

Everett Landfill -  
Tire Fire  
FS 2696

January 30, 1990

Doug Mosich  
Assistant Attorney General  
Ecology Division  
M.S. PV-11  
Olympia, WA 98504

CITY OF  
**everett**

CITY ATTORNEY'S OFFICE  
Everett City Hall  
3002 Wetmore Avenue  
Everett WA 98201  
206-259-8700  
FAX 206-259-8729

Re: Everett Landfill/Tire Fire Site

Dear Mr. Mosich:

Enclosed is an executed copy of the consent order regarding the Everett Landfill Site.

Yours very truly,

  
BRUCE E. JONES  
City Attorney

Enclosure

cc: Tom Thetford  
Ross Macfarlane

(4238)

MODEL TOXICS CONTROL ACT

In the Matter of  
Everett Landfill/Tire Fire Site  
2902 36th Street E.  
Everett, Washington 98201

Remedial Action Order  
on Consent

Order No.

I.

JURISDICTION

This order is issued pursuant to the authority of Sections 3(1) and 5(1) of the Model Toxics Control Act (MTCA or Act), Ch. 70.105D, RCW.

II.

STATEMENT OF FACTS

Based upon the information available to it and without adjudication of any facts or legal issues, the Washington State Department of Ecology (Ecology) finds that the following facts exist for the purpose of issuance of this Order. The undersigned City of Everett (the City) neither admits nor denies the accuracy of any factual statement or legal conclusion contained in this Order. Solely for the purposes of enforcing this Order, the City agrees not to contest Ecology's jurisdiction or authority to issue this Order.

A. Ecology is an agency of the State of Washington vested with the power to investigate releases or threatened releases of hazardous substances or to require potentially liable parties (PLPs) to investigate releases or threatened releases of hazardous substances. Ecology has the power to conduct remedial

actions to remedy such releases or to require PLPs to conduct remedial actions to remedy such releases.

B. On the basis of testing and analysis and upon review of Ecology files and records, Ecology has determined that hazardous substances, as defined at Section 2(5) of the MTCA, are present at the Everett Landfill/Tire Fire site.

C. Background.

1. Location. The Landfill Tire Fire site is located at 2902 36th Street East, Everett, Washington 98201, at latitude 47°58'00.0", longitude 122°11'30.0", Township 29N, Range 5E, Section 29 (see Figure 1 on page 3).

2. Ownership. The site is situated on property owned in part by the City of Everett, Burlington Northern Railroad (BNR), and Glacier Park Company.

