.

General Site History and Contaminants

The Bay Wood Products Site is located on fill that was placed in Port Gardner Bay. Lumber and mill operations began on this Site around 1936. In 1979, Bay Wood Products removed the sawmill and used the Site for log handling and storage until 1994. Site features during Bay Wood Products operations included office and shop buildings, a covered shed, oil drums, electrical transformers, above-ground fuel storage tanks, and log rafts. These features have been removed, and the Site is currently vacant. The following contaminants have been found on the Site in upland soil:

- Polychlorinated biphenyls (PCBs).
- Petroleum products.

² Planning and Community Development, City of Everett, WA
http://www.everettwa.org/Get_PDF.aspx?pdfID=339 (Accessed January 24, 2008)

In addition, wood waste was also found in upland soil and adjacent in-water areas (imbedded in the sediments). Wood waste smothers near-shore habitat and animals such as clams, and can cause changes in water chemistry that can harm marine and sediment ecosystems.

PCB-contaminated soil was removed from the Site in 1985 and 1993. Much of the wood waste accumulated in the upland portion of the Site was removed in 1995. However, Ecology believes more study is needed to fully characterize the contamination at the Bay Wood Products Site.

The Cleanup Process

Washington State's cleanup process and key opportunities for you to provide input are outlined in Figure 3. The general cleanup process includes the following steps:

- Remedial Investigation (RI) - investigates the site for types, locations, and amounts of contaminants.
- Feasibility Study (FS) - identifies cleanup options for those contaminants.
- Cleanup Action Plan (CAP) - selects the preferred cleanup option and explains how cleanup will be conducted.

Each of these steps will be documented in reports and plans that will be available for public review. Public comment periods of at least 30 calendar days are usually conducted for the following documents:

- Draft RI report
- Draft FS report
- Draft CAP

These cleanup steps and documents are described in greater detail in the following subsections.

Interim Actions

Interim actions may be conducted during the cleanup if required by Ecology. An interim action partially addresses the cleanup of a site, and may be required if:

- It is technically necessary to reduce a significant threat to human health or the environment.
- It corrects a problem that may become substantially worse or cost substantially more to fix if delayed.
- It is needed to complete another cleanup activity, such as design of a cleanup plan.

Interim actions are not currently anticipated on the Bay Wood Products Site.

Remedial Investigation/Feasibility Study Report

The Port has agreed to conduct an RI on the Site. The RI determines which contaminants are on the Site, where they are located, and whether there is a significant threat to human health or the environment. The draft RI report provides baseline data about environmental conditions that will be used to develop cleanup options. The FS and report then identify and evaluate cleanup options, in preparation for the next step in the process.

The RI and FS processes typically include several phases:

- Scoping.
- Site characterization.
- Development and screening of cleanup alternatives.
- Treatability investigations (if necessary to support decisions).
- Detailed analysis.

The RI and FS reports are expected to be combined into a draft Bay Wood Products Site RI/FS report. The draft report is anticipated to be completed in late 2009 or early 2010 and will be made available for public review and comment.

Cleanup Action Plan

The Port and Ecology have agreed to develop a CAP for the site. After public comment on the draft RI/FS report, a preferred cleanup alternative will be selected. The draft CAP explains the cleanup standards that will be applied at the site, selects the preferred cleanup alternative(s), and outlines the work to be performed during the actual site remediation. The CAP may also evaluate the completeness and effectiveness of any interim actions that were performed on the site. The draft CAP will be available for public review and comment. Once public comments are reviewed and any changes are made, Ecology provides final approval and site cleanup can begin. Cleanup is anticipated to be completed in spring 2011.

3.0: Community Profile

Community Profile

Everett is Snohomish County's largest city and the sixth largest city in the State of Washington. The current population of Everett is approximately 98,000³ situated within 47.7 square miles. Located on Port Gardner Bay, Everett hosts the West Coast's largest marina, U.S. Navy Homeport Naval Station Everett, and The Boeing Company's assembly plant. The city's 2006 labor workforce was more than 80,000, employed predominantly in technology, aerospace, and service-based industries.⁴

Key Community Concerns

An important part of the Public Participation Plan is to identify key community concerns for each cleanup site. The Bay Wood Products Site is located near a residential area. The proximity of the community to the site is likely to raise questions about how daily life and the future of the community will be affected during and after cleanup of the site.

Many factors are likely to raise community questions, such as the amount of contamination, how the contamination will be cleaned up, or future use of the site. Community concerns often change over time, as new information is learned and questions are answered. Identifying site-specific community concerns at each stage of the cleanup process is helpful to ensure that they are adequately addressed. On-going key community concerns will be identified for the Bay Wood Products Site through public comments and other opportunities as detailed in Section 4.

³ US Census Bureau, City & Towns Estimates Data for July 1, 2006.
<http://www.census.gov/popest/estimates.php> (Accessed September 12, 2007)

⁴ City of Everett. <http://www.everettwa.org/default.aspx?ID=314> (Accessed September 12, 2007)

4.0: Public Participation Opportunities

Ecology and the Port invite you to share your comments and participate in the cleanup in your community. As we work to meet our goals, we will evaluate whether this public participation process is successful. This section describes the public participation opportunities for this site.

Measuring Success

We want this public participation process to succeed. Success can be measured, at least in part, in the following ways:

- Number of written comments submitted that reflect understanding of the cleanup process and the site.
- Direct “in-person” feedback about the site cleanup or public participation processes, if public meetings are held.
- Periodic updates to this plan to reflect community concerns and responses.

If we are successful, this process will increase:

- Community awareness about plans for cleanup and opportunities for public involvement.
- Public participation throughout the cleanup.
- Community understanding regarding how their input will be considered in the decision-making process.

Activities and Information Sources

Ecology Contacts

Ecology is the lead contact for questions about the cleanup in your community. The Ecology staff person identified in this section is familiar with the cleanup process and activities at the site. For more information about public involvement or the technical aspects of the cleanup, please contact:

Isaac Standen
Ecology Site Manager
WA State Dept. of Ecology
Toxics Cleanup Program
P.O. Box 47600
Olympia, WA 98504-7600
Phone: (360) 407-6776

E-mail: ista461@ecy.wa.gov

Ecology's Webpage

Ecology has created a webpage to provide convenient access to information. Documents such as the Agreed Order, draft reports, and cleanup plans, are posted as they are issued during the investigation and cleanup process. Visitors to the webpage can find out about public comment periods and meetings; download, print, and read information; and submit comments via e-mail. The webpage also provides links to detailed information about the MTCA cleanup process. The Bay Wood Products Site webpage is available at the following address:

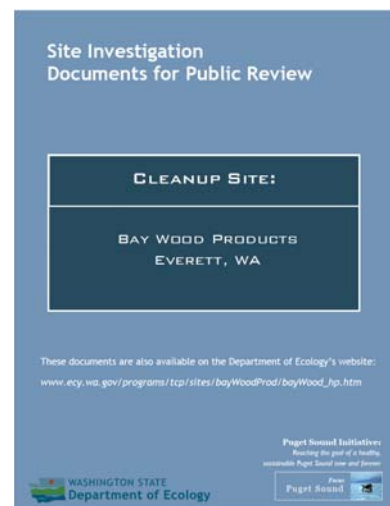
http://www.ecy.wa.gov/programs/tcp/sites/bayWoodProd/bayWood_hp.htm

Information Centers/Document Repositories

The most comprehensive source of information about the Bay Wood Products Site is the information center, or document repository. Two repositories provide access to the complete list of site-related documents. All Bay Wood Products investigation and cleanup activity reports will be kept in print at those two locations and will be available for your review. They can be requested on compact disk (CD) as well. Document repositories are updated before public comment periods to include the relevant documents for review. Documents remain at the repositories throughout the investigation and cleanup. For this site, the document repositories and their hours are:

- **Everett Public Library**
2702 Hoyt Ave.
Phone: (425) 257-8010
Hours: Mon.-Wed. 10 a.m.-9 p.m.,
Thurs.-Sat. 10 a.m.-6 p.m., Sun. 1-5 p.m.
- **WA Department of Ecology Headquarters**
300 Desmond Drive SE
Lacey, WA 98503
By appointment. Please contact Carol Dorn at
(360) 407-7224 or cesg461@ecy.wa.gov.

Look for document covers such as the illustration on the right.



Public Comment Periods

Public comment periods provide opportunities for you to review and comment on major documents, such as the Agreed Order, draft Public Participation Plan, and the draft RI/FS report. The typical public comment period is 30 calendar days.

Notice of Public Comment Periods

Notices for each public comment period will be provided by local newspaper and by mail. These notices indicate the timeframe and subject of the comment period, and explain how you can submit your comments. For the Bay Wood Products Site, newspaper notices will be posted in The Daily Herald.

Notices are also sent by regular mail to the local community and interested parties. The community typically includes all residential and business addresses within one-quarter mile of the site, as well as potentially interested parties such as public health entities, environmental groups, and business associations.

Fact Sheets

One common format for public comment notification is the fact sheet. Like the newspaper notice, fact sheets explain the timeframe and purpose of the comment period, but also provide background and a summary of the document under review. A fact sheet has been prepared for the Bay Wood Products Site explaining the Agreed Order and this Public Participation Plan (See Appendix A). Future fact sheets will be prepared at key milestones in the cleanup process.

MTCA Site Register

Ecology produces an electronic newsletter called the MTCA Site Register. This semi-monthly publication provides updates of the cleanup activities occurring throughout the state, including public meeting dates, public comment periods, and cleanup-related reports. Individuals who would like to receive the MTCA Site Register can sign up three ways:

- Call (360) 407-6069
- Send an email request to ltho461@ecy.wa.gov or
- Register on-line at http://www.ecy.wa.gov/programs/tcp/pub_inv/pub_inv2.html

Mailing Lists

Ecology maintains both an e-mail and regular mail distribution list throughout the cleanup process. The list is created from carrier route delineations for addresses within one-quarter mile of the site, potentially interested parties, public meeting sign-in sheets, and requests made in person, or by regular mail or e-mail. You may request to be on the mailing list by contacting the Ecology staff person listed earlier in this section.

Optional Public Meetings

A public meeting will be held during a comment period if requested by ten or more people, or if Ecology decides it would be useful. Public meetings provide additional opportunity to learn about the investigation or cleanup, and to enhance informed comment. If you are interested in a public meeting about the Bay Wood Products Site, please contact the Ecology staff person listed earlier in this section.

Submitting Comments

You may submit comments by regular mail or e-mail during public comment periods to the Ecology project manager listed earlier in this section.

Response to Comments

Ecology will review all comments submitted during public comment periods, and will modify documents as necessary. You will receive notice by regular mail or e-mail that Ecology has received your comments, along with an explanation about how the comments were addressed.

