



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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November 19, 2018

Carol Wiseman, Remediation Project Manager
Weyerhaeuser Company
220 Occidental Ave South
Seattle, WA 98104

Re: Final Determination of Liability for Release of Hazardous Substances at the following Contaminated Site:

- **Site Name:** Weyerhaeuser Everett Mill E
- **Site Address:** 515 E. Marine View Dr., Everett, Washington
- **Cleanup Site ID:** 2903
- **Facility/Site ID:** 12
- **Snohomish County Parcel #'s:** 29051600200500

Dear Carol Wiseman:

On January 27, 2017, the Department of Ecology (Ecology) sent you written notice of our preliminary determination that Weyerhaeuser Company (Weyerhaeuser) is a potentially liable person (PLP) for a release of hazardous substances at the Weyerhaeuser Everett Mill E facility (Site). On March 28, 2017, Ecology received your written notice conditionally accepting your status as a PLP for the Site and conditionally indicating your willingness to negotiate an Agreed Order.

Based on available information, Ecology finds that credible evidence exists that Weyerhaeuser is liable for a release of hazardous substances at the Site. On the basis of this finding, Ecology has determined that Weyerhaeuser is a PLP with regard to the Site.

Your March 28 letter outlines certain limitations on your acceptance of PLP status and your willingness to enter into an Agreed Order. Specifically, you reject potential liability associated with any releases from Outfall LLO-07 and its associated piping. To be clear, Ecology's preliminary determination letter did not propose a specific "finding of liability" based on "credible evidence" with respect to this outfall, nor has Ecology separately delineated potential releases from this outfall (which is located within the currently-designated Weyerhaeuser Everett Mill E Site) as a distinct "site." Rather, Ecology has outlined credible evidence of releases to soil and groundwater associated with historic activity at the broader Weyerhaeuser Everett Mill E Site, for which liability was not fully resolved in the 1998 Consent Decree (#98-2-08718-6).



Given the location of the Site, the nature of hazardous substances known to have been used and released to soil and groundwater at the Site, and the known hydraulic connectivity between groundwater at the Site and the Snohomish River—all as specified in Ecology's preliminary determination letter and the references cited therein—the nature and extent of these releases and potential releases must be further investigated, including the potential for sediment contamination stemming from the releases. *See* WAC 173-340-350(7)(c)(iii)(A). This is the case irrespective of Outfall LLO-07 and the sampling data you attribute solely to releases from that outfall.

On this point, Weyerhaeuser's August 20 correspondence states:

The highest concentrations of arsenic in this location [outside the barrier wall and the closest existing piezometer PZ-2B to Outfall LLO-07] is 108 micrograms per liter. The highest concentrations of arsenic in groundwater at the Site anywhere (approximately 400 micrograms per liter) are located within the barrier wall.

Because arsenic concentrations in water conveyed by the storm water pipe leading to Outfall LLO-07 have been measured at 542 micrograms per liter (2013 sampling), Weyerhaeuser infers that lesser-contaminated groundwater at the Site could not have led to the elevated arsenic concentrations in sediment sampled adjacent to Outfall LLO-07. Weyerhaeuser's August 20 correspondence, however, showed that the closest groundwater sample to the outfall was taken in 1992, outside the barrier wall, at location HC-9. Figure 1 was subsequently corrected after Ecology pointed out an error in unit conversion. The corrected 1992 HC-9 groundwater arsenic concentration is 6,220 micrograms per liter, which is substantially higher than both the in-pipe and groundwater concentrations used to support Weyerhaeuser's inference that groundwater concentrations did not have the potential to impact sediment. The correspondence and figures were revised again on October 18, 2018, when Ecology pointed out that many of the sample locations were in error. The correct 1992 HC-9 groundwater sample location is inside the barrier wall, but the wall was not constructed until 1999. There were other groundwater samples taken in 1992 and 1993 at locations outside the barrier wall location and closer to the storm water pipe. These samples also had sufficiently high arsenic concentrations to potentially impact storm water and sediments; i.e., HC-3 (1250 micrograms per liter), MW-32 (818 micrograms per liter), HC-14 (417 micrograms per liter). There is still arsenic contaminated soil beneath a thin (approx. 12" thick) permeable "soil cap" (Consent Decree #98-2-08718-6, Exhibit C) on the area located outside of the barrier wall, near the storm water pipe (SB-3; 121 milligrams per kilogram @ 7.2') and adjacent to the shoreline (MW-32; 125 milligrams per kilogram @ 6'). For these reasons, additional soil and groundwater sampling is needed.

Figure 3 of the revised correspondence shows that subsurface sediments have not been adequately investigated since 1992, when arsenic was found at 426 milligrams per kilograms @ 30 cm and at 239 milligrams per kilogram @ 58 cm in sample SR-05. This sample was located near Outfall LLO-07, but the 1) unknown depth of contamination, 2) lack of any nearby subsurface sediment samples to define areal extent, and 3) potential groundwater pathway originating from the contaminated soils in the area, suggests there are multiple potential sources for sediment contamination that need further investigation at this Site.

As you are aware, liability under the Model Toxics Control Act (MTCA) is strict, joint and several (RCW 70.105D.040(2)). Even if one accepts Weyerhaeuser's position that any releases originating from Outfall LLO-07 are attributable to a distinct, off-property source, there is not a sufficient basis at this point to distinguish liability for releases from that specific outfall from liability for other releases within the broader Site in which the outfall is located. Put another way, there is insufficient information from the Site to provide any kind of conclusive, quantitative determination that sediment contamination adjacent to the outfall is not coextensive with other contamination stemming from the Site.

The purpose of MTCA is to identify, investigate, and cleanup facilities where hazardous substances have been released. Ecology ensures that contaminated sites are investigated and cleaned up to the standards set forth in the MTCA statute and regulations. Ecology has determined that it is in the public interest for remedial actions to take place at this Site. Ecology will contact you regarding the actions necessary for the Weyerhaeuser Company to bring about the prompt and thorough cleanup of hazardous substances at this Site. Failure to cooperate with Ecology or comply with MTCA in this matter will result in Ecology employing enforcement tools as it deems necessary and appropriate. This includes, but is not limited to, the issuance of an administrative order. Failure to comply with such an order may result in a fine of up to \$25,000 per day and liability for up to three times the costs incurred by the state (RCW 70.105D.050(1)).

Your rights and responsibilities as a PLP are outlined in Chapter 70.105D RCW, and Chapters 173-340 and 173-204 WAC. Ecology's cleanup project manager for the Site, Ronald W. Timm, will contact you with information about how Ecology intends to proceed with the cleanup.

If you have any questions regarding this notice, please contact Ronald Timm at (425) 649-7185 or ronald.timm@ecy.wa.gov.

Sincerely,



Robert W. Warren
Section Manager
Toxics Cleanup Program, NWRO

By certified mail: 9171 9690 0935 0204 6835 56

cc: Michael Dunning, Perkins Coie
Andy Fitz, Office of the Attorney General
Ecology Site File