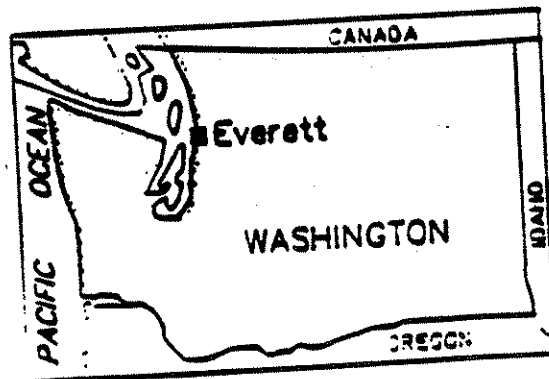
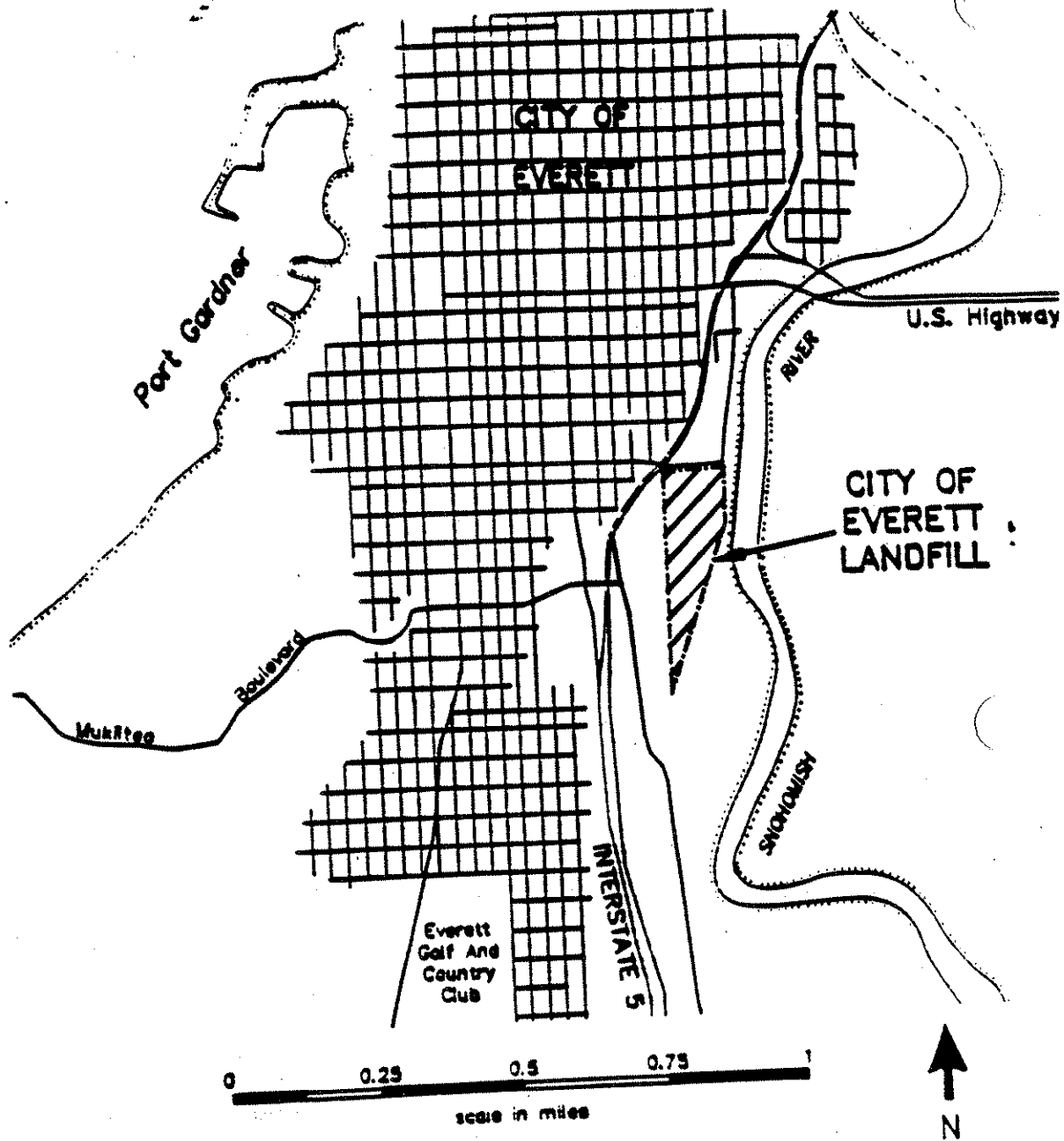
3. Site Description and Surrounding Area. The site is comprised of approximately 75 acres of land which are located in an industrial section of eastern Everett. The site is triangular in shape and is bordered on the east and west by BNR railroad tracks (see Figure 2 on page 4). The Snohomish River is located east of the eastern tracks and flows to the north.

The site is located approximately 5-6 miles upstream from the mouth of the river on its western bank. The river flows past the eastern side of the site at an approximate distance of 1,900 feet at the southern tip, decreasing to an approximate distance of 100 feet at the northern end.