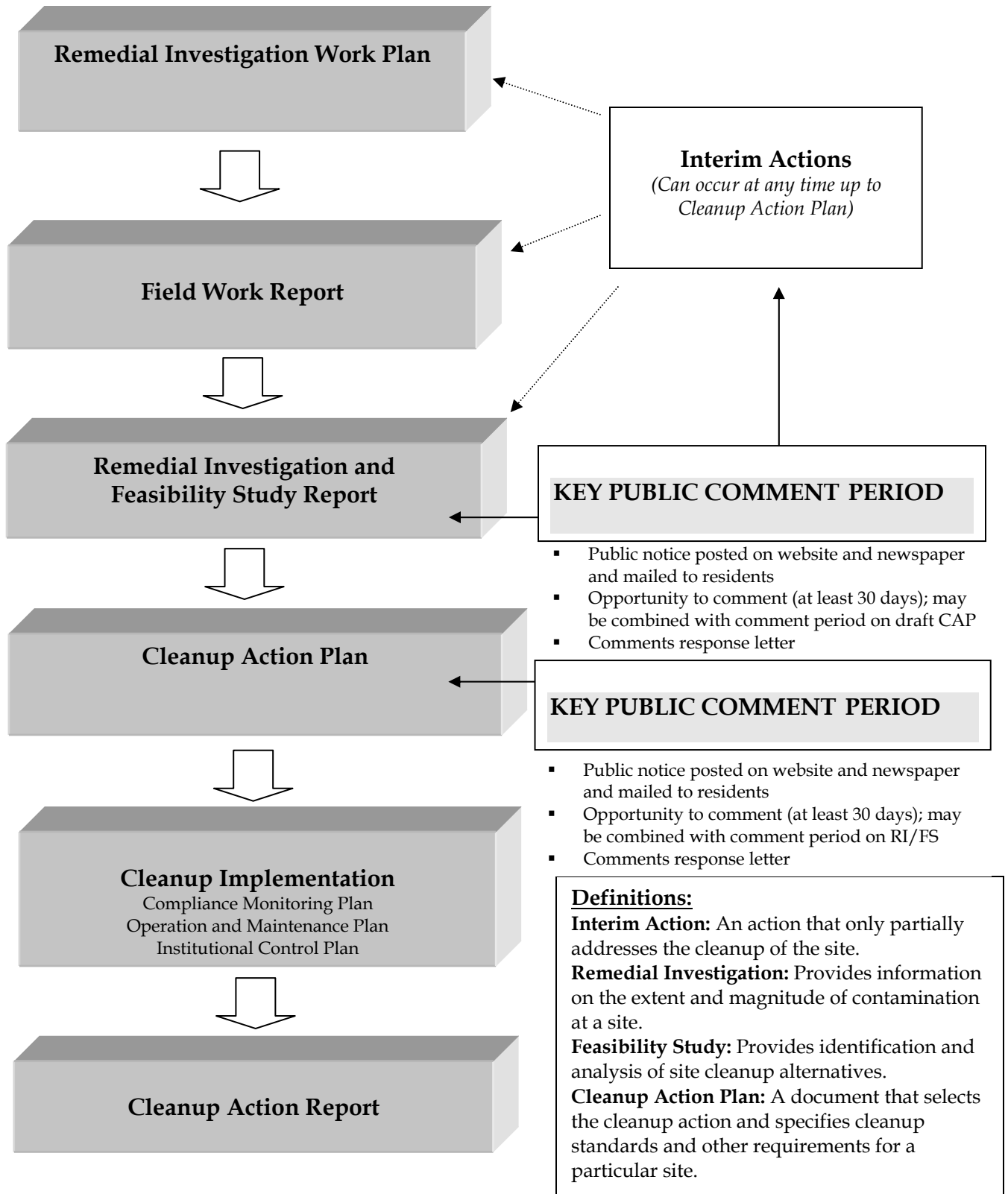
Other

Ecology and the Port are committed to the public participation process and will consider additional means for delivering information and receiving comments, including combining public comment periods for other actions (such as those associated with the State Environmental Policy Act).

Public Participation Grants

You may be eligible to apply for a Public Participation Grant from Ecology to provide additional public participation activities. Those additional activities will not reduce the scope of the activities defined by this plan. Activities conducted under this plan would coordinate with the additional activities defined under the grant.

Figure 3: Washington State Cleanup Process



Glossary

Cleanup: The implementation of a cleanup action or interim action.

Cleanup Action: Any remedial action except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with MTCA cleanup requirements, including but not limited to: complying with cleanup standards, utilizing permanent solutions to the maximum extent practicable, and including adequate monitoring to ensure the effectiveness of the cleanup action.

Cleanup Action Plan: A document that selects the cleanup action and specifies cleanup standards and other requirements for a particular site. The cleanup action plan, which follows the remedial investigation/feasibility study report, is subject to a public comment period. After completion of a comment period on the cleanup action plan, Ecology finalizes the cleanup action plan.

Cleanup Level: The concentration (or amount) of a hazardous substance in soil, water, air, or sediment that protects human health and the environment under specified exposure conditions. Cleanup levels are part of a uniform standard established in state regulations, such as MTCA.

Cleanup Process: The process for identifying, investigating, and cleaning up hazardous waste sites.

Contaminant: Any hazardous substance that does not occur naturally or occurs at greater than natural background levels.

Feasibility Study: Provides identification and analysis of site cleanup alternatives and is usually completed within a year. Evaluates sufficient site information to enable the selection of a cleanup action. The entire Remedial Investigation/Feasibility Study (RI/FS) process takes about two years and is followed by the cleanup action plan.

Hazardous Site List: A list of ranked sites that require further remedial action. These sites are published in the Site Register.

Interim Action: Any remedial action that partially addresses the cleanup of a site. It is an action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance at a facility; an action that corrects a problem that may become substantially worse or cost substantially more to address if the action is delayed; an action needed to provide for completion of a site hazard assessment, state remedial investigation/feasibility study, or design of a cleanup action.

Model Toxics Control Act: Refers to Chapter 70.105D RCW. Voters approved it in November 1988. The implementing regulation is found in Chapter 173-340 WAC.

Public Notice: At a minimum, adequate notice mailed to all persons who have made a timely request of Ecology and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the local (city or county) newspaper of largest circulation; and the opportunity for interested persons to comment.

Public Participation Plan: A plan prepared under the authority of WAC 173-340-600 to encourage coordinated and effective public involvement tailored to the public's needs at a particular site.

Release: Any intentional or unintentional entry of any hazardous substance into the environment, including, but not limited to, the abandonment or disposal of containers of hazardous substances.

Remedial Action: Any action or expenditure consistent with MTCA to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment, including any investigative and monitoring activities of any release or threatened release of a hazardous substance, and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

Remedial Investigation: Any remedial action that provides information on the extent and magnitude of contamination at a site. This usually takes 12 to 18 months and is followed by the feasibility study. The purpose of the Remedial Investigation/Feasibility Study is to collect and develop sufficient site information to enable the selection of a cleanup action.



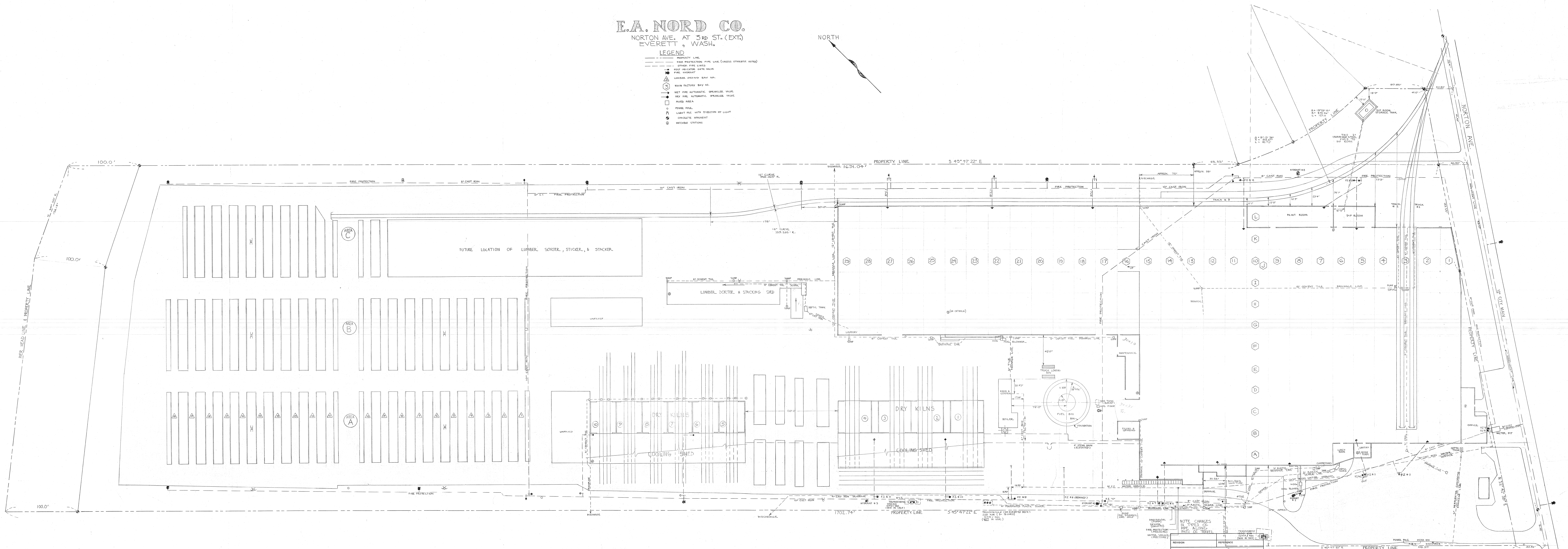
APPENDIX C

Historical JELD-WEN Documentation (Plant Layout Drawings)

E.A. NORD CO.
 NORTON AVE. AT 3RD ST. (EXT.)
 EVERETT, WASH.

NORTH

- LEGEND**
- PROPERTY LINE
 - FIRE PROTECTION PIPE LINE (UNLESS OTHERWISE NOTED)
 - OTHER PIPE LINES
 - FSDI INDICATOR GATE VALVE
 - FIRE HYDRANT
 - ▲ LUMBER DESIGN BAY NO.
 - ③ MAIN FACTORY BAY NO.
 - WET PIPE AUTOMATIC SPRINKLER VALVE
 - ◊ DRY PIPE AUTOMATIC SPRINKLER VALVE
 - PAVED AREA
 - POWER POLE
 - LIGHT FIX. WITH DIRECTION OF LIGHT
 - CONCRETE URGUMENT
 - WATERBAY STATIONS



PLANT LAYOUT
 DEC. 1965

SCALE 1" = 20'

