

M A P #2, LLC

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March 28, 2017

Mr. David L. South
Cleanup Project Manager
Toxics Cleanup Program
Department of Ecology
3190 – 160th Avenue SE
Bellevue, WA 98008-5452

Re: Weyerhaeuser Everett Mill E Site-- Preliminary Determination of Liability

Dear Mr. South:

This responds to your January 27, 2017 letter, in which you set forth the Department of Ecology's ("Ecology") proposed finding of liability for M.A.P. #2 LLC ("M.A.P. 2") at the Weyerhaeuser Everett Mill E Site ("Mill E Site"), in Everett, Washington. We urge you to carefully revisit your preliminary conclusions and find that M.A.P. 2 is not liable under the Model Toxics Control Act, RCW 70.105D ("MTCA"), for issues outside the scope of the 1998 Consent Decree for the Site.

We have had an opportunity to review Weyerhaeuser's response to your January 27, 2017 letter to Weyerhaeuser proposing a finding of liability ("Weyerhaeuser Response"). In particular, we concur with Weyerhaeuser's detailed conclusions regarding liability for discharges from Unknown Outfall LLO-07 ("Outfall LLO-07"). There is no credible evidence to support a finding of potential liability for M.A.P. 2 or Weyerhaeuser for discharges from this outfall under RCW 70.105D.040 or WAC 173-340-500.

We note that no action or inaction on the part of M.A.P. 2 has, or is alleged to have, resulted in a release or threatened release of hazardous substances at the Mill E Site. The sole basis for M.A.P. 2's proposed liability is its current ownership interest in the property that comprises the Site. Nevertheless, M.A.P. 2 has cooperated with Weyerhaeuser to ensure that the terms of the Consent Decree are fulfilled and will continue to do so. Our cooperation also extends to work that Weyerhaeuser agrees to perform to address issues associated with groundwater at the Site, specifically elevated arsenic in the area of the Site outside the barrier wall and outside the scope of the Consent Decree.

M.A.P. 2's willingness to cooperate should not, however, be misconstrued as an acknowledgement of liability for releases from Outfall LLO-07. As set forth in the Weyerhaeuser Response, Ecology has not provided credible evidence that discharges from this unknown outfall constitute releases of hazardous substances from the Mill E Site, as it must do under MTCA. To the contrary, the evidence establishes that the discharges from Outfall LLO-07 are not releases (or threatened releases) of hazardous substances from the property owned by M.A.P. 2 that comprises the Mill E Site. There is no evidence to link elevated concentrations of arsenic and mercury in river sediment directly below Outfall LLO-07 to M.A.P. 2's property or its operations on that property.

As Weyerhaeuser notes, discharge from Outfall LLO-07 does not by itself constitute a release of hazardous substances from the Site. This data is evidence that arsenic is discharging from Outfall LLO-07 into the Snohomish River, but provides no evidence that the arsenic has been or is being released from the Site. M.A.P. 2 has worked closely with Weyerhaeuser and its environmental consultants at Floyd|Snider to investigate the pipe leading to Outfall LLO-07, which traverses the Mill E Site. This investigation demonstrates that the discharge from the outfall does not originate on the Mill E Site.

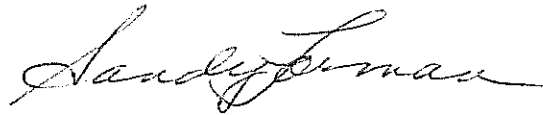
No credible evidence exists to support the conclusion that the Mill E Site is the source of elevated arsenic in discharge or sediment, which may have resulted from discharge at Outfall LLO-07. On the contrary, all of the evidence compiled to date suggests that the discharge from this outfall originates off of the Mill E Site. Notwithstanding the difficult soil conditions encountered at the Mill E Site during the winter months, Floyd|Snider was able to establish that the pipe leading to Outfall LLO-07 extends to within forty feet of the Mill E Site boundary, and concluded that the pipe may originate as much as nine hundred feet upstream from the outfall and six hundred feet beyond the Mill E Site boundary. The only reasonable explanation for the obstruction encountered short of that distance is a buildup of sediment and woody debris carried into the pipe by tidal activity. Moreover, the pipe size and outfall volume suggest drainage of an area far larger than the soil cap area at the Mill E Site. There is no evidence that the pipe serves as a stormwater discharge for the Mill E Site, and there is no indication that the pipe has been damaged. The pipe remains intact as it traverses the site.

The additional data that Ecology relies on for its proposed finding of liability is equally unpersuasive. As Weyerhaeuser has accurately recounted, this entire area of Everett is impacted by arsenic released from the former Everett Smelter. Concerns related to those arsenic releases have appropriately been the focus of Ecology's past cleanup efforts in this area. The only credible evidence suggests that the elevated arsenic measured in the discharge from Outfall LLO-07 and in sediment below the outfall is associated with the smelter or other off-site activities, not the Mill E Site. For the reasons set forth in the Weyerhaeuser Response, it is apparent that the twenty-five year old sediment and seep data from the Mill E Remedial Investigation is not representative of current site conditions and not germane to contemporary discharges from Outfall LLO-07. The 1995 Phase III sediment data shows that arsenic concentrations were substantially lower than in 1992, and the Ecology-approved remedy has reduced, and is expected to continue to reduce, levels of arsenic in sediment adjacent to the Mill E Site.

M.A.P. 2 is committed to its obligations as a property owner under MTCA and its implementing regulations. It is prepared to fully cooperate with Ecology and Weyerhaeuser to address Ecology's concerns about Site conditions. M.A.P. 2 nevertheless urges Ecology to revisit its proposed finding of liability set forth in its January 27, 2017 letter, particularly as it pertains to Outfall LLO-07 and related discharges to the Snohomish River. There is no credible evidence that hazardous substances in the discharge from Outfall LLO-07 and in the sediments below and adjacent to Outfall LLO-07 are the result of releases from the Mill E Site. In fact, the evidence amassed by Weyerhaeuser and M.A.P. 2 to date supports the opposite conclusion.

Please contact me if you have any questions or would like to discuss this matter further.

Sincerely,

A handwritten signature in cursive script that reads "Sandy Forman". The signature is written in black ink and is positioned centrally below the word "Sincerely,".

Sandy Forman