Figure 1

Site Map

Source: Ecology & Environment, 1988

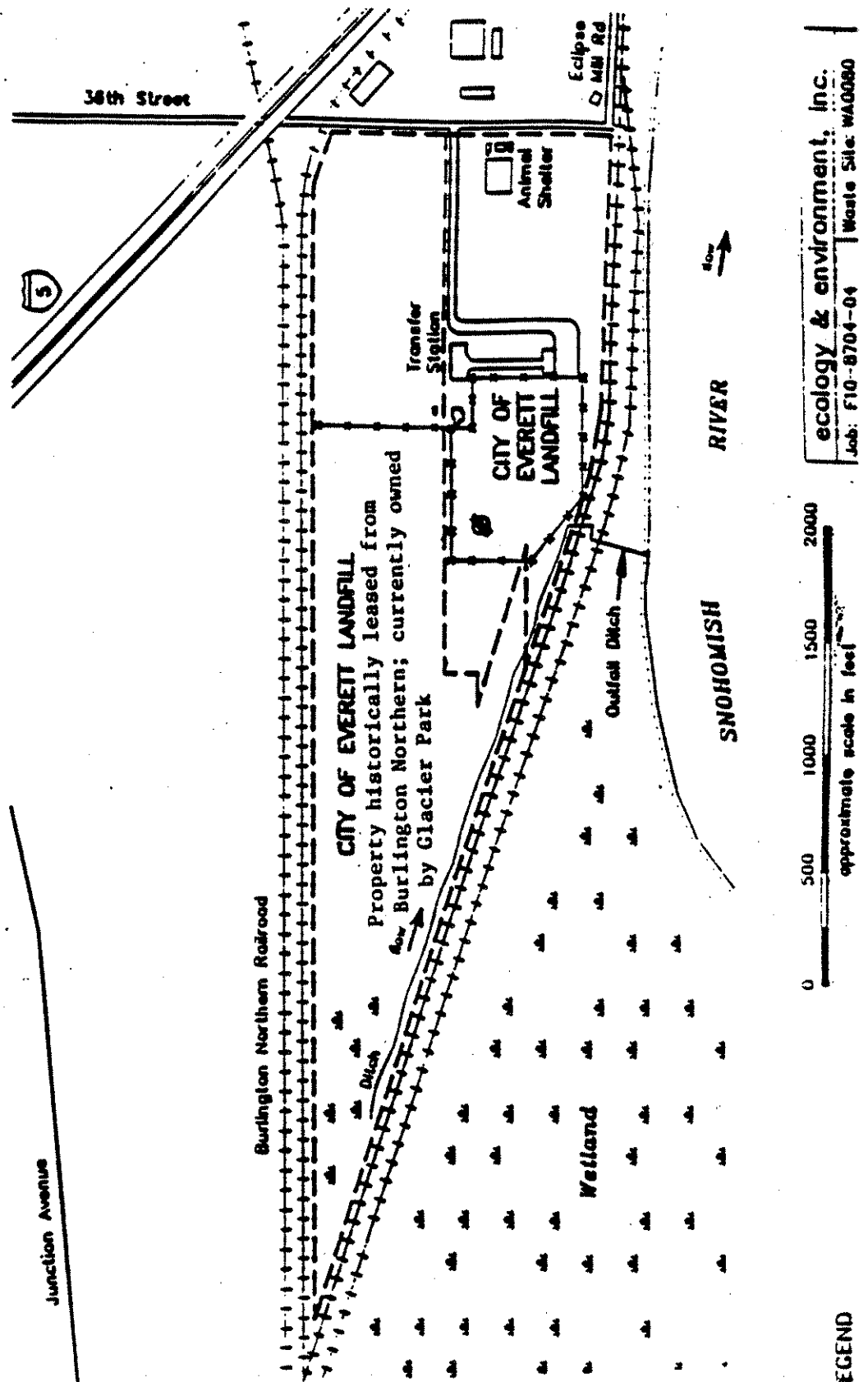


|                             |                    |
|-----------------------------|--------------------|
| ecology & environment, inc. |                    |
| Job: F10-8704-04            | Waste Site: WA     |
| Drawn by: O. P.             | Date: July 1, 1988 |

Figure 2

Site Map

Source: Ecology & Environment, 1988



A population of approximately 6,000 people live within a one mile radius of the landfill, concentrated primarily to the west toward Everett.

III.

ECOLOGY DETERMINATIONS

1. The City of Everett, Burlington Northern Railroad, and Glacier Park Company are "owners or operators" of the property as defined in Section 2(6) of the Act.