NO. DATE BY WHOM REVISIONS

1 20 NOV 64 P.L. JORDAN REVISION 65-11

EE-154

NOTE CHANGES IN TYPES OF PIPE ALONG PATH OF LEVEL

REVISION REFERENCE

NO. DATE BY WHOM REVISIONS

1 20 NOV 64 P.L. JORDAN REVISION 65-11

TRACED
 CHECKED
 APPROVED

NORD E. A. Nord Company, Everett, Washington

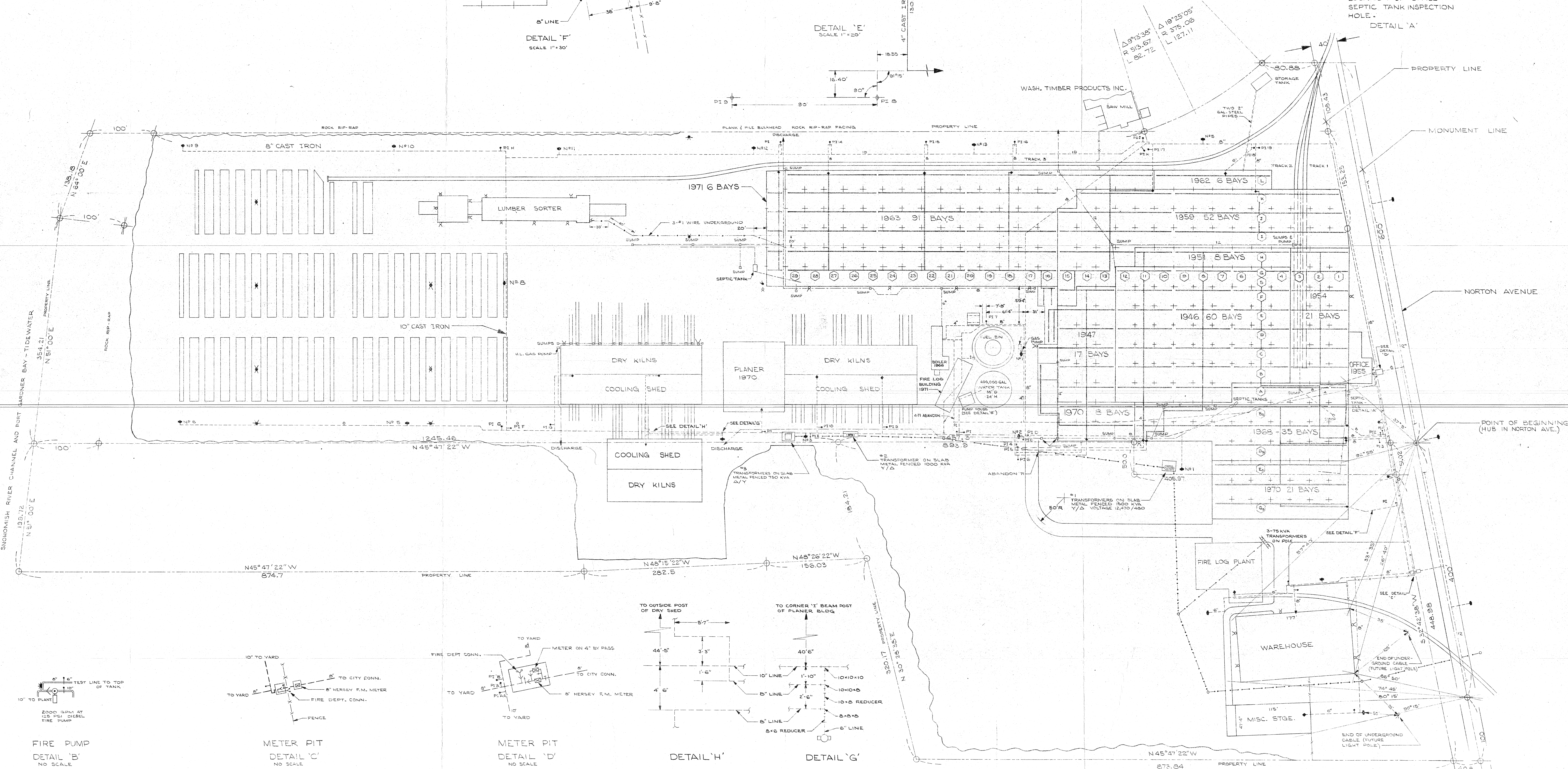
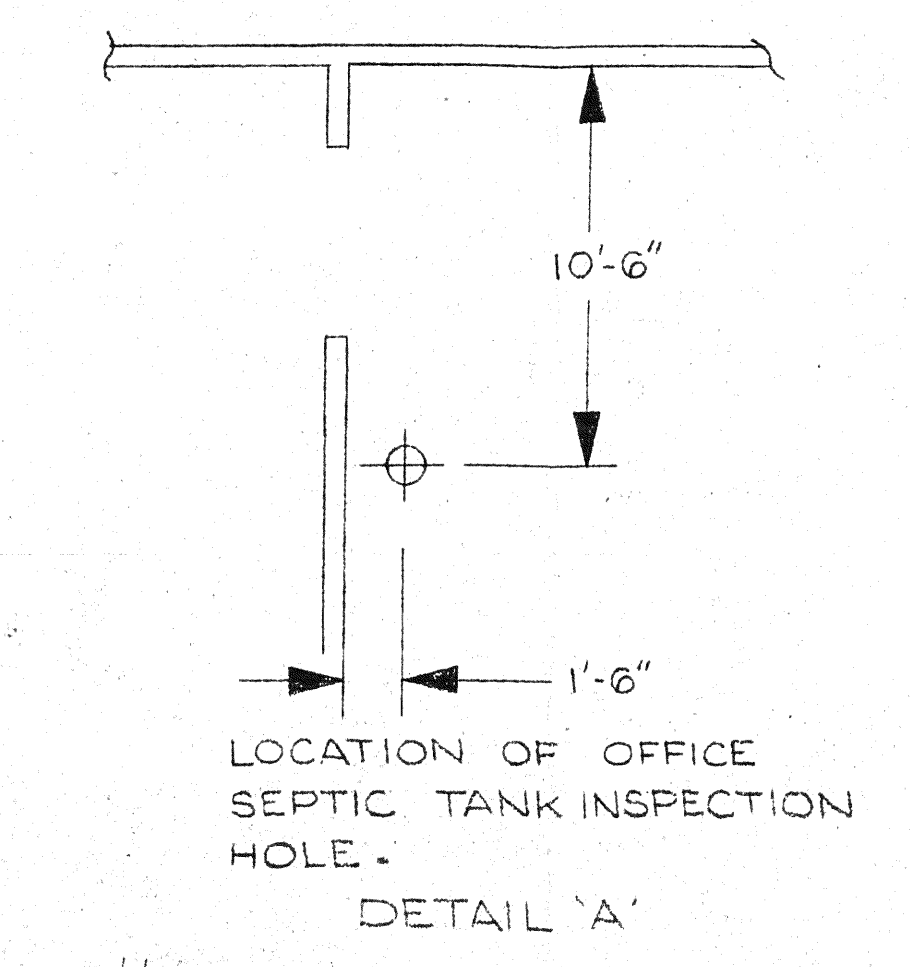
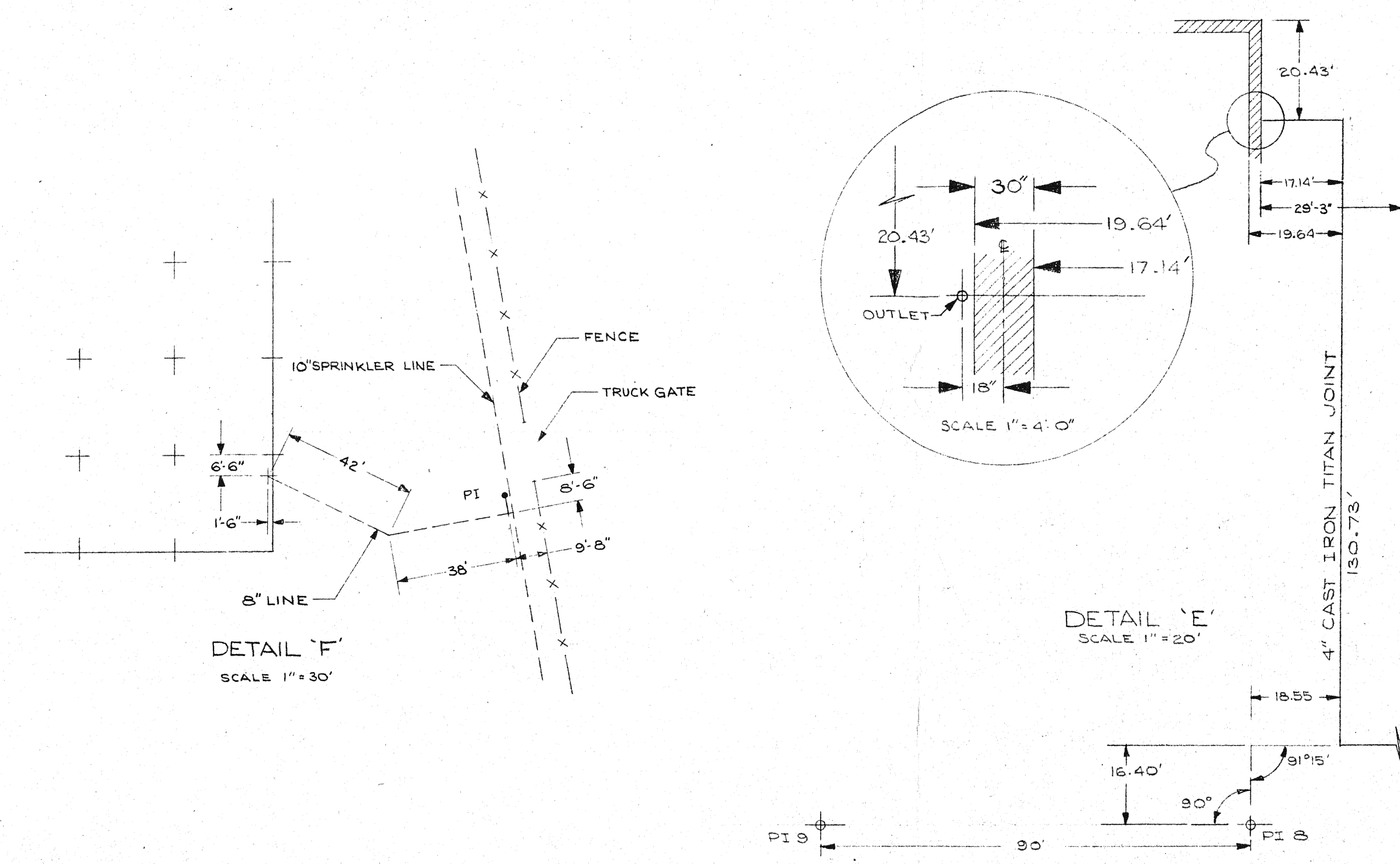
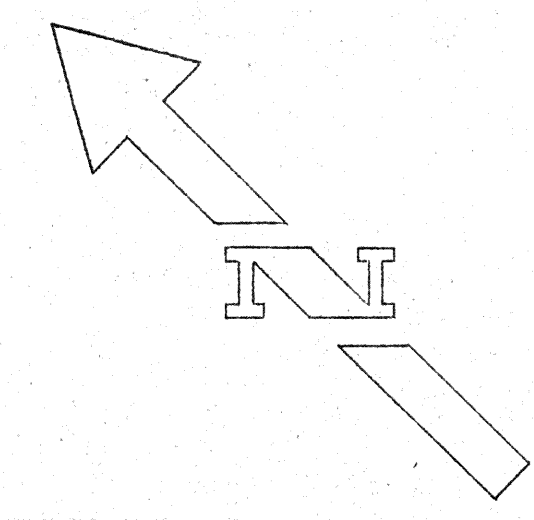
NORD GENERAL PLANT LAYOUT

22 DECEMBER 1965

DRAWN BY PHILLIP JORDAN
 PLANT ENGINEERS OFFICE

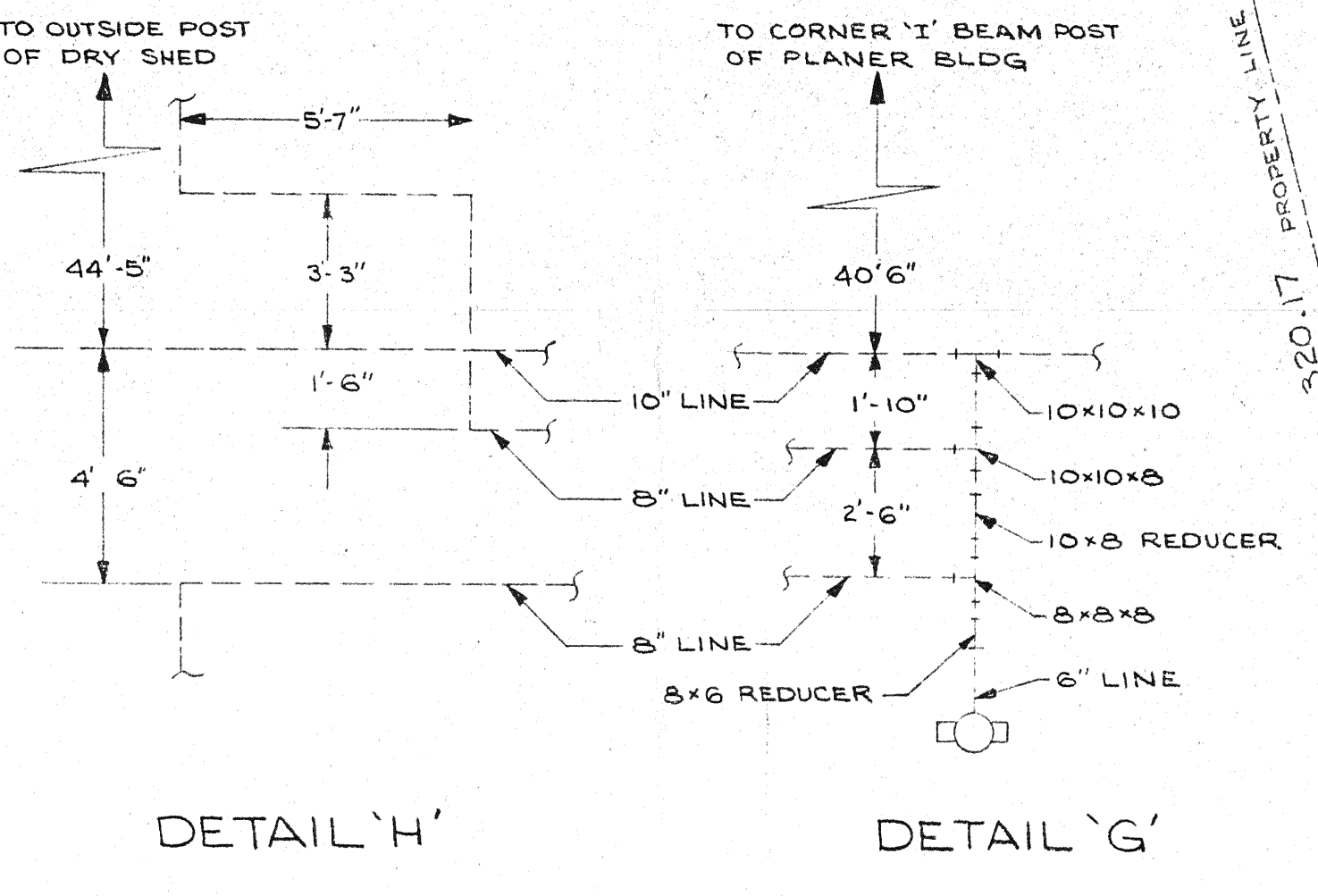
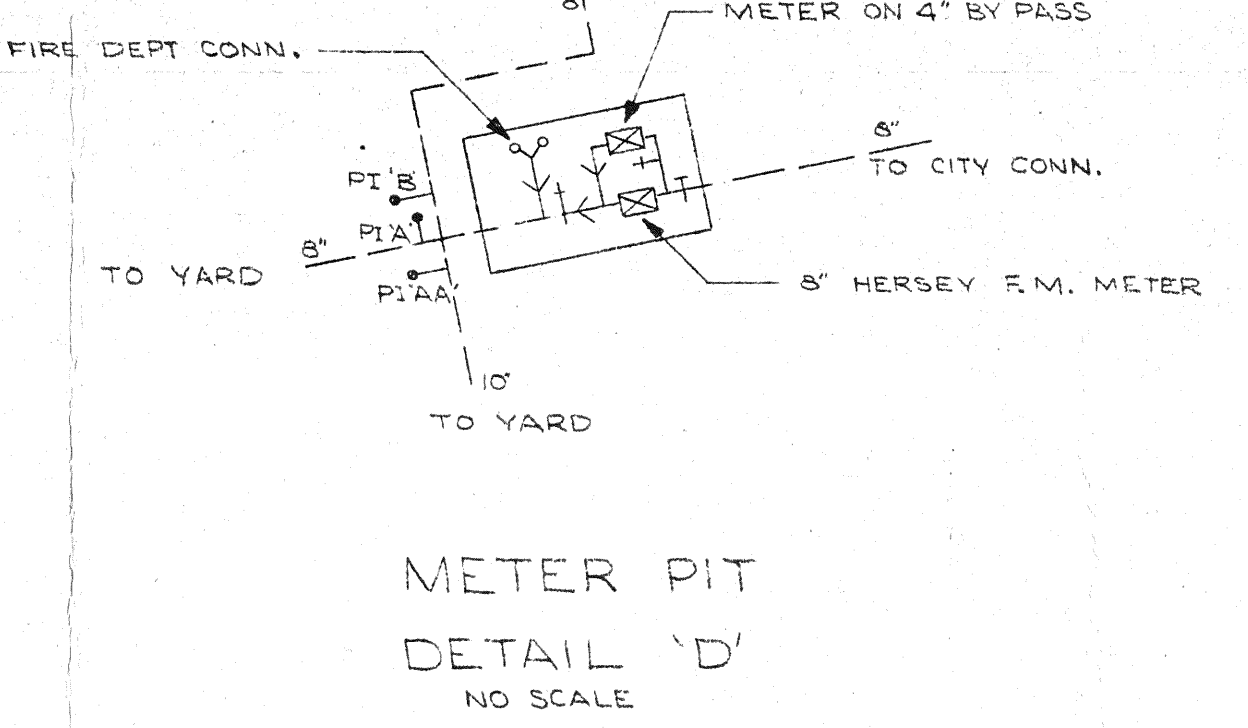
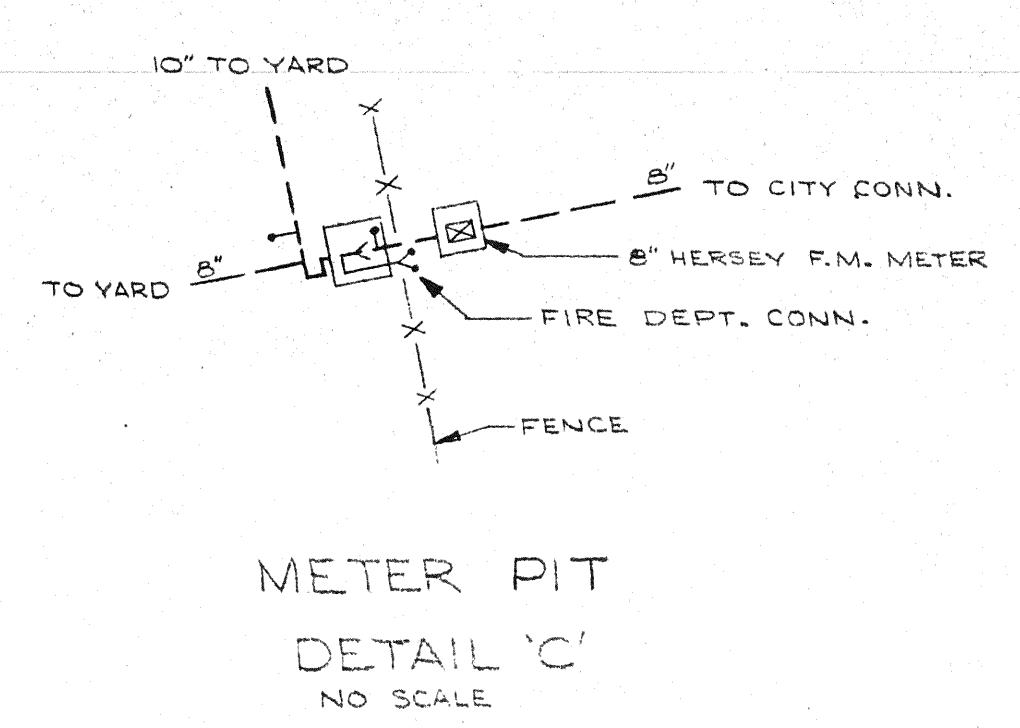
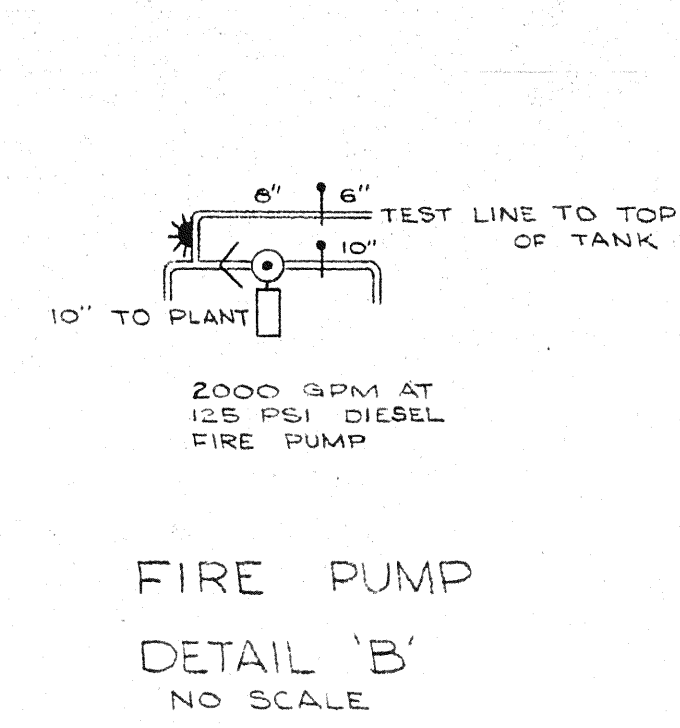
SCALE 1" = 20'