2. The property described above is a "facility" as defined in Section 2(3) of the Act.

3. Certain substances identified at the site as described above are "hazardous substances" as defined at Section 2(5) of the Act.

4. Based on the presence of these hazardous substances at the facility and all factors known to Ecology, there is a release or threatened release of hazardous substances from the facility, as defined in Section 2(10) of the Act.

5. Ecology has found the City of Everett, Burlington Northern Railroad, and Glacier Park Company to be potentially liable parties under Section 2(8) and Section 4 of the Act.

6. Pursuant to Sections 3 and 5 of the MTCA, if there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, Ecology may require potentially liable persons to conduct remedial actions, including

investigations, to remedy releases or threatened releases of hazardous substances.

7. The nature of the hazardous substances requires remedial investigation to define their concentration and extent, risk assessment to define the health and environmental hazards posed by the contaminants, and feasibility studies to evaluate alternative remedial measures to mitigate the hazards. Such remedial investigation is in the public interest.

IV.

ORDER

Based on the foregoing facts and determinations, it is hereby ordered that the City of Everett (the City) take the following remedial actions.

1. Within 60 days initiate a remedial investigation, risk assessment, and feasibility study. The work shall be carried out according to the work plan attached as Attachment 1 to this Order.

2. With respect to the implementation of this Order, the City shall make the results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf, available to Ecology and shall submit these results in progress reports and in a final report submitted in accordance with the work plan.

At the request of Ecology, the City shall allow split or duplicate samples to be taken by Ecology and/or its authorized representatives of any samples collected by the City pursuant to

the implementation of this Order. Except in the event of an emergency, the City shall notify Ecology five (5) working days in advance of any sample collection activity.

V.

TERMS AND CONDITIONS OF ORDER

1. The definitions set forth in the MTCA shall control the meanings of the terms used in this Order, unless otherwise specified.

2. Public Notice: The MTCA requires that this Order be subject to public notice SEC. 3(2)(a). Ecology shall be responsible for providing such public notice and reserves the right to withdraw its consent to issuance of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

3. Oversight Costs. The City shall pay to Ecology all costs incurred by Ecology in the oversight or administration of this order that are reasonably attributable to the site. These costs shall include, but not be limited to, work performed for investigations, remedial actions, order preparation, and order oversight and administration. The City shall pay the required amount within 30 days of receiving summary statements of Ecology's expenses. Such summary statements shall demonstrate that the claimed costs were reasonably incurred in the oversight or administration of this Order. Claimed costs under this agreement shall include any work performed by the project



coordinator or other Ecology employee (not including support staff). The reimbursable rate for work performed by Ecology shall be computed by dividing the employee's annual salary by the number of hours worked and multiplying that figure by an overhead rate of 1.482. Claimed costs will also include expenses incurred by Ecology for laboratory tests and results or for independent contractor work performed pursuant to this agreement. Summary statements will be invoiced quarterly. Payments shall be made payable to the State of Washington Toxic Control Account and sent to:

Washington Department of Ecology  
Post Office Box 5128  
Olympia, Washington  
98504-5128

4. Designated Project Coordinators. Within ten (10) days of the effective date of this Order, the City shall designate a project coordinator. The project coordinator shall facilitate compliance with the requirements of this Order. To the maximum extent possible, communications between Ecology and the City, 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 coordinators. Should the City change its project coordinator, written notification shall be given to Ecology at least ten (10) calendar days prior to the change.

The Ecology project coordinator is John Williams, Department of Ecology, Mailstop PV-11, Olympia, Washington 98504.

5. Performance. All remedial work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with experience and expertise in hazardous waste site investigation and cleanup. The City shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the site. Selection of such person or contractor shall be subject to Ecology approval.

6. Access. Ecology or any Ecology-authorized representative shall have the authority to enter and to move freely about all property at the site 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 progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator 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 City. Ecology shall provide reasonable notice before entering property except in an emergency situation. Ecology shall split any samples taken during an

inspection unless the City fails to make available a representative for the purpose of splitting samples after having been given reasonable notice.