DRAWING # 651222



LEGEND

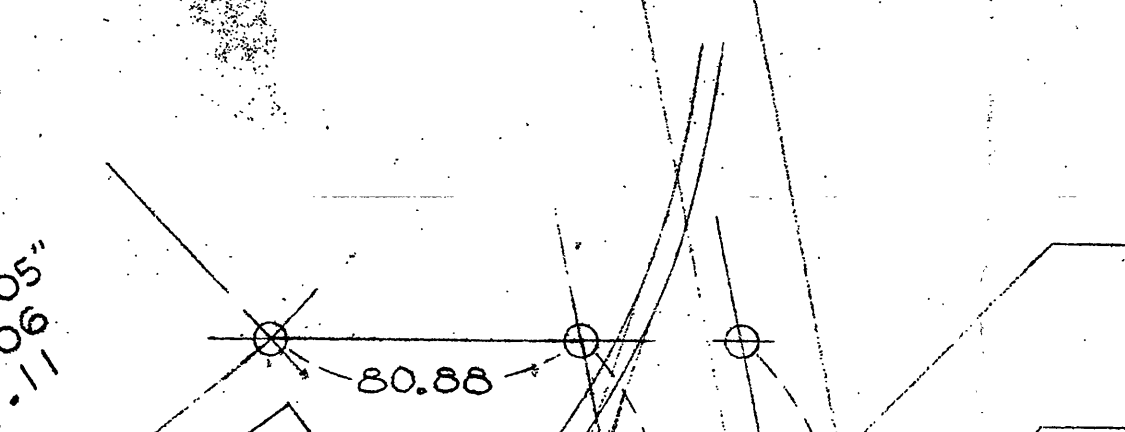
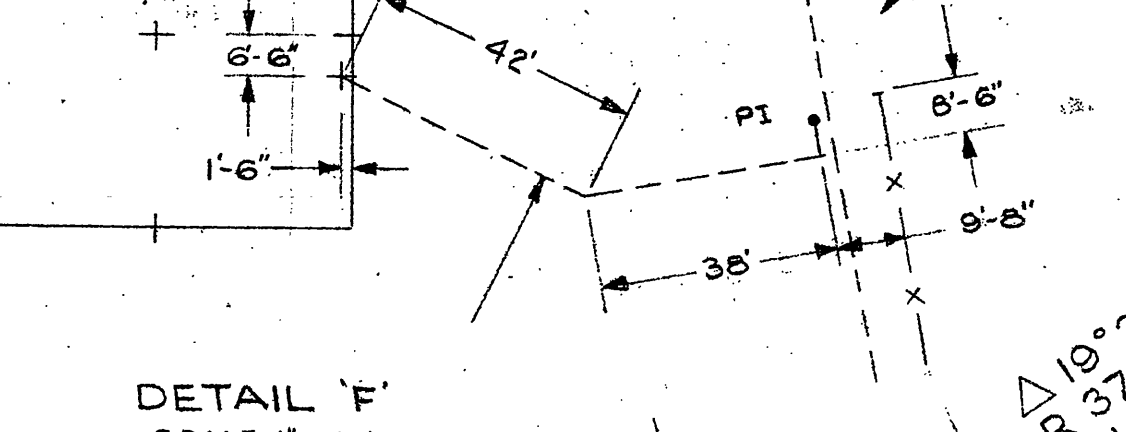
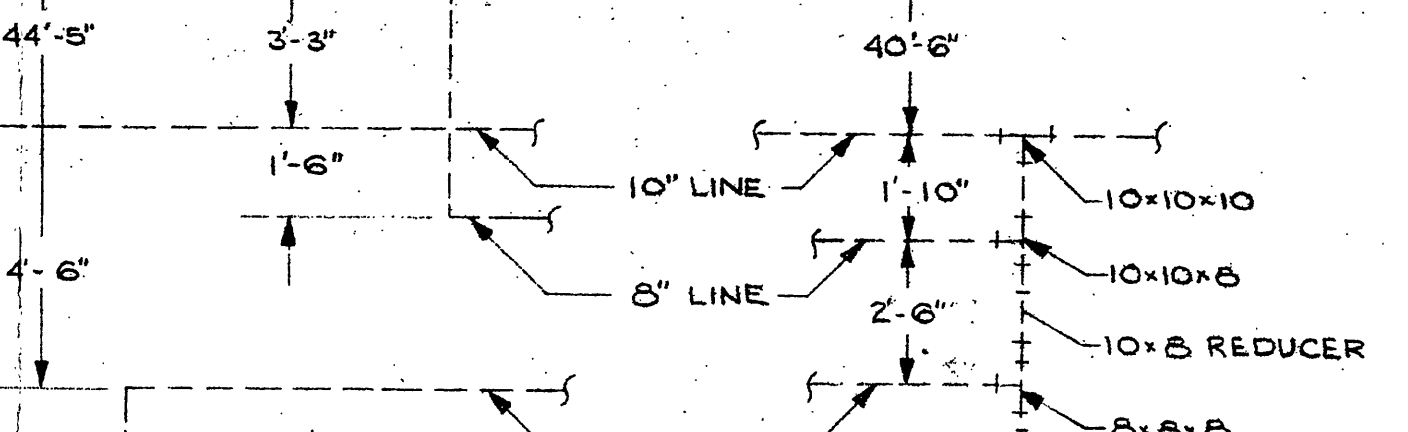
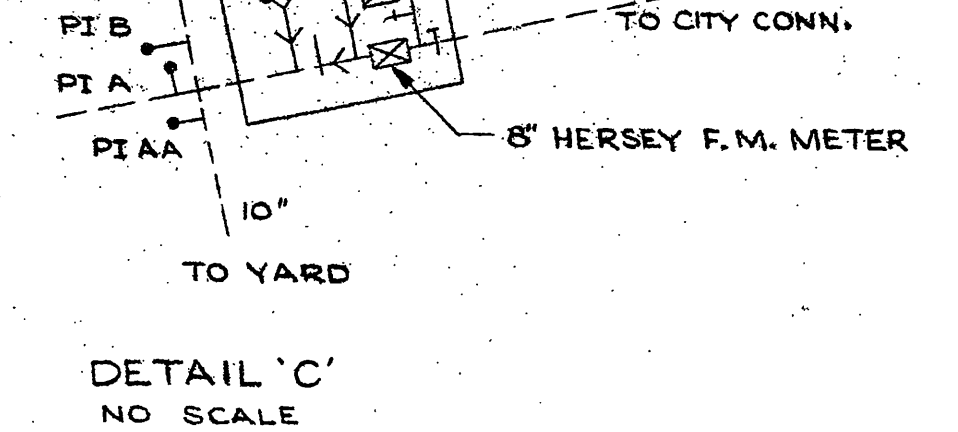
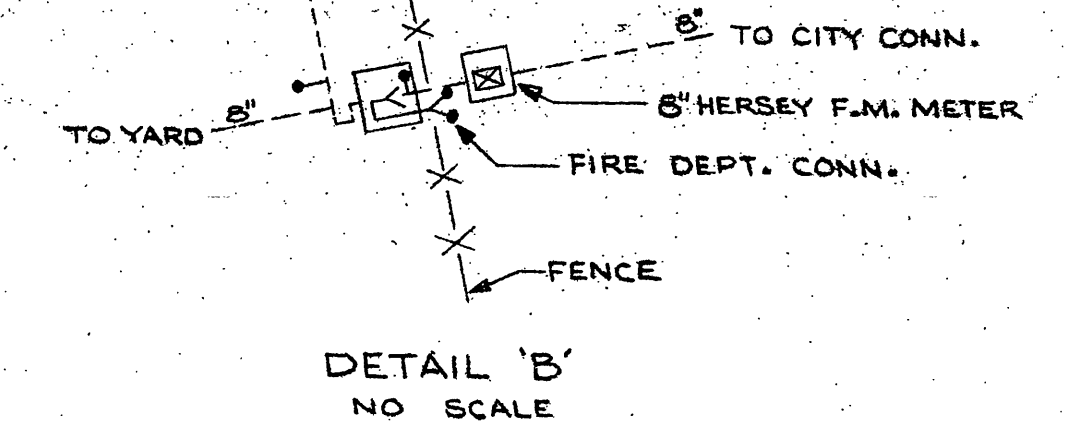
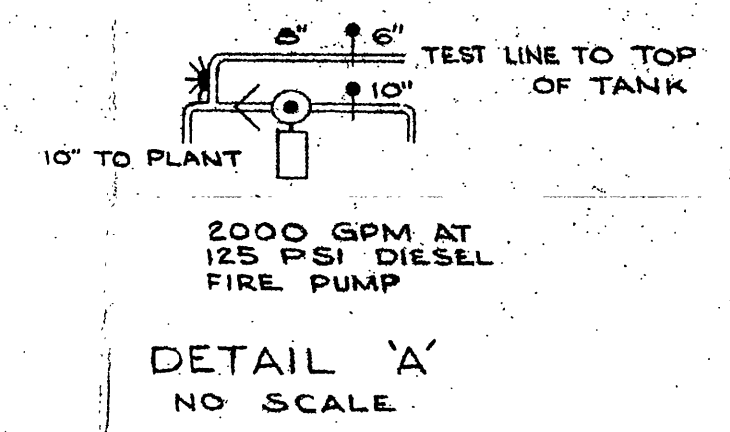
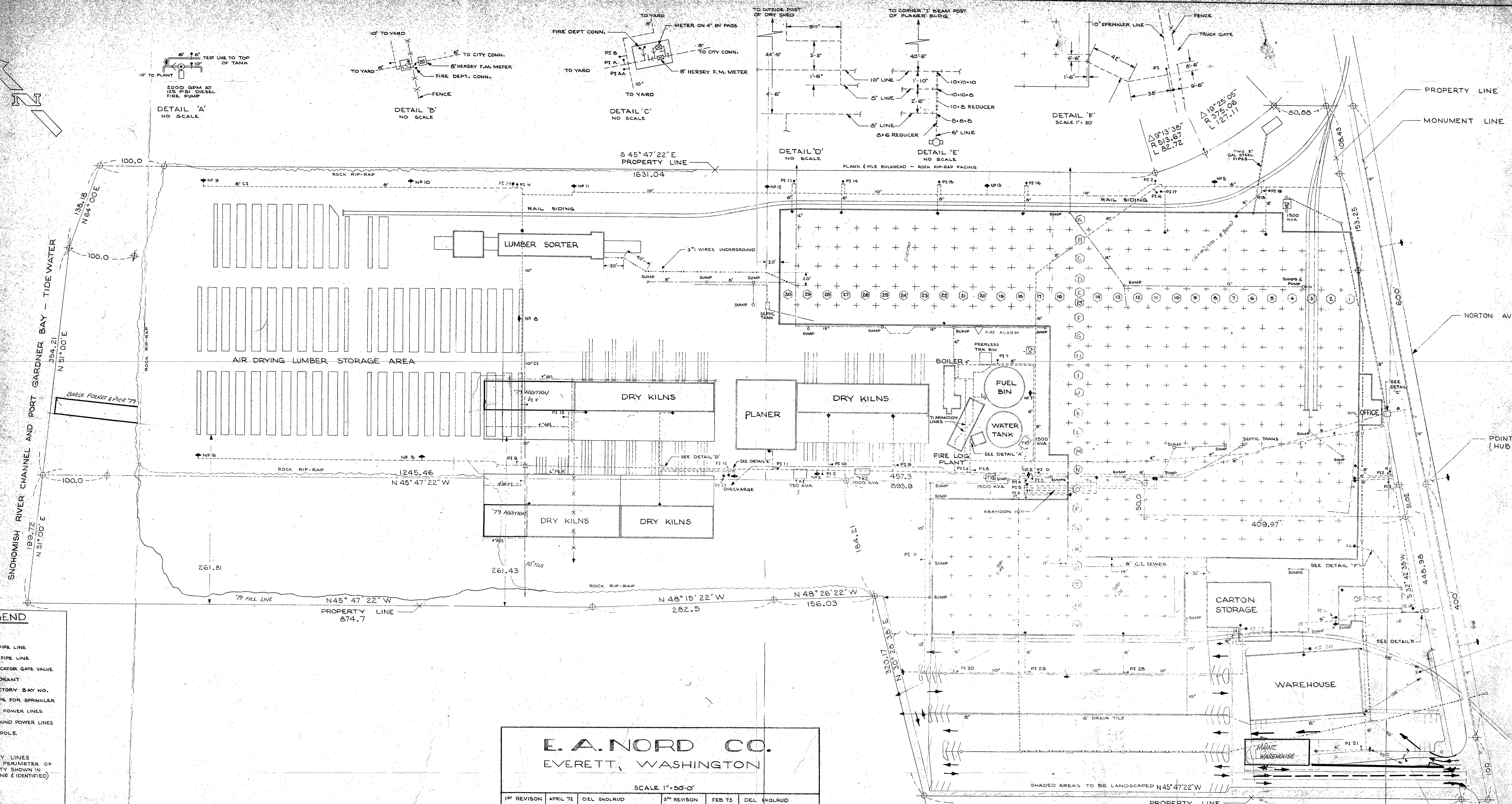
- PROPERTY LINE
- WATER PIPE LINE
- SEWAGE PIPE LINE
- POST INDICATOR GATE VALVE
- FIRE HYDRANT
- MAIN FACTORY BAY NO.
- POWER POLE
- ⊗ LIGHT POLE WITH DIRECTION OF LIGHT.
- ⊗ LIGHT (ATTACHED TO A BUILDING) WITH DIRECTION OF LIGHT.
- - - CHAIN-LINK FENCE
- - - UNDERGROUND WIRING
- RISER PIPE FOR SPRINKLER
- PIPE FOR SPRINKLER
- OVERHEAD WIRE TO TRANSFORMERS



E. A. NORD CO.
 EVERETT, WASHINGTON
 DEL SKOLRUD JULY 70
 SCALE 1"=50'-0"

1 ST REVISION	JUNE 71	DEL SKOLRUD
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DRAWING 6 SBT 2-B



- LEGEND**
- WATER PIPE LINE
 - SEWAGE PIPE LINE
 - POST INDICATOR GATE VALVE
 - FIRE HYDRANT
 - MAIN FACTORY BAY NO.
 - RISER PIPE FOR SPRINKLER
 - OVERHEAD POWER LINES
 - UNDERGROUND POWER LINES
 - POWER POLE
 - FENCE
 - PROPERTY LINES (EXCEPT PERIMETER OF PROPERTY SHOWN IN SOLID LINE & IDENTIFIED)

E. A. NORD CO.
EVERETT, WASHINGTON

SCALE 1" = 50'-0"

1 ST REVISION	APRIL 72	DEL SKOLRUD	3 RD REVISION	FEB 73	DEL SKOLRUD
2 ND REVISION	MAY 72	DEL SKOLRUD	4 TH REVISION	DEC 76	GARRY GRACEY

PLANT LAYOUT
REV. FEB. 1973

EE-156

NORD E.A. Nord Company



APPENDIX D

**December 14, 1977 Address to Congressman Meeds and the USEPA
(document)**

December 14, 1977 Address by Roger Eklund to
Congressman Meeds, The EPA and others

R.W. Nord and
Jim Hunter
Books only

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OPENING REMARKS

As you know, the Nord Company has purchased 15 acres of land immediately south of our existing facilities. About 11 acres are tidelands and the remaining 4 acres are uplands.

To give you a brief background, the Nord Company was founded here in Everett in 1924. Today, we manufacture a diversified line of wood building products including wood doors, louver doors, folding bifold doors, wood turnings or architectural spindles, colonial columns, porch posts and stair parts. Our products are primarily used in single family housing and for remodeling.

We distribute these products in rail car quantities to wholesale distributors throughout the United States and in addition export our products to Canada, Northern Europe and Japan.

SLIDE: SURVEY MAP

The plant itself is located in the midst of the third largest waterfront industrial area in the state of Washington. Our plant is located here. The property we propose to fill is located here.

SLIDE: AERIAL VIEW OF PLANT

This aerial view of the plant again shows where the planned 11-acre fill would be located. It is located here.

The expansion program we have planned is actually a continuation of many previous expansion programs. Our history has consistently been one of growth which has in turn meant stable employment for the community, the satisfaction of consumer demand for our products, and dollars for the economy. In fact, in the last 30 years, we have made 16 major additions to our facilities --- an average of one every twenty-two months.

SLIDE: AVERAGE ANNUAL EMPLOYMENT

Thirty years ago when we acquired our present site, the Nord Company employed only 50 people. By 1965, our employment had increased nine times to 459. Six years later in 1971, employment had climbed to 544 people. And today, after another six year period of growth and expansion, we have had a 50% increase in employment, directly providing jobs for nearly 800 people.

SLIDE: GROWTH IN EMPLOYEE WAGES

During this same period an even more dramatic growth has taken place in employee wages. In 1965, our employees received wages of \$2.3 million dollars. Six years later

in 1971, total wages had increased 90% to \$4.4 million.
In 1977, our employees will receive wages totaling \$10.5
million, a 500% increase since 1965.

All of this growth in employment and related wages has
been a direct result of expanding our facilities.

SLIDE: BLANK

In November 1975, we initiated plans for a new expansion
program. With this expansion program, we will substantially
increase production and employment.

SLIDE: PLAN OF EXPANSION

We are located here. The area in green shows our present
facilities. The areas in blue represents our planned
expansion. Here are the 15 acres we purchased in 1976.

We consider this expansion program a necessary one for
several important reasons.

We have been operating at maximum capacity for more than
three years, and cannot produce any more products than
we are making at this time with our present facilities.
As a result, we have already been forced to restrict our
marketing efforts and restrain our growth in the market
place.

At one time, we did make a statement to the Department

of Fish and Wildlife that we had no present intentions of expanding onto neighboring areas. That was a true statement. At that time, we had no such intention since we could not purchase any adjacent land. We have no power of eminent domain, and it was not until October of 1976 that we had an opportunity to buy any adjacent property.

We also considered other alternatives before this particular 15-acre site became available for purchase. These alternatives were considered only because for several years, no adjacent property was available to us.

One such alternative seriously considered was expanding at a different location. Because of the nature of our production process, this is neither physically practical nor cost possible. To make the best use of our raw materials requires moving them from one production area to another in a constant flow. Therefore, we must keep our production facilities in as close proximity as possible to keep our costs down and ultimately keep the consumer prices of our products as low as possible.

Many years ago, we tried mixing rail cars of products with a Seattle firm that manufactures flush doors which we do not make, but services many of the same wholesalers we service. However, our experience was very

unsatisfactory. The reason this system did not work is that it is virtually impossible to coordinate the production schedules of two separate facilities where our type of product is involved. Since then we have had other opportunities to do the same thing with other non-competative companies. But, we have consistantly refused to enter into any venture that involves manufacturing or marketing our products through more than one location.

The nature of the manufacturing process at our existing plant is also such that we cannot consider partial or piecemeal expansion programs. Simply adding machinery for remanufacturing lumber into a finished product is of no help unless we have the facilities for sorting, drying, cutting and storing lumber prior to manufacture. Once we adopt an overall expansion program, as we have, the entire 15-acre tract will be required for expansion. This is imperative simply because we are operating at capacity in every area of our operation.

That includes dry kilns, boiler plants, even our ability to store materials. Once we expand these basic areas of lumber handling, we must be able to expand all the way down the production line. To do that, we will need the entire 15-acre site.

After allowing for an access road, approximately half of the 15 acres would be utilized for plant facilities. The remainder would be used for employee parking. This would replace the current parking area that will be taken up by other phases of the expansion. Our current parking area is located here.

We have examined parking alternatives in planning for this expansion. The Environmental Protection Agency's suggestion of a "park and shuttle" bus system is not feasible for our company. The City of Everett requires us to provide parking facilities for our employees within 300 feet of our plant. In cooperation with a federal agency, we have also tried to institute a car pooling system. Since only a handful of our employees expressed any interest, this does not seem to be a satisfactory alternative.

There are many far-reaching public benefits to be gained from this expansion.

SLIDE: PROJECTED JOBS

We project that this expansion program will create more than 700 new jobs at the Nord plant alone. Our employment will move from a current level of 790 to a projected level of 1500.

SLIDE: PROJECTED WAGES

Our expanded employment will result in wages of nearly \$40 million, moving from a current rate of \$10.5 million to a projected rate of \$38.5 million dollars annually. This is actually a conservative estimate.

We have enjoyed a long and good relationship with our employees -- also an important consideration in undertaking such a far-reaching expansion. At the basis of that relationship has been the company's performance in providing steady and stable employment. Our employees support our expansion and their support is important to us. A positive relationship with our employees and our union gives us greater confidence to move into this new expansion.

SLIDE: UNION LETTER

In a letter dated December 5, our employee's union made the following statement:

"Everett Local #1054 has enjoyed a good relationship and steady employment with the E. A. Nord Company for many years. We feel that the jobs this expansion promises will in turn benefit the overall community in several ways. It will stimulate additional related jobs, retail sales for local businesses and generally, a growing community.

For these reasons, we would encourage this expansion".

SLIDE: EFFECT OF JOBS ON COMMUNITY

The U. S. Chamber of Commerce estimates that nearly 500 related service jobs will be created in the greater Everett area by this expansion. These new jobs are needed in the community. As you can see, the impact of our expansion will result in 710 new jobs at our company and an estimated 462 related service jobs in the community for a total expansion in employment of 1172 jobs.

New jobs mean more personal income which explains why an estimated 21 new retail establishments would be generated by these new jobs in the area. In addition, those jobs and the related incomes will stimulate deposits in commercial banks and savings and loan institutions, boost retail sales, and broaden the area's tax base. The effect multiplies throughout the community.

Our proximity to the waters of Puget Sound is a critical element in our current lumber supply and in our ability to expand. Our planned expansion includes the construction of a barge pocket in order to facilitate barging an increasing amount of lumber directly to our plant. Presently, lumber is barged to the Port of Everett, unloaded and then trucked to the plant. Barging lumber through the Port of Everett has been a successful first phase in gearing toward a much expanded volume of inbound lumber, but it is cost prohibitive to transship a much larger volume of lumber at the Everett Port terminal and have it re-loaded in trucks

for delivery to our plant.

SLIDE: PROJECTED LUMBER

Currently, about 5 million board feet of lumber is shipped to us each year by barge. With the proposed dock and related expansion, we will have to barge approximately 50 million board feet of lumber a year.

SLIDE: PROJECTED SHARE OF WATER DELIVERIES

Currently, inbound lumber shipped by water accounts for fully 8% of our total lumber supply. With the completion of our planned expansion, we project that 40% of our lumber supply will arrive by water.

SLIDE: MAP OF NORTHWEST

Several of our suppliers have expressed a growing preference for shipping raw materials by water to our plant including Weldwood of Canada, MacMillian Bloedel, and East Asiatic Company. For those located in areas like Vancouver Island and the several points indicated on this map, barging is the most efficient way to deliver lumber to our plant.

These sources of supply are obviously very important to us. It is important to note that not all sawmills are geared for cutting the small high grade portion of a log which we utilize. So we must reach out to those mills

that can supply the type of lumber we need. Since the most efficient way to receive lumber from many of these mills is by barge, we must be located on the water.

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Naturally, whenever such a project is considered its benefits should be weighed against the potential loss of our natural resources. It is our understanding that the damage to our natural resources, if any, would be extremely minimal.

SLIDE: THAYNE PARKS LETTER

Biologist Thayne Parks of the Everett Community College assures us that the area we propose to fill is not a salt marsh. The water is almost entirely fresh water. There are very few organisms present in any quantity or variety. And those that are present are of low biological productivity. In paragraph 5, he made this conclusion: "I see no threat to any type of food chain or wild life by filling the area in question." In a separate report, another biologist, Terry Buckridge also with the Everett Community College reached the same conclusion. A third report, an Environmental Impact Statement prepared by the Port of Everett, dealing with an area quite similar to the one we are considering, came to much the same conclusion.

SLIDE: EXCERPT FROM ENVIRONMENTAL IMPACT STATEMENT

This statement refers to the Norton Avenue Boat Launch Facility completed little more than a year ago and located along the same ~~estuary~~^{shoreline} about 4/10th of a mile from Nord's proposed expansion site. It reads: "No significant displacement, endangerment, or destruction of any wildlife or natural vegetation will occur. (In reference to filling for the Norton Avenue Boat Launch.) Water quality may be affected adversely during dredging operations, but such effects will be mitigated by adherence to procedures approved by State and Federal agencies."

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Work is also about to begin on a 117-acre fill designated for a new industrial area and parking for marina expansion just a mile away from the Nord tidelands.

A question has been raised as to the type of fill material we are proposing to use. It has come to our attention in correspondence with the Corps of Engineers that there is a need for disposal sites of dredged river spoils in the Port Gardner - Snohomish River area. Should we be permitted to fill this 11 acre site, we would be most willing to cooperate in designating the area as a disposal site for dredged river spoils.

CONCLUSION

To summarize, the E. A. Nord Company has initiated plans to construct a dock in order to facilitate barging raw

materials to our plant. The 11 acres Nord proposes to fill would provide the space necessary to process incoming lumber for remanufacturing. Therefore, our intended use of the area is water dependent.

The Nord plant is currently operating at capacity. There is a greater demand for our products than we can supply. The planned expansion program would enable us to meet this unsatisfied demand.

On the one hand, if there is any loss of aquatic resources by filling the area, the loss would be exceedingly minimal. On the other hand, Nord's expansion program will provide new jobs for several hundred people resulting in far-reaching public benefits.

I appreciate your attention. If you have any questions, we will be happy to answer them.

E.A. NORD COMPANY, INC.