7. Public Participation/Community Relations. Ecology shall maintain the responsibility for community relations at the site. The City shall help coordinate and implement community relations for the site. Ecology shall allow the City to review fact sheets, press releases, and public notices, and accommodate where possible the City's concerns prior to release of such information. These documents will be submitted to the City for review one week prior to their release.

In the event of disagreement over the contents of any document prepared by Ecology for the purposes of community relations, Ecology shall make the final decision about its content.

8. Retention of Records. The City shall retain in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in their possession generated pursuant to this Order. Should any portion of the work performed hereunder be undertaken by contractors or agents of the City, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

9. Reservation of Rights. Ecology reserves all rights to issue additional orders or take any action authorized by law in the event or upon the discovery of a release or threatened release of hazardous substances not addressed by this Order and/or upon discovery of any factors not known at the time of issuance of this Order or in order to abate an emergency.

This Agreed Order is not a settlement under the MTCA. 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 reserves the right to take any enforcement action it deems necessary, in addition to this Order, to address the release of hazardous substances at the Everett Tire Fire site, Provided, that Ecology will not sue or take any additional enforcement action to require the City to conduct the remedial action specified in the Agreed Order so long as the City complies with the provisions of the Order. In addition, Ecology will not bring an action to recover remedial action costs received under this Agreed Order. This Agreed Order shall not be construed to waive the City's right to bring an action for contribution or to recover costs under the MTCA or any other act against any other party.

10. Endangerment. In the event Ecology determines or concurs in a determination by another local, state, or federal agency that activities implementing or in noncompliance with this Order, or any other circumstances or activities, are creating or

have the potential to create a danger to the health or welfare of the people on the site or in the surrounding area or to the environment, Ecology may order the City to stop further implementation of this Order for such period of time as it deems necessary to abate the danger. In the event that Ecology issues such an order, all deadlines under this Consent Order are suspended and time periods shall be extended for such periods of time as Ecology determines is reasonable.

11. Transference of Property. No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the site shall be consummated by the PLPs 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 transfer of any legal or equitable interest that the City may have in the property, or any portion thereof, the City shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, the City shall notify Ecology of said contemplated transfer.

12. Compliance With Other Applicable Laws. All actions carried out by the City pursuant to this Order shall be done in accordance with all applicable federal, state, and local

requirements, including requirements to obtain necessary state or local permits.

13. Amendments. Any changes in the work plan, health and safety plan, or quality assurance/quality control plan governing this work shall be documented in writing and approved by Ecology. Initial proposals by the City of any changes to these plans may be done either verbally or in writing. Proposals for changes must include justification for the proposed change or schedule extension. If initial contact is verbal, both the City's request and Ecology's approval or disapproval must be documented in writing. If the City contends that a force majeure event requires an extension or modification of the work plan or schedule, they shall notify Ecology orally within 72 hours from when they have knowledge of the alleged force majeure event. Such oral notification shall be followed with written notification within seven days. The written notification shall describe the alleged force majeure event and the necessary extension or modification of the work plan or schedule. Ecology shall approve or disapprove of the requested modification or extension of the work plan or schedule within 10 days of its receipt of the written notification.

VI.

ENFORCEMENT

1. In the event the City refuses, without sufficient cause, to comply with any term of this Order, this Order may be enforced as follows:

a. The Attorney General may bring an action to enforce this Order in state or federal court.

b. In any such action, the City may be liable for up to three times the amount of any costs incurred by the State of Washington as a result of the City's refusal to comply with this order without sufficient cause.

c. Additionally, in any such action, the City may be liable for civil penalties of up to \$25,000 per day for each day the City refuses to comply.

d. Should Ecology conduct or provide for conducting the remedial action, the Attorney General will, if necessary, bring an action to recover all costs incurred by the state for such action. Nothing in this agreement shall prevent the Attorney General from bringing such an action against PLPs other than the City who are not signatories to this Order.

e. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided for at Section 6 of the Act.

Effective date of Order: FEB 15, 1990

Dated this 5 day of FEBRUARY 1990

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Lee M. Donigan  
for the State of Washington  
Department of Ecology

Bruce Jones  
Bruce Jones, City Attorney  
City of Everett