Expansion of Nord Facilities

Third and Norton Avenues

Everett, Washington

December 14, 1977

INTRODUCTION

The E. A. Nord Company, in keeping with our continuing expansion policies, has purchased 15 acres adjacent to our present facilities of which approximately 11 acres are wetlands and four acres are uplands. We propose to fill 11 acres of this land to accommodate an expansion plan that would provide several hundred new jobs.

The Nord Company is not aware that filling this area would result in the loss of meaningful aquatic resources. Furthermore, a great many public benefits would be gained in the form of new jobs, increased personal income, and a boost to the area's economy.

The following pages provide a detailed explanation of the Nord Company's plans for expansion, our need for expansion, and the subsequent benefits of this expansion to the general public.

LOCATION OF THE NORD PLANT

The Nord plant is located in the midst of the third largest waterfront industrial area in the state of Washington. This is not an attempt to utilize a portion of the pristine coastline area of the state situated outside of industrial complexes. (See exhibits #1, 2 and 3 showing the location of Nord's proposed fill and its proximity to other filled areas.)

BACKGROUND INFORMATION

The E. A. Nord Company, founded in Everett in 1924, manufactures a diversified line of wood building products including stile and rail doors, louver doors and blinds, bifold doors, architectural spindles, columns, posts and stair parts.

We distribute these products throughout the United States and to international markets including Canada, Northern Europe and Japan.

The Nord history has consistently been one of planned growth and expansion. This growth and expansion has in turn meant jobs for the community, quality products for the marketplace, and dollars for the economy.

Thirty years ago when we acquired our present site, the Nord Company employed 50 people. By 1965, our employment had increased nine times to more than 450 people receiving wages of \$2.3 million. Six years later in 1971, employment had risen by almost 20% (544) and total wages had increased 90% (\$4.4 million). Today, after another six year period of growth and expansion, Nord employs nearly 800 people, earning wages of \$10.5 million. That represents a 50% increase in employment while wages increased nearly 75%.

All of this growth in employment has been a direct result of expanding Nord's facilities and product lines. After acquiring this site in 1945, Nord built the original 54,000 square feet of factory buildings. By 1965, 170,000 square feet of factory buildings had been added in a series of expansion programs. This accounts for the nine-fold increase in Nord employment that took place during that same time.

Since 1965, we've added another 160,000 square feet of factory facilities plus complementary equipment including dry kilns, boiler and fuel handling facilities, lumber sorter, stacker and planer. During that same 12-year period our employment has nearly doubled and employee wages have increased almost five times. (See exhibit #4 for more information about Nord's past expansion programs.)

PURPOSE AND NEED FOR EXPANSION

In November 1975, plans were initiated for a new expansion program. The purpose of this particular program is primarily to meet a demand for our products which currently exceeds supply. (See excerpts of minutes from Nord Board of Directors meeting, November 10, 1975. Attached as exhibit #5.) With this expansion program, Nord will substantially increase production. (See exhibits #6 and 7 for plan view and detailed description of expansion.) The proposed buildings and equipment will require an estimated investment of approximately \$9 million.

Nord management considers this expansion program to be a necessary one for several reasons. First, a "stand still" posture is not possible to keep pace with changing market conditions.

More importantly, the Nord plant has been operating at capacity for the last three years. We cannot produce any more products than we are making at this time with our present facilities. As a result, we are actually servicing fewer customers today than we were at the beginning of this year. Our inability to meet market demand will result in some of our customers going elsewhere for their supply. Then, instead of growing, the Nord Company will have to lay people off.

At one time, the Nord Company did advise the Department of Fish and Wildlife that we had no present intentions to expand onto adjacent areas. And at that time, we had no such intention since we could not purchase any adjacent land. Nord has no power of eminent domain. It was not until October of 1976 that we had an opportunity to buy any adjacent land.

The Nord Company considered other alternatives before this particular 15-acre site became available for purchase. These alternatives were considered only because for several years, no adjacent property was available to us.

One such alternative seriously considered was expanding at a different location. Because of the nature of our production process, this is neither physically practical nor cost possible. To make the best use of our raw materials requires moving them from one production area to another. Therefore, we must keep our production facilities in as close proximity as possible to keep our costs down and our prices competitive.

The nature of the manufacturing process at our existing plant is such that we can no longer consider partial or piecemeal types of expansion. Simply adding machinery for the remanufacturing of lumber into a finished product is of no help unless we have the facilities for sorting,

drying, cutting and storing lumber prior to manufacture. Any suggestion that expansion be limited to the upland four acres of the 15-acre site would not help solve the company's problem. A permit to fill a portion of the 11 acres of tidelands would likewise not meet the pressing demands of the company. Once Nord adopts an overall expansion program, as it has, the entire 15-acre tract must be available for this expansion.

After allowing for an access road, approximately half of the 15 acres would be utilized for plant facilities. The remainder would be used for employee parking. This would replace the current parking area that will be taken up by other phases of the expansion. We are required by Everett City Ordinance to provide off-street parking within 300 feet of our plant.

However, we have looked into alternatives to using any of this area for parking. The EPA's suggestion of a "park and shuttle" bus system is not feasible. To get an entire crew shift to the plant on time would require a fleet of buses. In the past, we have tried to institute a car pooling system. Since only a handful of employees expressed an interest, this doesn't seem to be a satisfactory alternative.

PUBLIC BENEFITS OF EXPANSION

There are many far-reaching public benefits to be gained by this expansion.

We project that this expansion program will create more than 700 new jobs at the Nord plant, representing wages of nearly \$40 million. (This is actually a conservative estimate. See exhibits #8 and 9.)

Nord has been a steady and stable employer over the years. We have enjoyed a long and good relationship with our local union. Everett Local No. 1054 fully supports our proposed expansion. (See exhibit #10.)

The U. S. Chamber of Commerce estimates that nearly 500 related service jobs will be created in the greater Everett area by this expansion. These new jobs are definitely needed in the community.

New jobs mean more personal income which explains why an estimated 21 new retail establishments would be generated by these new jobs in the area. In addition, those jobs and the related incomes will stimulate deposits in commercial banks and savings and loan institutions, boost retail sales, and broaden the area's tax base. The effect multiplies throughout the community. (The effect of Nord jobs on the community is based on information from the Snohomish County Economic Development Council.)

A more direct benefit of the proposed expansion is simply the national supply of the type of products Nord manufactures to areas where the demand is not currently being met.

WATER DEPENDENT USE

Nord's proposed expansion, as outlined previously, includes the construction of a dock in order to facilitate barging raw materials directly to the plant. Presently, lumber is barged to the Port of Everett, unloaded and then trucked to the plant. The utilization of an increased lumber supply (50 million board feet) can only be accomplished by barging directly to the Nord facilities. It is cost prohibitive to transship this amount of lumber at the Everett Port terminal and have it hauled in by truck.

Currently, about 5 million board feet of lumber is shipped to Nord by barge. With the proposed dock and related expanded facilities, Nord would be able to barge approximately 50 million board feet of lumber a year, making 40% of our raw material deliveries water-dependent. (See exhibits #11 and 12.)

Several of Nord's suppliers have expressed a preference for this method of shipping raw materials to our plant including MacMillan Bloedel, Weldwood of Canada, and East Asiatic Company. (See exhibits #13, 14 and 15.)

Obviously, for those located in areas like Vancouver Island, barging is the most efficient way to deliver lumber to the Nord plant.

These sources of supply are very important to the Nord Company. We use only old growth fir and hemlock in our products. Not all sawmills are geared for cutting this high quality lumber we require. We must reach out to those mills that can supply what we need. This is one of the main reasons we buy from Canadian suppliers. Since the most efficient way to receive lumber from many of these mills is by barge, we must be located on the water.

ENVIRONMENTAL IMPACT

Naturally, whenever such a project is considered its benefits should be weighed against the potential loss of natural resources. And this has been the case.

Biologists Thayne Parks and Terry Buckridge of Everett Community College assure us that the area Nord proposes to fill is not a salt marsh. The water is almost entirely fresh water. There are very few organisms present in any quantity or variety. And those that are present are of low biological productivity. (See exhibits #16 and 17.)

An Environmental Impact Statement prepared by the Port of Everett, dealing with an area quite similar to the one in question, came to much the same conclusion. (See exhibit #18.)

In fact, quite recently two areas quite near the one in question were approved for filling. The Norton Avenue Trailer Boat Launch Facility completed little more than a year ago is only about 4/10th of a mile from Nord's proposed expansion site. And work is about to begin to fill a 117-acre site designated for a new industrial area and parking for marina expansion just a mile away from the Nord tidelands.

The Nord Company does not recognize that filling this area would result in the loss of meaningful aquatic life. It is our understanding that the damage to natural resources, if any, would be extremely minimal. This should be weighed

carefully against the potential for several hundred new jobs and the related public benefits that the proposed expansion project would generate.

If necessary, to obtain a permit, we would like to have an opportunity of retaining an independent marine biologist from the University of Washington, Department of Fisheries to make a study concerning the effect, if any, that filling this property might have on the few, low forms of marine life that may exist there.

FILL MATERIAL

Should Nord be permitted to fill this 11-acre area, rather than negotiate the type of fill material to be used, we are most willing to designate it as a disposal site for dredged river spoils. It has come to our attention in correspondence with the Corps of Engineers that there is a need for such sites in the Port Gardner-Snohomish River area. We are in full agreement on this point.

CONCLUSION

The E. A. Nord Company has initiated plans to construct a dock in order to facilitate barging raw materials to our plant. The 11-acres Nord proposes to fill would provide the space necessary to process incoming lumber for remanufacturing. Therefore, our intended use of the area is water dependent.

The Nord plant is currently operating at capacity. There is greater demand for our products than we can supply. The planned expansion program would enable us to meet this unsatisfied demand.

On the one hand, if there is any loss of aquatic resources by filling the area, the loss would be exceedingly minimal. On the other hand, Nord's expansion program will provide new jobs for several hundred people resulting in far-reaching public benefits both locally and nationally.



Focus

Model Toxics Control Act Cleanup Regulation: Process for Cleanup of Hazardous Waste Sites

In March of 1989, an innovative, citizen-mandated toxic waste cleanup law went into effect in Washington, changing the way hazardous waste sites in this state are cleaned up. Passed by voters as Initiative 97, this law is known as the Model Toxics Control Act, chapter 70.105D RCW. This fact sheet provides a brief overview of the process for the cleanup of contaminated sites under the rules Ecology adopted to implement that Act (chapter 173-340 WAC).

How the Law Works

The cleanup of hazardous waste sites is complex and expensive. In an effort to avoid the confusion and delays associated with the federal Superfund program, the Model Toxics Control Act is designed to be as streamlined as possible. It sets strict cleanup standards to ensure that the quality of cleanup and protection of human health and the environment are not compromised. At the same time, the rules that guide cleanup under the Act have built-in flexibility to allow cleanups to be addressed on a site-specific basis.

The Model Toxics Control Act funds hazardous waste cleanup through a tax on the wholesale value of hazardous substances. The tax is imposed on the first in-state possessor of hazardous substances at the rate of 0.7 percent, or \$7 per \$1,000. Since its passage in 1988, the Act has guided the cleanup of thousands of hazardous waste sites that dot the Washington landscape. The Washington State Department of Ecology's Toxic Cleanup Program ensures that these sites are investigated and cleaned up.

What Constitutes a Hazardous Waste Site?

Any owner or operator who has information that a hazardous substance has been released to the environment at the owner or operator's facility and may be a threat to human health or the environment must report this information to the Department of Ecology (Ecology). If an "initial investigation" by Ecology confirms further action (such as testing or cleanup) may be necessary, the facility is entered onto either Ecology's "Integrated Site Information System" database or "Leaking Underground Storage Tank" database. These are computerized databases used to track progress on all confirmed or suspected contaminated sites in Washington State. All confirmed sites that have not been already voluntarily cleaned up are ranked and placed on the state "Hazardous Sites List." Owners, operators, and other persons known to be potentially liable for the cleanup of the site will receive an "Early Notice Letter" from Ecology notifying them that their site is suspected of needing cleanup, and that it is Ecology's policy to work cooperatively with them to accomplish prompt and effective cleanup.

Who is Responsible for Cleanup?

Any past or present relationship with a contaminated site may result in liability. Under the Model Toxics Control Act a potentially liable person can be:

- A current or past facility owner or operator.
- Anyone who arranged for disposal or treatment of hazardous substances at the site.
- Anyone who transported hazardous substances for disposal or treatment at a contaminated site, unless the facility could legally receive the hazardous materials at the time of transport.
- Anyone who sells a hazardous substance with written instructions for its use, and abiding by the instructions results in contamination.

In situations where there is more than one potentially liable person, each person is jointly and severally liable for cleanup at the site. That means each person can be held liable for the entire cost of cleanup. In cases where there is more than one potentially liable person at a site, Ecology encourages these persons to get together to negotiate how the cost of cleanup will be shared among all potentially liable persons.

Ecology must notify anyone it knows may be a “potentially liable person” and allow an opportunity for comment before making any further determination on that person’s liability. The comment period may be waived at the potentially liable person’s request or if Ecology has to conduct emergency cleanup at the site.

Achieving Cleanups through Cooperation

Although Ecology has the legal authority to order a liable party to clean up, the department prefers to achieve cleanups cooperatively. Ecology believes that a non-adversarial relationship with potentially liable persons improves the prospect for prompt and efficient cleanup. The rules implementing the Model Toxics Control Act, which were developed by Ecology in consultation with the Science Advisory Board (created by the Act), and representatives from citizen, environmental and business groups, and government agencies, are designed to:

- Encourage independent cleanups initiated by potentially liable persons, thus providing for quicker cleanups with less legal complexity.
- Encourage an open process for the public, local government and liable parties to discuss cleanup options and community concerns.
- Facilitate cooperative cleanup agreements rather than Ecology-initiated orders. *Ecology can, and does, however use enforcement tools in emergencies or with recalcitrant potentially liable persons.*

What is the Potentially Liable Person’s Role in Cleanup?

The Model Toxics Control Act requires potentially liable persons to assume responsibility for cleaning up contaminated sites. For this reason, Ecology does not usually conduct the actual cleanup when a potentially liable person can be identified. Rather, Ecology oversees the cleanup of sites to ensure that investigations, public involvement and actual cleanup and monitoring are done appropriately. Ecology’s costs of this oversight are required to be paid by the liable party.

When contamination is confirmed at the site, the owner or operator may decide to proceed with cleanup without Ecology assistance or approval. Such “independent cleanups” are

allowed under the Model Toxics Control Act under most circumstances, but must be reported to Ecology, and are done at the owner's or operator's own risk. Ecology may require additional cleanup work at these sites to bring them into compliance with the state cleanup standards. Most cleanups in Washington are done independently.

Other than local governments, potentially liable persons conducting independent cleanups do not have access to financial assistance from Ecology. Those who plan to seek contributions from other persons to help pay for cleanup costs need to be sure their cleanup is "the substantial equivalent of a department-conducted or department-supervised remedial action." Ecology has provided guidance on how to meet this requirement in WAC 173-340-545. Persons interested in pursuing a private contribution action on an independent cleanup should carefully review this guidance prior to conducting site work.

Working with Ecology to Achieve Cleanup

Ecology and potentially liable persons often work cooperatively to reach cleanup solutions. Options for working with Ecology include formal agreements such as consent decrees and agreed orders, and seeking technical assistance through the Voluntary Cleanup Program. These mechanisms allow Ecology to take an active role in cleanup, providing help to potentially liable persons and minimizing costs by ensuring the job meets state standards the first time. This also minimizes the possibility that additional cleanup will be required in the future – providing significant assurances to investors and lenders.

Here is a summary of the most common mechanisms used by Ecology:

- **Voluntary Cleanup Program:** Many property owners choose to cleanup their sites independent of Ecology oversight. This allows many smaller or less complex sites to be cleaned up quickly without having to go through a formal process. A disadvantage to property owners is that Ecology does not approve the cleanup. This can present a problem to property owners who need state approval of the cleanup to satisfy a buyer or lender.

One option to the property owner wanting to conduct an independent cleanup yet still receive some feedback from Ecology is to request a technical consultation through Ecology's Voluntary Cleanup Program. Under this voluntary program, the property owner submits a cleanup report with a fee to cover Ecology's review costs. Based on the review, Ecology either issues a letter stating that the site needs "No Further Action" or identifies what additional work is needed. Since Ecology is not directly involved in the site cleanup work, the level of certainty in Ecology's response is less than in a consent decree or agreed order. However, many persons have found a "No Further Action" letter to be sufficient for their needs, making the Voluntary Cleanup Program a popular option.

- **Consent Decrees:** A consent decree is a formal legal agreement filed in court. The work requirements in the decree and the terms under which it must be done are negotiated and agreed to by the potentially liable person, Ecology and the state Attorney General's office. Before consent decrees can become final, they must undergo a public review and comment period that typically includes a public hearing. Consent decrees protect the potentially liable person from being sued for "contribution" by other persons that incur cleanup expenses at the site while facilitating any contribution claims against the other persons when they are responsible for part of the cleanup costs. Sites cleaned up under a consent decree are also exempt from having to obtain certain state and local permits that could delay the cleanup.

-
- **De Minimus Consent Decree:** Landowners whose contribution to site contamination is “insignificant in amount and toxicity” may be eligible for a de minimus consent decree. In these decrees, landowner typically settle their liability by paying for some of the cleanup instead of actually conducting the cleanup work. Ecology usually accepts a de minimus settlement proposal only if the landowner is affiliated with a larger site cleanup that Ecology is currently working on.
 - **Prospective Purchaser Consent Decree:** A consent decree may also be available for a “prospective purchaser” of contaminated property. In this situation, a person who is not already liable for cleanup and wishes to purchase a cleanup site for redevelopment or reuse may apply to negotiate a prospective purchaser consent decree. The applicant must show, among other things, that they will contribute substantial new resources towards the cleanup. Cleanups that also have a substantial public benefit will receive a higher priority for prospective purchaser agreements. If the application is accepted, the requirements for cleanup are negotiated and specified in a consent decree so that the purchaser can better estimate the cost of cleanup before buying the land.
 - **Agreed Orders:** Unlike a consent decree, an agreed order is not filed in court and is not a settlement. Rather, it is a legally binding administrative order issued by Ecology and agreed to by the potentially liable person. Agreed orders are available for remedial investigations, feasibility studies, and final cleanups. An agreed order describes the site activities that must occur for Ecology to agree not to take enforcement action for that phase of work. As with consent decrees, agreed orders are subject to public review and offer the advantage of facilitating contribution claims against other persons and exempting cleanup work from obtaining certain state and local permits.

Ecology-Initiated Cleanup Orders

Administrative orders requiring cleanup activities without an agreement with a potentially liable person are known as **enforcement orders**. These orders are usually issued to a potentially liable person when Ecology believes a cleanup solution cannot be achieved expeditiously through negotiation or if an emergency exists. If the responsible party fails to comply with an enforcement order, Ecology can clean up the site and later recover costs from the responsible person(s) at up to three times the amount spent. The state Attorney General’s Office may also seek a fine of up to \$25,000 a day for violating an order. Enforcement orders are subject to public notification.

Financial Assistance

Each year, Ecology provides millions of dollars in grants to local governments to help pay for the cost of site cleanup. In general, such grants are available only for sites where the cleanup work is being done under an order or decree. Ecology can also provide grants to local governments to help defray the cost of replacing a public water supply well contaminated by a hazardous waste site. Grants are also available for local citizen groups and neighborhoods affected by contaminated sites to facilitate public review of the cleanup. See Chapter 173-322 WAC for additional information on grants to local governments and Chapter 173-321 WAC for additional information on public participation grants.

Public Involvement

Public notices are required on all agreed orders, consent decrees, and enforcement orders. Public notification is also required for all Ecology-conducted remedial actions.

Ecology's Site Register is a widely used means of providing information about cleanup efforts to the public and is one way of assisting community involvement. The Site Register is published every two weeks to inform citizens of public meetings and comment periods, discussions or negotiations of legal agreements, and other cleanup activities. The Site Register can be accessed on the Internet at: www.ecy.wa.gov/programs/tcp/pub_inv/pub_inv2.html.

How Sites are Cleaned Up

The rules describing the cleanup process at a hazardous waste site are in chapter 173-340 WAC. The following is a general description of the steps taken during the cleanup of an average hazardous waste site. Consult the rules for the specific requirements for each step in the cleanup process.

1. Site Discovery: Sites where contamination is found must be reported to Ecology's Toxics Cleanup Program within 90 days of discovery, unless it involves a release of hazardous materials from an underground storage tank system. In that case, the site discovery must be reported to Ecology within 24 hours. At this point, potentially liable persons may choose to conduct independent cleanup without assistance from the department, but cleanup results must be reported to Ecology.

2. Initial Investigation: Ecology is required to conduct an initial investigation of the site within 90 days of receiving a site discovery report. Based on information obtained about the site, a decision must be made within 30 days to determine if the site requires additional investigation, emergency cleanup, or no further action. If further action is required under the Model Toxics Control Act, Ecology sends early notice letters to owners, operators and other potentially liable persons inviting them to work cooperatively with the department.

4. Hazard Ranking: The Model Toxics Control Act requires that sites be ranked according to the relative health and environmental risk each site poses. Working with the Science Advisory Board, Ecology created the Washington Ranking Method to categorize sites using data from site hazard assessments. Sites are ranked on a scale of 1 to 5. A score of 1 represents the highest level of risk and 5 the lowest. Ranked sites are placed on the state Hazardous Sites List.

3. Site Hazard Assessment: A site hazard assessment is conducted to confirm the presence of hazardous substances and to determine the relative risk the site poses to human health and the environment.

5. Remedial Investigation/Feasibility Study: A remedial investigation and feasibility study is conducted to define the extent and magnitude of contamination at the site. Potential impacts on human health and the environment and alternative cleanup technologies are also evaluated in this study. Sites being cleaned up by Ecology or by potentially liable persons under a consent decree, agreed order or enforcement order are required to provide for a 30 day public review before finalizing the report.

6. Selection of Cleanup Action: Using information gathered during the study, a cleanup action plan is developed. The plan identifies preferred cleanup methods and specifies cleanup standards and other requirements at the site. A draft of the plan is subject to public review and comment before it is finalized.

7. Site Cleanup: Actual cleanup begins when the cleanup action plan is implemented. This includes design, construction, operation and monitoring of cleanup actions. A site may be taken off the Hazardous Sites List after cleanup is completed and Ecology determines cleanup standards have been met.

PLP Waiver Form Template

Lisa Lefebber
Port of Everett
1205 Craftsman Way
Everett, WA 98201-1588

Pursuant to WAC 173-340-500 and WAC 173-340-520(1)(b)(i), I Lisa Lefebber, a duly authorized representative of Port of Everett, do hereby waive the right to the thirty (30) day notice and comment period described in WAC 173-340-500(3) and accept status of Port of Everett as a Potentially Liable Person at the following contaminated site:

- Site Name: Jeld Wen
- Site Address: 300 West Marine View Drive, Everett, WA
- Cleanup Site ID: 4402
- Facility/Site ID: 2757

By waiving this right, Port of Everett makes no admission of liability.

Signature

Date

Relation to the Site: