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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF CRIMINAL INVESTIGATIONS

REPORT OF INVESTIGATION

1. TITLE	2. CONTROL NUMBER
Marine Power & Equipment (MPE)	85-X-4-1 35X
3. PERIOD COVERED	**4. REPORTING OFFICE**
	Seattle 5/4/87

SYNOPSIS:

Case Closure

On 4/10/87 Richard Woeck (President), Peter Woeck (Vice-president), Lloyd Anderson (Vice-president) and Marine Power & Equipment Inc. were sentenced in federal court. Sentences were imposed as follows:

Marine Power & Equipment: $200,000 fine and 3 years probation.
Richard Woeck: 1 year in prison, $5000 fine and 3 years probation
Peter Woeck: 1 year in prison, $3000 fine and 3 year probation
Lloyd Anderson: 1 year in prison, $1000 fine and 3 years probation

In each case all but five days of the prison term were suspended. The fines imposed can be reduced on a dollar per dollar basis based on contributions by the defendants to environmental projects. Each individual defendant was also ordered to perform 300 hours of community service in environmentally related projects.

Several thousand evidentiary documents seized or subpoenaed from MPE facilities remain in the custody of the U.S. Attorney. Those items will be returned to the defendants after the papers have been sorted and cleared for release by the Justice Dept.

This investigation is closed. Civil action by Region 10 is expected to proceed with possible consent decrees seeking cleanup of Lake Union and the Duwamish River by MPE near their facilities.

Result Code: 3-PB

USEPA SF
1345247

REPORT MADE BY	DATE
S/A Ken Purdy Kenneth E. Purdy	5-5-87
REVIEWING OFFICIAL	**DATE**
SAIC Dixon McClary D. McClary	5-5-87

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EPA Form 2720-9 (Rev. 3-84) U. S. GOVERNMENT PRINTING OFFICE-1984-439-414/7281 ORIGINATING OFFICE

U. D STATES ENVIRONMENTAL PROTECTION AG Y
OFFICE OF LEGAL AND ENFORCEMENT COUNSEL

REPORT OF INVESTIGATION

1. OFFICE OF ORIGIN	2. REPORTING OFFICE	3. CONTROL NUMBER
Seattle Area Office	Seattle Area Office	85-X-4-1 #13
4. INVESTIGATION MADE AT/PERIOD COVERED		5. SYSTEMS ID NUMBER
6. INVESTIGATION MADE BY		7. TITLE
S/A Daryl McClary		Marine Power & Equipment (MPE)

SYNOPSIS:

Reference is made to ROI 85-X-4-1 #12 dated 3/20/85 by S/A Commodore Mann. The report details the execution of a federal criminal search warrant on 2/25/85 at the Marine Power and Equipment (MPE) facility located on Fox Ave. During the execution of that warrant, S/A Dixon E. McClary took numerous photographs and slides of the facility and its dry docks between 3:00 and 5:00 PM. These films have been designated Rolls 59 thru 70 inclusive.

Shortly after 5:00 PM, EPA scuba divers were working at the southeast side of slip 3. The divers were working between a Marine Logistics Corp (MLC) barge and the dock. EPA divers Michael Motta, Andy Hess, and Lyn Frandsen were present along with EPA technician James B. Hileman. Nearby were S/A's William Smith and Dixon McClary. At that time, Peter Woeck, Jr. approached S/A's Smith and McClary to inquire if the divers were finished. S/A McClary responded that the divers were not finished and that they had one or two dives remaining. Woeck continued that he wanted to know when the divers would be finished so that he could have the above referenced barge (MLC263) moved. Woeck continued that he was having the barge moved because he was "going to bring the dry dock around the corner." S/A McClary asked when Woeck intended to have the dry dock moved. Woeck replied that the dry dock was going to be "out at 6 and back at 12." S/A McClary advised Woeck that the EPA divers would be finished at that location by close of business on 2/25.

On Tuesday, February 26, 1985, at about 10:30 AM, S/A Daryl C. McClary and James B. Hileman observed the tugboats Goodnews Bay and Hooper Bay tow the Naval vessel U.S.S. Narragansett up the Duwamish waterway under the First Ave. South Bridge back to the MPE facility. The vessel was docked on the west side of the MPE facility, south of the table dock. Hileman and S/A Daryl McClary boarded the EPA vessel Monarch with EPA divers Mike Motta, Andy Hess, and Chuck Morgan and proceeded north on the Duwamish waterway to an area approximately 1/2 mile north of the First Ave. South Bridge. There, at about 10:45 AM, the floating dry dock marked "D7" on the outside walls was moored. At this time the floating dry dock was still partially submerged. The deck of the floating dry dock was not visible.

The EPA vessel Monarch remained in the immediate vicinity to observe the dry dock being refloated. As the refloating process continued, the EPA vessel Monarch was positioned approximately 2 feet off of the north end of the dry dock. At this time, S/A McClary observed large amounts of water running off the deck of the dry dock which appeared dirty. The water flowing by the EPA vessel Monarch appeared oily and spots of black sandblasting debris were visible floating on top of the water. As the deck of the floating dry dock

DISTRIBUTION	REPORT MADE BY	DATE
ORIGINAL — Orig. Ofc. 1st CC — Headquarters 2d CC — 3d CC —	DDMcClary S/A Daryl McClary, SAIC	2/28/85
	REVIEWING OFFICIAL	DATE

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became more visible, S/A McClary observed large quantities of sandblasting debris spread over most of the deck surface, the major concentration being in the middle of the deck and along the inside walls. The ends of the dry dock deck appeared relatively washed of sandblasting debris in comparison. EPA diver Andy Hess obtained a sample from the river bottom off the north end of the dry dock with a scoop. EPA vessel Monarch manuevered to the south end of the floating dry dock and continued to observe the refloating activity. EPA diver Hess obtained the river bottom sample from the south end of the floating dry dock with a scoop. At about 11:30 AM, the refloating activity of the floating dry dock appeared to be accomplished. At this time EPA vessel Monarch left surveillance of the dry dock and returned to the vicinity of Marine Power & Equipment.

At about 12:00 noon, S/A Daryl McClary observed the tugboat Hooper Bay arrive at the MPE facility on the Duwamish waterway. Information was received from the crew of the tugboat that the movement of floating dry dock back to the MPE facility was scheduled for about 3:00 PM. At about 2:30 PM, S/A McClary observed the tugboat Hooper Bay depart the MPE facility and proceed north on the Duwamish waterway under the First Ave. S. Bridge.

During this time S/A's Daryl McClary, Dixon McClary, and Commodore Mann conversed with Frank Hanson, MPE yard superintendent. In answer to questions, Hanson stated that he worked at MPE in 1980 when the table dock merely consisted of a number of parallel I-beams. The numerous metal plates with 2" diameter holes were added at a later time. Before adding the metal plates, the table dock was used solely for ship construction and not for ship repair or sandblasting. S/A Dixon McClary asked Hanson who designated where the liquid in the tanks of certain barges was pumped. Hanson replied that he specified where the tanks were pumped. S/A Dixon McClary asked Hanson to explain further. Hanson replied by asking if he had to comment. S/A Dixon McClary responded in the negative. Hanson replied that he would rather not comment. Hanson added "it was clear water as far as I knew."

Hanson stated that he was the yard superintendent and was in charge of the Fox Ave. MPE facility in the absence of Peter Woeck, Jr. and Doc Church. Hanson identified the three other MPE superintendents as Bill Brady, Frank Brady, and Paul Evanger. Hanson stated that Evanger was a short man and that he had been working nights recently (Evanger fits the physical description of the supervisor who observed the liquid discharging from ZB190). Hanson further identified Tipp Thelen as the dry dock foreman (Thelen drives a Dodge Colt bearing WA License GRL477).

At about 3:28 PM, the Hooper Bay was observed proceeding south on the Duwamish waterway with the floating dry dock D7 in tow assisted by the tugboat Goodnews Bay. At about 3:35 PM, the floating dry dock had passed under the First Ave. S. Bridge. At about 4:30 PM, the floating dry dock was secured at the MPE facility at Slip #3 facing east to west. At this time, yard superintendent, Ralph Hanson, approached S/A Daryl C. McClary and S/A Dixon E. McClary and remarked "that looks kind of incriminating doesn't it."

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CONTINUED:

At about 4:35 PM, S/A Dixon McClary accompanied by S/A Daryl McClary boarded the floating dry dock D7 and proceeded to inspect the deck area. They observed large amounts of sandblasting debris and pools of water covering most of the deck area. Some of the standing water appeared brown with scum and some of the water had an oil sheen. Almost none of the light colored paint debris previously observed on Monday, 2/25/85, by S/A Dixon McClary was present at this time. Also much of the sandblasting debris which had been on deck in large 2 foot to 3 foot piles appeared to have been vastly diminished by the Duwamish River hydraulic activity although there were still heavy accumulations of sandblasting debris observable on the deck in depths from about 1 inch up to piles approximately 2 feet deep. At this time, the deck area of floating dry dock was photographed for evidence. (Photographs have been designated Rolls 71 thru 78).

At about 5:00 PM, S/A's Dixon E. McClary and Daryl C. McClary exited the floating dry dock. At that time S/A Dixon McClary spoke to a scuba diver working for MPE and employed by CH_2M Hill. The diver stated that he had, among other things, just taken water samples from the MPE drains. This diver drove a vehicle bearing WA license GSJ321. At 5:25 PM, S/A Dixon E. McClary and Daryl C. McClary departed the MPE facility and returned to the Seattle Area Office.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. MARINE POWER AND EQUIPMENT, INC., and WFI INDUSTRIES, INC., Defendants.	No. C85-382 ORDER

The Court, ~~having found that the discharges of spent sandblasting abrasives, paint chips, metals and others from the defendants' dry dock facilities into the Duwamish River and Lake Union constitute unpermitted discharges into navigable waters of the United States in violation of~~ pursuant to Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and the Refuse Act, 33 U.S.C. § 407, and by agreement of the parties, hereby

ORDERS that defendants; ~~are hereby:~~

1. are Temporarily restrained ~~preliminarily enjoined~~ from discharging without a permit into the Duwamish River and Lake Union spent abrasives used for sandblasting, chipped paint, rust and other debris from: (1) their two dry docks located on the

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
ATTEST: BRUCE RIFKIN
Clerk, U. S. District Court
Western District of Washington
By _____ Deputy Clerk

UNITED STATES ATTORNEY
3600 Seafirst Fifth Avenue Plaza
Seattle, WA 98104
(206) 442-7970

Duwamish River just South of the First Avenue South Bridge in Seattle, Washington; and (2) its dry docks on Lake Union located at 1441 North Northlake Way, Seattle, Washington; and

2. are required to conduct all of their operations at the above-described dry dock facilities in compliance with the provisions of the Clean Water Act, 33 U.S.C. §§ 1251, et seq., and the Refuse Act, 33 U.S.C. § 407.

The provisions of this order shall remain in effect until the 8th day of April, 1985, or until the defendants obtain the necessary permits and demonstrate compliance with those permits to the satisfaction of the United States Environmental Protection Agency and the Washington Department of Ecology.

DATED this 8th day of March, 1985.

Barbara J. Rothstein
UNITED STATES DISTRICT JUDGE

Presented by:

Jackson L. Fox
JACKSON L. FOX
Assistant United States Attorney

James J. Ragen
James J. Ragen
Attorney for Defendants

UNITED STATES ATTORNEY
3600 Seafirst Fifth Avenue Plaza
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(206) 442-7970

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF LEGAL AND ENFORCEMENT COUNSEL

REPORT OF INVESTIGATION

1. OFFICE OF ORIGIN	2. REPORTING OFFICE	3. CONTROL NUMBER
Seattle Area Office	Seattle Area Office	85-X-4-1 #3

4. INVESTIGATION MADE AT/PERIOD COVERED	5. SYSTEMS ID NUMBER

6. INVESTIGATION MADE BY	7. TITLE
S/A Kenneth Purdy	Marine Power & Equipment

SYNOPSIS:

RE: Observations January 16, 1985 through January 21, 1985 - Duwamish

As a result of the initial observations of the MPE facility on January 9-12, 1985 arrangements were made to locate and occupy a fixed surveillance post. Such a post was located on January 16, 1985 whereupon equipment and supplies were assembled. The observation post became operational on January 21, 1985 and permitted the use of videotape and conventional cameras. The observation post was located in a position that enabled the agents to observe the outboard end (water side end) of both the table dock and the dry dock. From an elevation higher than the docks the agents could look down on the surface of the table dock and could see a major part of the MPE facility. The agents also made frequent visits to the parking lot near the shore end of the dry dock for close up observations and photographs of activity inside the dry dock.

On January 16, 1985 S/A Mann observed that sandblasting operations were underway at the dry dock. S/A Mann took several photos of the dry dock and the engulfing cloud of dust (Roll 8, slides 1-22). At approximately 2:30 P.M. on January 16, 1985 S/A Purdy and Hattwig observed this sandblasting operation from the shore side parking lot. Roll 7, photos 8-12 depict the extent and density of the sandblasting dust cloud and provide a comparison (photo 11) with the relative clarity of the air only a few feet away.

On January 21, 1985 S/A Purdy and S/A Mann were present in the observation post at approximately 9:00 A.M. The agents observed for the first time the lowering of the table dock into the river. The agents observed that certain isolated areas of the table dock near its water end appeared to have been cleared in some way, but the major part of the dock was covered with the black debris that had been present since January 10, 1985.

As S/A Purdy watched the initial submerging movements of the dock he observed that several ports in the upstream side of the adjoining pier became exposed. As the dock sank just below the surface of the water S/A Purdy noticed a distinct geyser of water emerging from each of these ports. These geysers produced a flow of water from each of these ports across the surface of the dock. This flow became less evident as the dock sank deeper into the water. The submergence of this dock is depicted in Roll 7, photos 13-24 and Roll 9, slides 1-4. In particular, slides 3 and 4 demonstrate the geyser action from the ports.

DISTRIBUTION	REPORT MADE BY	DATE
ORIGINAL – Orig. Ofc. 1st CC – Headquarters 2d CC – 3d CC –	S/A Kenneth Purdy	3/6/85
	REVIEWING OFFICIAL SAIC Dixon McCrary, Criminal Investigations	DATE 3/6/85

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At approximately 9:30 A.M. a tug boat, identified as MPE 105, removed the barge from the submerged table dock. (Roll 9, slides 5-22.) As soon as the barge cleared the area of the table dock, the dock began to surface. The dock surfaced from the river after approximately 20 minutes and S/A Purdy observed rows of indentations of some kind transversing the dock at regular intervals throughout its length. Those indentations are depicted on Roll 10, slide 3 and 4. He also observed that the debris previously noticed appeared to be spread over the dock in a rippled fashion. Piles of such debris could be seen along with puddles of water. (Roll 10, slides 5-13.) Those puddles of water dissipated from the surface within a few minutes of emergence. The direction or method of dispersion was not detectable.

S/A Mann continued to observe activities at the dry dock. After the dock surfaced he saw people using a fork lift to reposition the concrete blocks on the surface of the table dock. This activity caused noticeable tracks and depressions in the accumulated debris on the dock (Roll 10, slides 14 and 15). S/A Mann saw no efforts to remove any of the debris from the surface of the dock during this period when the dock was unencumbered and accessible.

At approximately 1:45 P.M. on January 21, 1985 S/A Mann observed that the table dock was again submerging. He again observed the geysers and flowing of water from the pier ports across the dock surface. That activity is depicted in Roll 10, slides 17-22.

At approximately 2:00 P.M. on January 21, 1985 after the dock was completely submerged and the water surface had an opportunity to becalm itself, S/A Mann observed a brown scum form on the water over the top of the submerged dock. S/A Mann noticed that the rising tide appeared to hold the material within the confines of the submerged dock and under the adjacent piers. (See Roll 11, slides 1-9 and #15.)

On that afternoon at approximately 2:20 P.M. a tug boat, identified as "The Wasp" manuevered a large blue barge, subsequently determined to be the "Ultra Processor" to be raised on the table dock. The tug moved the barge over the submerged table dock area and at 3:00 P.M. detached itself from the barge leaving the barge in position over the table dock.

As the dock began to rise from the water S/A Mann observed the reappearance of the brown scum that he had seen earlier. The scum began to move out from the dock area and into the eddying currents between the table dock and the shore north of MPE. S/A Mann estimated that the discoloration was 30 to 40 yards long and 10 to 15 yards wide. S/A Mann watched as the slick moved from the table dock area to a location close to his observation post. S/A Mann observed that there appeared to be a thick film on the water in which was carried numerous small brown globules of material. This material remained on the water until approximately 4:10 P.M. at which time it was carried away by the receding tide and the current. S/A Mann took several photos of this material on the water. (Roll 12, photos 1-24.)

S/A Purdy and McClary arrived at the observation post at approximately 4:30 P.M. at which time they observed that the table dock had partly surfaced, but

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CONTINUED:

was stopped in its upward progress. The agents observed that workmen were manuevering various lines attached to the barge as if they were attempting to alter its position on the table dock. At approximately 5:15 P.M. a tug, the "Norton Bay" arrived at the table dock, tied up to the Ultra Processor and assisted in the attempt to position it. These efforts were apparently unsuccessful for at 5:35 P.M. the Norton Bay pulled the Ultra Processor from the table dock and moved it upriver where it was tied to the MPE main dock. The empty table dock was then raised as previously described. (Roll 13, photos 1-3 and Roll 14, photos 1-14.) Surveillance on this date was discontinued shortly thereafter.

The events described on January 21, 1985 were videotaped to the extent possible. Those video tapes are identified as tapes 1, 2 and 3. Part of this day's filming is included in the first 31 inches of tape #4.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF LEGAL AND ENFORCEMENT COUNSEL

REPORT OF INVESTIGATION

1. OFFICE OF ORIGIN	2. REPORTING OFFICE	3. CONTROL NUMBER
Seattle Area Office	Seattle Area Office	85-X-4-1 #2

4. INVESTIGATION MADE AT/PERIOD COVERED	5. SYSTEMS ID NUMBER

6. INVESTIGATION MADE BY	7. TITLE
S/A Kenneth Purdy	Marine Power & Equipment

SYNOPSIS:

Observations - January 8, 1985 through January 12, 1985 - Duwamish

On the evening of January 8, 1985, S/A McClary observed that a barge identified by the numbers MLC 260 was in the floating dry dock which was above the surface of the water. No significant activity was observed at that time.

On January 9, 1985 at approximately 9:00 A.M. S/A Purdy, looking from the bridge parking lot across the river from MPE observed that a large black barge was being manuevered into what appeared to be a slip at the MPE dock. Two tug boats were utilized to move the barge. It was later determined that this slip was actually the location of the MPE table dock which was in its submerged position. (See Roll 1, Photo 1)

S/A Purdy moved to the opposite side of the river where he observed that the floating dry dock was afloat and empty of any vessel. S/A Purdy observed what appeared to be a water mark on the side of the dry dock approximately 10 feet above the water's surface. S/A Purdy observed that workmen were busy inside the dry dock. With the assistance of an overhead crane on the adjacent pier those workmen were removing several large concrete blocks, estimated to be 3' x 3' x 3' in size from the dry dock onto the pier. S/A Purdy observed these activities until approximately 10:00 A.M. at which time he left the area.

At approximately 11:45 S/A's McClary and Purdy returned to the MPE facility where they observed that a mechanical shovel, frequently called a "front loader" had been placed into the dry dock. The front loader was white in color with blue trim and bore the markings "40 Rentals", "Bobcat #124" and "Clark 743." The bulldozer was being utilized to push debris into a large pile near the midline of the dry dock about 25 feet from the shore end of the dry dock. The same type of material was observed over most of the visible surface of the dry dock, and other piles of various sizes were observed against the walls and against the remaining concrete blocks. The condition of the dry dock at that time is depicted on Roll #2, slides 10-18.

At 12:50 P.M. S/A's Purdy and McClary observed that the front loader was being used to shovel quantities of this debris, which had the appearance of a black, sandy material, into metal boxes on the deck of the dry dock. These boxes were approximately 3' x 3' x 8' in size and were enclosed on three sides only. The boxes were lifted from the dry dock when full and were transported to a

DISTRIBUTION	REPORT MADE BY	DATE
ORIGINAL – Orig. Ofc. 1st CC – Headquarters 2d CC – 3d CC –	S/A Kenneth Purdy	3/6/85
	REVIEWING OFFICIAL SAIC Dixon McClary, Criminal Investigations	DATE 3/6/85

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location out of the agents' sight somewhere on the main dock. Agents observed that a considerable flow of water dripped form the loaded boxes as they were hoisted through the air by the crane. (See Roll 2, slides 19-22.) After a short time these boxes were returned empty to the dry dock.

S/A Mann, from a position on the First Ave. South Bridge, observed that the metal boxes were lifted to a waiting dump truck into which they were unloaded. S/A Mann observed that after two or three such boxes were emptied into the truck the truck left the pier and was driven out of his sight to a location near the southeast corner of the MPE property. S/A's Mann and McClary later observed that the truck was unloading the material into a pile on the southeast side of the main MPE work building. The truck returned after each trip to receive additional material from the dry dock. (See Roll #1, Photos 2-16, and Roll #4, Slides 1-12.)

S/A Mann also observed that the surface of the dry dock from bow to stern was covered with piles of this debris and that there were piles of standing water inside the dry dock. He also noted that the dry dock was transversed with what appeared to be steel beams which were also covered by debris although their outline was visible to him. (Roll #1, Photos 17-23.)

The agents, including S/A Hattwig, observed these activities until approximately 9:30 P.M. on January 9, 1985. The front loader was used to remove most of the large pile of debris on the east side of the dry dock that had been built up and then it moved from place to place inside the dry dock picking up additional material and placing it in the metal boxes for removal. The agents counted 57 such boxes of material being removed prior to their departure. As the front loader moved further into the dry dock it left behind numerous piles and accumulations of debris. The agents observed that the front loader frequently picked up pieces of metal, sheets of torn plastic and other trash along with the granular material. When the agents left, the front loader had moved perhaps 75 feet into the dry dock from the east side. The agents observed no attempts to shovel up or otherwise remove the debris left behind as the front loader progressed into the dry dock.

On January 10, 1985, at approximately 9:00 A.M. S/A Purdy returned to the MPE facility and observed that the dry dock was again submerged and that a blue barge identified by the name Arctic Star was in the dry dock. S/A Purdy observed a watermark on the dry dock approximately 3 feet from the surface of the water which indicated that the dock had been submerged somewhat deeper earlier in the morning. He also noted that the watermark corresponded to a depth of 10 feet on a depth marker at the bow of the dry dock. (See Roll 4, Slides 14-19.) He also observed that the morning high tide had receded approximately a foot at that time (Roll 5, slide 8.) A sheen was observed on the water between the dry dock and the shore (Roll 5, slide 4). S/A Purdy continued to watch the dry dock until it emerged from the water at approximately 9:55 A.M. (Roll 5, slides 1-21).

As the deck of the dry dock broke the surface of the water S/A Purdy observed a flow of water over the bow of the dry dock. The flow lasted only a brief period. As the deck came into view he observed numerous piles of debris interspersed with puddles of water. The piles appeared to be those that the agent saw on the previous day which were left behind during the removal operation. (Roll 6, Slides 1-3 and 8-15).

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CONTINUED:

S/A's Purdy, Mann and Hattwig left the MPE facility at approximately 10:00 A.M. after the dry dock had surfaced. At the intersection of the access road to MPE and Michigan Street, S/A Hattwig observed a broken bag of sandblasting grit. The bag was identified as a product of "Barnes" Company. A half gallon sample of this grit was obtained and photos were taken of the bag which was also retained (Roll 6, slides 4-7.)

At approximately 2:30 P.M. on January 10, 1985, S/A Purdy and Hattwig returned to the MPE facility. From the parking lot near the bow of the dry dock they observed that workers were present in the dry dock. A lifting platform, commonly called a "cherry picker" was inside the dry dock and men were observed moving hoses about. The agents observed that there was a dusty haze around the dry dock, but could not determine its cause.

The two agents walked up onto the First Ave. South Bridge for better observation of activities in the dry dock. They were unable to observe specific actions, but noticed a brown cloud of dusty material between the barge and the dry dock wall. They also observed that there were piles of debris clearly visible from the water end of the dry dock just as there were from the shore. Those piles appeared to extend the full length and width of the dry dock. (Roll 6, slides 16, 17, and 18.) The two agents walked to the south end of the bridge from which point they could see the southeast portion of the MPE facility. They observed a large pile of debris near the main building on its southeast corner. This pile appeared to be the material that was moved the previous day by the dump truck. (Roll 6, slide 19.) The agents also observed that the black barge which S/A Purdy saw on January 9 was elevated above the water on the table dock. The surface of this dock was covered with a layer of debris similar to that seen in the dry dock although no sandblasting had yet been observed on this dock. It appeared that the debris was already on the dock when it emerged from accepting the black barge. (Roll 6, slide 21.)

On Saturday, January 12, 1985 S/A Purdy returned to the area of MPE at approximately 3:50 P.M. He observed only two vehicles in the company parking lot with very little activity occurring. From the bridge he observed a cloud of dust rising from between the barge and upstream wall of the dry dock as if sandblasting were in process, but he could not see the operation. He also saw one forklift moving about the dock area. It appeared to S/A Purdy that no sandblasting had started on the black barge on the table dock. He also noticed that the pile of debris was still present near the main building. (See Roll 7 Photos 1-7).

Observations at MPE after January 12, 1985 will be the subject of additional reports.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF CRIMINAL INVESTIGATIONS

REPORT OF INVESTIGATION

1. TITLE	2. CONTROL NUMBER
Marine Power and Equipment (MPE)	85-X-4-1 #26
3. PERIOD COVERED	4. REPORTING OFFICE
	Seattle

SYNOPSIS:

Conversation with Zidell, Inc.

On May 9, 1985, S/A Purdy spoke by phone with Mr. Bill Goble, the Chief Engineer for Zidell, Inc. of Portland, OR. Mr. Goble is the person responsible for preparing the work order for repairs on Zidell Barge #ZB-190. Those repairs were accomplished by MPE in late February 1985 at the MPE Duwamish River facility. As reported in ROI 85-X-4-1 #10 a liquid material was pumped from ZB-190 into the Duwamish River on the night of February 13, 1985.

S/A Purdy asked Mr. Goble what the liquid material consisted of and what the previous cargo of the barge might have been. Mr. Goble replied that ZB-190 is strictly a deck cargo barge and does not carry any cargo in its tanks. He stated that the work order was issued to clean out the water that had accumulated in the tanks through leakage through open hatches, etc. As far as he knows there was nothing other than water in the tanks.

Mr. Goble further explained that ZB-190 contains 10 water tight compartments within its structure. He stated that these tanks are flotation tanks only and are not designed to accommodate ballast or to take any kind of cargo. He stated that the hatch covers that the agents had observed on the deck of the barge are for the purpose of entry of personnel for inspections and repair. Mr. Goble further stated that barge #ZB-190 is used only for inland traffic although it may occasionally go into harbors such as Puget Sound. In that respect he felt that the water that was inside the compartments would have been fresh water rather than ocean water.

S/A Purdy inquired as to why the liquid observed being pumped from the barge was discolored. Mr. Goble said he was unable to specifically say what happened in this case, however, the color of the water coming out of the pump would depend upon the depth to which the tanks were being emptied. He explained that the water in the tank at the surface levels would probably be clean but as it was pumped further and further toward the bottom of the tank picking up sediments and so on it might well become darker. He stated that in this case the customer to whom Zidell intended to lease the barge had requested that these tanks be thoroughly dried out prior to delivery of the barge. They were, therefore, pumped to the bottom.

REPORT MADE BY	DATE
S/A Kenneth Purdy Kenneth Purdy	5/13/85
REVIEWING OFFICIAL	DATE
SAIC Dixon McClary D. McClary	5/13/85

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EPA Form 2720-9 (Rev. 3-84) U. S. GOVERNMENT PRINTING OFFICE-1984-439-414/7281 ORIGINATING OFFICE

UNITE TATES ENVIRONMENTAL PROTECTION AGENC
Oi E OF LEGAL AND ENFORCEMENT COUNSEL

REPORT OF INVESTIGATION

1. OFFICE OF ORIGIN	2. REPORTING OFFICE	3. CONTROL NUMBER
Seattle Area Office	Seattle Area Office	85-X-4-1 #24
4. INVESTIGATION MADE AT/PERIOD COVERED		5. SYSTEMS ID NUMBER
6. INVESTIGATION MADE BY		7. TITLE
S/A Kenneth Purdy		Marine Power & Equipment

SYNOPSIS:

Re: Referral for Collateral Investigation

On February 6, 1985 the U.S. Naval vessel Narragansett was placed in dry dock #4 at the MPE Duwamish River facility and was subsequently refurbished. On February 26, 1985 the work was completed and the vessel was freed from the dry dock. During the movement of the dry dock on February 26, 1985 S/A Dixon McClary and other agents, who were conducting a search of the facility, observed that the number "D-7" was freshly painted on the dry dock at a location that would have been visible to persons boarding the vessel or viewing it from the MPE facility side. Markings at other locations on the dry dock consisted of the numbers "4" and "AFDL-43" which were observed by the agents consistently for the previous two months.

On February 25, 1985 a person who refused to identify himself called the EPA Public Affairs office to report matters relating to MPE. The caller reported that MPE was deceiving the U.S. Navy by placing the Narragansett in Dry Dock 4 when it should be in dry dock 7.

S/A Purdy reviewed documents obtained from the MPE search warrants and concluded that dry dock #4 has not received proper certification for use in Navy contracts. Dock #7, commonly called the syncrolift, has been so certified. In view of the possibility that the contract for the repair of the Narragansett was obtained using documentation for dry dock 7 and that dry dock 4 was deliberately re-identified to mislead Navy inspectors during the overhaul this situation may represent a fraud against the government as well as false statements to a federal agency.

In March 1985, S/A Purdy discussed this situation with S/A Scott Reedal of the Defense Criminal Investigative Service. S/A Reedal expressed his interest in investigating this matter. On April 3, 1985 S/A Purdy met with S/A Reedal and S/A Fujii of the U.S. Naval Investigative Service and provided background information relating to this case. S/A Reedal and Fujii, in cooperation with S/A Purdy, will jointly pursue the investigation of this contract and will report their findings to the Seattle Area Office.

Since this allegation was not included in the referral papers provided to the U.S. Attorney in Seattle, S/A McClary and Purdy discussed with AUSA David Marshall the potential for criminal charges relating to contract fraud. AUSA Marshall desires that this aspect of the case be investigated and reported to him.

DISTRIBUTION	REPORT MADE BY	DATE
ORIGINAL – Orig. Ofc. 1st CC – Headquarters 2d CC – 3d CC –	S/A Kenneth Purdy	4/10/85
	REVIEWING OFFICIAL	DATE
	SAIC Dixon McClary, Criminal Investigations	4/15/85

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF LEGAL AND ENFORCEMENT COUNSEL

REPORT OF INVESTIGATION

1. OFFICE OF ORIGIN	2. REPORTING OFFICE	3. CONTROL NUMBER
Seattle Area Office	Seattle Area Office	85-X-4-1 #21

4. INVESTIGATION MADE AT/PERIOD COVERED	5. SYSTEMS ID NUMBER

6. INVESTIGATION MADE BY	7. TITLE
S/A Gerd Hattwig	Marine Power & Equipment

SYNOPSIS:

Mr. Kermbach stated he worked for Marine Power & Equipment (MPE) as a boilermaker for a period of about three months starting on 2/17/84. He was laid off due to lack of work and worked at the MPE shipbuilding yard on Fox Ave. He worked on one of the two large barges which were at that time under construction at that yard for the firm Seaway Express, a subsidiary of MPE.

During his employment with MPE he observed employees of MPE on three occasions, he recalls, driving a little skiploader to the end of the table dock and dumping the sand and paint chips left over after sandblasting into the Duwamish waterway. Further he recalls the deck of the dry dock being hosed off with a fire hose causing the same type of material to be washed into the Duwamish River.

He observed MPE crews sandblast and spray paint the barge while it was tied up along the eastside of the facility. No efforts were made to contain the sand and/or materials blasted off the hull of this vessel, and similarly paint and paint spray was allowed to run off and drift into the Duwamish River.

Mr. Kermbach estimates that even during times when the debris left over after sandblasting was taken off the dry docks, 30% of the debris ended up in the Duwamish due to the work procedures used by the work crews. He does not know how the debris which was removed from the dry docks was disposed of.

Mr. Kermbach asked to be considered as a confidential source because he fears retaliation from individuals still connected with MPE and has some concerns over his physical safety and well being.

DISTRIBUTION	REPORT MADE BY	DATE
ORIGINAL – Orig. Ofc. 1st CC – Headquarters 2d CC – 3d CC –	S/A Gerd Hattwig Gerd Hattwig	2/26/85
	REVIEWING OFFICIAL SAIC Dixon McClary, Criminal Investigations	DATE 3/20/85

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF CRIMINAL INVESTIGATIONS

REPORT OF INTERVIEW

1. TITLE	2. CONTROL NUMBER
Marine Power & Equipment	85-X-4-1 #20
3. PERSON INTERVIEWED	4. REPORTING OFFICE
	Seattle
5. LOCATION	6. DATE
	2/28/85

On February 28, 1985 S/A Hattwig interviewed an individual who was formerly employed by Marine Power & Equipment (MPE) at their Fox St. shipyard. This person was employed as a welder for about 3 1/2 years prior to the fall of 1984.

During his employment at the shipyard this person observed sandblasting and spray painting by MPE crews over the open water of the Duwamish River on a regular basis. This work was performed on Washington State Ferries and barges constructed or repaired by MPE.

He also observed sandblasting and spray painting on vessels on the syncrolift and in the floating dry dock next to it. He said that the standard operating procedure at MPE for cleaning the syncrolift was to run a backhoe back and forth over the deck scraping off the debris. This scraping caused a large amount of debris to fall through the many holes in the deck of the syncrolift into the Duwamish. This happened so often that he cannot recall how many times he witnessed it. On at least 6 occasions, probably more, he observed workers wash down the deck of the syncrolift with high pressure water hoses, which again caused the debris to enter the Duwamish through the deck holes or over the side of the syncrolift.

He has also worked in the floating dry dock at Fox Street. In this dry dock he has seen sandblasting debris piled up as high as 6 feet; so deep that it was impossible to walk on the deck of this dry dock. He observed workers remove some of this debris from the dry dock by loading it into large metal containers that were lifted out by crane. After these removals, however, there was always debris left on the deck when it was next submerged to load or unload vessels. The debris which was removed was hauled off by an MPE owned dump truck. Some of it was used for fill and much of it was piled up at various locations for later disposal.

This person requested confidentiality because he is fearful of being "blackballed" by MPE which would prevent him from making a living in the shipbuilding industry.

REPORT MADE BY	DATE
S/A Gerd Hattwig	2/29/85
REVIEWING OFFICIAL	DATE
SAIC Dixon McClary, Criminal Investigations	3/19/85

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EPA Form 2720-8 (Rev. 3-84)
U. S. GOVERNMENT PRINTING OFFICE-1984-439-413/7280
ORIGINATING OFFICE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF CRIMINAL INVESTIGATIONS

REPORT OF INTERVIEW

1. TITLE	2. CONTROL NUMBER
Marine Power & Equipment	85-X-4-1 #18
3. PERSON INTERVIEWED	**4. REPORTING OFFICE**
Richard E. Leonard	Seattle
5. LOCATION	**6. DATE**
Kirkland, WA	2/27/85

Mr. Leonard contacted the Seattle Area Office telephonically on 2/26/85 stating he had been employed as a boilermaker for a period of 3 months, starting in January 1984, at Marine Power & Equipment (MPE) and was willing to give testimony regarding the sandblasting and painting procedures he observed.

Mr. Leonard was interviewed on 2/27/85 at his residence by S/A Hattwig. Leonard indicated he worked at both the Lake Union and Fox Street shipyards for MPE. He started at the Lake Union yard from 1/26/84 to 2/7/84. Leonard was then dispatched to the Fox St. location from 2/10/84 to 4/4/84. On April 4, 1984, he was fired by Bob Staggie for refusing to weld at a location where the last person who did the job got hurt.

During his employment with MPE (Fox St.), Leonard worked the swing shift from 4:30 PM to 12:00 midnight, and was the union steward for all the boilermakers on the job during this time. The main jobs being worked on were two large barges being built for Seaway Express, a subsidiary of MPE. The barges were built in two sections and then welded together.

Leonard saw sandblasting and spray painting on these barges right over the waters of the Duwamish. There was no attempt by MPE to limit the sandblasting debris, paint runoff and overspray from entering the Duwamish. He has seen an area in the water from 20 to 30 feet wide and 40 to 50 feet long covered by a paint film. The film was next to a Seaway Express barge during painting operations over the water.

On another occasion Leonard recalled paint fumes and dust being so thick that some of the employees were getting sick from breathing the mixture. Leonard also had a conversation with Bob Staggie, who was in charge at that time, about the situation. Leonard wanted something to be done or he, as the union steward, would pull all boilermakers off the job for health reasons. Leonard also discussed this incident at a later time with the union business agent, Joe Polatto. This discussion took place during the latter part of March 1984.

During various times of his employment Leonard worked on barges being repaired on the syncrolift (table dock). Leonard witnessed the bottom of various barges

REPORT MADE BY	DATE
S/A Gerd Hattwig Gerd Hattwig	2/29/85
REVIEWING OFFICIAL	**DATE**
SAIC Dixon McClary, Criminal Investigator	3/19/85

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EPA Form 2720-8 (Rev. 3-84) U. S. GOVERNMENT PRINTING OFFICE-1984-439-413/7280 ORIGINATING OFFICE

being sandblasted and painted. Once, after one of these jobs, Leonard was present when the syncrolift was cleared by being hosed off with a high pressure fire hose. All the sandblasting and painting debris was washed into the Duwamish.

During 1983 Mr. Leonard also worked for 3 to 4 months at the MPE Lake Union shipyard. During that time Leonard saw sandblasting and painting of ships tied up to the docks. According to Leonard no attempt was made to prevent the debris from entering the water. Leonard also recalled seeing a dead bird floating in the water in close proximity to one of these operations. During this time Leonard was working on "scrapping out" an old Army dry dock.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF LEGAL AND ENFORCEMENT COUNSEL

REPORT OF INVESTIGATION

1. OFFICE OF ORIGIN	2. REPORTING OFFICE	3. CONTROL NUMBER
Seattle Area Office	Seattle Area Office	85-X-4-1 #5

4. INVESTIGATION MADE AT/PERIOD COVERED	5. SYSTEMS ID NUMBER

6. INVESTIGATION MADE BY	7. TITLE
S/A Kenneth Purdy	Marine Power & Equipment

SYNOPSIS:

Execution of a Federal Search Warrant - January 26, 1985

At approximately 12:30 A.M. on the morning of January 26, 1985, based upon affidavit by S/A Ken Purdy, a federal search warrant issued from U.S. Magistrate John Weinberg. The warrant authorized the agents of the EPA to enter upon the table dock and the dry dock at the MPE Duamish River facility and to seize samples of the sandblasting grit or other debris that was deposited on these docks. The warrant authorized service during any time of the day or night. The Magistrate also ordered (orally) that the agents need not leave a copy of the warrant or an inventory of items seized on the premises as is normally required in such warrants, but instead provided that the property owner's copy of the warrant and an inventory of items seized be returned to the Magistrate to be sealed by the court.

At approximately 3:30 A.M. on the morning of January 26, 1985, S/A Purdy, S/A McClary, S/A Mann and S/A Hattwig met in the vicinity of the First Ave. South Bridge for the purpose of executing the search warrant. Upon arrival at the facility it was determined that a work crew was still busily engaged in painting activity on the table docks. The agents remained in the vicinity monitoring activities on the dry docks until approximately 5:00 A.M. on that date at which time the work crew left the dock area. S/A's Hattwig and McClary observed the painters cleaning their paint guns by spraying them into the air prior to leaving the dock. S/A Hattwig confirmed that the vehicles previously in the parking lot left the vicinity and only one person, a nighttime guard, apparently remained at the MPE facility. S/A Hattwig took up a position where he could observe the movements of the guard at the front of the building and S/A Mann assumed a position in the surveillance post where he could monitor activities on the dock in the event that anyone should approach the area where the agents would be working.

At approximately 5:30 A.M. S/A Purdy and McClary launched a small boat from the public boat ramp at the First Ave. South Bridge and rowed across the narrow cove to the end of the dry dock. They then rowed alongside the dry dock to the shore end of the dry dock where they tied up the boat. S/A Purdy entered the dry dock and ran to a point approximately 75 feet inside the dock. He then moved to a position alongside the north wall of the dry dock. From a shelf-like area at the intersection of the dry dock deck and the wall he obtained a one cubitainer sample of a black, gritty, glassy-type material. This material was

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ORIGINAL – Orig. Ofc. 1st CC – Headquarters 2d CC – 3d CC –	S/A Kenneth Purdy	3/7/85
	REVIEWING OFFICIAL SAIC Dixon McClary, Criminal Investigations	DATE 3/8/85

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placed into a cubitainer previously marked #5. He then moved closer to the center line of the dry dock underneath the barge, which appeared to have been freshly painted, and obtained a similar sample which he placed in a cubitainer identified #3. As he took the second sample of material he observed that the material appeared to be much wetter and heavier per spoonful than did the material from the dry dock wall.

While S/A Purdy was in the process of filling the cubitainer from the material beneath the bottom of the vessel he was joined by S/A McClary. Both agents noticed and commented on the fact that there was a very strong odor of a solvent such as lacquer thinner permeating the dry dock in the vicinity of the vessel. Darkness prevented closer observation of the surface to detect any puddles or pools that may have been the source of this odor.

S/A's Purdy and McClary observed that the piles of debris previously noticed during the surveillance indeed consisted of quantities of sandblasting grit that had piled up to depths of 2 to 2 1/2 feet throughout the surface of the dry dock. This material had accumulated against the sides of the support blocks on which the barge was sitting and was particularly concentrated at the intersections of the wall and the deck itself. The steel girders that transverse the dry dock were covered with this type of material as was all of the surface which was visible to S/A Purdy. The agents also noticed that the deck contained numerous mounds of this type of material which have been photographed and described earlier in this surveillance.

As soon as the two cubitainers were filled with the samples S/A Purdy and S/A McClary left the dry dock having been on that premises for no longer than 10 mintues. The agents returned to their boat and from there rowed to a position at the southwest corner of the table dock where a vertical ladder descended from the pier to the water. S/A McClary left the boat and ascended the ladder. S/A Purdy remained beneath the pier in the boat awaiting Agent McClary's return. S/A McClary proceeded to a point, beneath the stern of the barge, that was on the table dock at a location approximately half way from the north side of the dock. The agent took a sample of the material from a pile on the dock that had previously been observed and photographed from the observation point. S/A McClary placed this sample in a cubitainer which had previously been identified as #1. S/A McClary took a second sample, from the west side of the dock, from a pile of material that was piled against a block on the southwest corner of the vessel. This location was also previously photographed and identified. Both samples were taken from piles of gritty material that were frozen (indicating a high moisture content).

While S/A McClary was on the table dock he further examined the small depressions that had been observed from the observation post at the time that the dry dock surfaced. On the west side of the table dock he found that there was a thin layer of grit with regular rows of cleared spots approximately 8 to 10 inches in diameter in the center of each of which was a hole approximately 2 inches in diameter. These holes appeared to penetrate through the dock and provided a direct path to the river below. Moving east on the table dock, S/A McClary observed that the layer of grit increased in depth and the cleared

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spots decreased in diameter around the 2" holes through the dock. Moving further east the cleared spots decreased, as the grit increased in depth, until there were only depressions visible in the gritty material where the next row of 2" holes should have been. S/A McClary also observed that the grit depth on the table dock was from 18" to 24" in places.

S/A McClary returned to the boat and the agents rowed back to the public boat dock. The entire time spent on this search warrant did not exceed 1/2 hour. No intrusion was made to any other part of the MPE facility and no property or materials were removed other than the four samples described above. All of the samples were retained by S/A Purdy who kept them in his custody througout the weekend and who brought them to the Seattle Area Office on January 28, 1985. On January 28, 1985 these samples were identified with sample numbers as follow: The cubitainer marked #5 is sample #85-04-0063; cubitainer marked #3 is 85-04-0064; cubitainer marked #1 is 85-04-0065; cubitainer marked #2 is 85-04-0066. Custody seals were placed on each of these cubitainers by S/A Purdy and on that date at approximately 3:35 P.M. they were released to the custody of laboratory director Arnold Gahler who transported them to the Manchester Laboratory for analysis.

On February 1, 1985 S/A Purdy made return of this warrant to U.S. Magistrate Weinberg and also presented to the Magistrate the property owner's copy of the search warrant and the property owner's inventory of materials seized by the agents. At the same time he delivered to the Magistrate the orders and related papers which ordered that this warrant and its return be sealed until further released by the court, as was orally authorized by the Magistrate on January 26, 1985.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF ENFORCEMENT AND COMPLIANCE MONITORING

OFFICIAL USE ONLY

REPORT OF INVESTICATION

MARINE POWER & EQUIPMENT

CASE # 85-X-4-1 35X

MARCH 1985

ENVIRONMENTAL PROTECTION AGENCY
NATIONAL ENFORCEMENT INVESTIGATIONS CENTER
OFFICE OF CRIMINAL INVESTIGATIONS
SEATTLE AREA OFFICE
1200 Sixth Avenue
Seattle, Washington, 98101

DATE: 3/8/85

CRIMINAL FILE NUMBER: 85-X-4-1

PROJECT NUMBER: 35X

REPORT EXAMINED, APPROVED, AND RECOMMENDED FOR PROSECUTION

DIXON E. MCCLARY
SPECIAL AGENT IN CHARGE

JAMES MOORE
REGIONAL COUNSEL-REGION X

GENE S. ANDERSON
UNITED STATES ATTORNEY
WESTERN DISTRICT OF WASHINGTON
3600 SEAFIRST FIFTH AVENUE PLAZA
SEATTLE, WA 98104

This report is submitted in regard to alleged violations of the Federal Water Pollution Control Act (CWA) and the Rivers and Harbors Act of 1899 by Marine Power and Equipment, Inc. and by its parent company WFI Industries, Inc. The alleged violations include the discharge of pollutants such as sandblasting grit, paint chips, solvents and other debris from the company's dry docks into the Duwamish River and into Lake Union without having an NPDES permit from the Environmental Protection Agency or Washington State Department of Ecology. Ancillary violations of the United States Code may include obstructing & impeding execution of a search warrant, conspiracy and false statements both with respect to waste disposal and in applications for federal permits and contracts. Federal Grand Jury investigation is recommended to further these allegations.

STATUTORY VIOLATIONS:

1. 33 USC 1311(a) [FWPCA Sec.301] - This section states that any discharge of any pollutant by any person except in compliance with specific sections of this title shall be unlawfull. Criminal penalties are provided at 33 USC 1319(c)(1) for this violation.

2. 33 USC 407 [Rivers & Harbors Act of 1899] - provides that it shall not be lawfull to throw, discharge - - - out of any ship, barge or floating craft - - - any refuse matter of any kind or description - - - into any navigable waters of the United States - - -. 33 USC 411 provides criminal penalties for violations of section 407.

3. 18 USC 1509 provides criminal penalties for any person who "by threats or force willfully prevents obstructs, impedes.... the performance of duties under any order judgment or decree of a Court of the United States." This offense while specifically chargeable with respect to Scott Hillesland, may be equally chargeable to MPE and WFI. This is the only offense involving Mr. Hillesland who has been arrested and formally charged.

4. 18 USC 371 - Conspiracy. This charge may be applicable to the two corporations and possibly to individual members thereof. Evidence relating to this charge must be developed through a grand jury investigation.

5. 18 USC 1001 - False Statememts. This charge may apply to both the corporations and individuals, with respect to statements made to state and federal regulatory agencies, with respect to U.S. Army Corps of Engineer Dredge and Fill Permit Applications, and with respect to bids for U.S. Navy vessel repair contracts.

Personal History of Defendants:

Individuals

1. Scott Lewis Hillesland

2. Security Guard, Security Specialties Company

3. Home address: 2800 N.E. 55th Street, Apt. 5, Seattle, Washington

4. Home telephone: (206) 525-6521

5. Employer: Security Specialties Company
1509 N.E. 150th, Seattle, Washington

6. Work location: M.P.E.
6701 Fox Avenue South
Seattle, Washington

Corporation

1. Marine Power and Equipment, Inc. (Subsidiary of W.F.I. Industries, Inc.)

2. Corporate and Lake Union Facility address:
   1441 North Northlake Way
   Seattle, Washington

   Duwamish River Facility Address:
   6701 Fox Avenue South
   Seattle, Washington

3. Both facilities above are associated with offenses.

4. State of Incorporation
   WFI Industries Inc. - Washington 11/29/83
   Marine Power & Equipment Inc., - Washington - 1967

5. Registered Agents Unknown

6. WFI Industries, Inc. was started in April, 1984 to act as a holding company for its several subsidiaries including MPE. 100% of the capital stock is owned by the Woeck family. WFI Industries Inc. employs about 700 people. Financial statement not available (See Dun & Bradstreet Report 11-895-9683 dated 1-14-85).

Marine Power and Equipment Inc., is a shipbuilding and repair facility. It employs approximately 400 people at this time having reduced its work force considerably over several months. The company is a wholly owned subsidiary of WFI Industries, Inc.. All of the M.P.E. Stock is owned by WFI Industries Inc. and is actually owned by the Woeck family. No financial statement available. (See Dun and Bradstreet Report 10-925-4284 dated 9/21/84).

WFI Industries, Inc. and Marine power and Equipment Inc., share common officers, most of whom are members of the same family. These officers are:

Chairman of the Board:	Peter F. Woeck
President (WFI & MPE)	Richard Woeck
V. President (WFI & MPE)	Peter Woeck, Jr.
V. President (MPE)	Lloyd Anderson
Treasurer (WFI & MPE)	Shirley Gillespie
Secretary (WFI & MPE)	Sally Bergman

WFI Industries reportedly has thirteen subsidiaries, not all of which have been identified.

Enforcement History:

Marine Power and Equipment Inc. is not known to have been the subject of any EPA enforcement actions. It has been the subject of several complaints to local pollution control agencies. The subjects of those complaints include both air pollution from sandblasting dust and water pollution from drydock discharges. In August 1984 after repeated warnings the State of Washington, Department of Ecology penalized MPE $5,000.00 for discharging pollutants from its Duwamish River facility. That penalty has recently been mitigated to $2,500.00. Prior to the assessment of this penalty, Marine Power and Equipment has consistently refused entry to state and local agency representatives who attempted to conduct authorized inspections.

Description of Evidence:

Evidence in this case consists bascially of observations by surveillance agents over a period from October 1984 thru February 1985. Those observations will be supplemented by photographs, video tapes and analyses of samples taken during periods of discharge. Documents and samples obtained in search warrants executed on February 25, 1985 have not yet been evaluated for their evidentiary potential.

In summary, MPE permits the accumulations of spent sandblasting grit, paint chips, paint spillage and other debris to remain in its drydocks with no effort to clean these docks until the accumulations reach depths of a foot or more. The agents repeatedly over a six week period observed these drydocks and their accumulated debris being submerged into the Duwamish River and Lake Union.

At the Duwamish River facility the agents have observed that each such submergence causes a discharge of a brown scum into the river and results in the washing of heavier materials into the river. Samples of both the surface scum and the spent sandblasting material show high levels of arsenic, lead, copper and zinc.

On February 6, 1985 MPE moved one of its drydocks from its normal moorage to a point in the river about 1/2 mile away. The drydock with its accumulation of debris was sunk in the river parallel to the current with the river water flowing through it. It remained submerged for approximately three hours. When the agents observed the re-floated drydock they saw that most of the accumulated sandblasting material had been washed from the drydock into the river during this operation.

On October 18, 1984, Marine Power and Equipment discharged liquids from a barge directly into the Duwamish River. On February 13, 1985, Marine Power and Equipment pumped the contents of the tanks of another barge directly into the Duwamish River. The agents observed workmen place a hose in the tank, connect a pump, and for two hours or more discharge a brown frothy material into the river. This discharge occurred under the observation of a Marine Power Equipment Company supervisor.

Divers examined the bottom of the Duwamish River under and around the MPE drydock on February 26, 1985. They observed that sandblasting grit has been deposited to depths of up to eight feet near the drydocks and extends several hundred feet down river from the drydocks. River bottom samples upstream from the facility contain no such material.

The divers also found deposits of this same material on the bottom of Lake Union at all locations explored near the MPE facility. These deposits extends to a point at least 200 feet toward the center of the Lake beyond the end of the drydocks. They also observed deposits of paint and other debris liberally spread over the lake bottom.

Multiple samples of this debris have been obtained from the drydocks as well as from the river and lake bottoms during the search warrant. Analysis of those samples has not yet been accomplished.

Reports of Investigation number 85-X-4-1 #2 through 10 (attached) provide specific times and dates of these discharges all of which represent violations of the Clean Water Act and the Rivers and Harbors Act. Reports relating to the search warrant and witness statements are in preparation.

AO 93 (Rev. 8/85)

Pl Exh 22 + 23

SEARCH WARRANT ON WRITTEN AFFIDAVIT

United States District Court	DISTRICT WESTERN DISTRICT OF WASHINGTON	
UNITED STATES OF AMERICA v. WFI INDUSTRIES, INC., and MARINE POWER AND EQUIPMENT, INC.	DOCKET NO.	MAGISTRATE'S CASE NO.
	TO: KENNETH PURDY, Special Agent, EPA (and Deputy U.S. Marshal), (or any other authorized agent)	

Affidavit(s) having been made before me by the below-named affiant that he/she has reason to believe that (on the person of) (on the premises known as) The Marine Power and Equipment, Inc. ship repair facilities located at (1) Slip 3, on the Duwamish River, upstream (south) of the First Avenue South Bridge, Seattle, Washington, on the east bank of the River, a multi-acre industrial facility bounded on the west by the Duwamish River and on the east by Fox Avenue, and being further defined by reference to a photograph and chart accompanying the affidavit in support of this warrant, incorporated herein by reference, and further described beginning on page 2 of this warrant, and (2) the Marine Power ship repair facility located at 1441 North Northlake Way, Seattle, Washington, a multi-acre industrial facility bounded on the southwest by the Seattle Ship Canal on the northwest side of Lake Union, and bounded on the northeast by North Northlake Way; being further defined by reference to a copy of a photograph accompanying the affidavit in support of this warrant and incorporated herein by reference, and further described beginning on page 2 of this warrant;

In the Western District of Washington there is now being concealed certain property, to which the affiant and other employees of the United States Environmental Protection Agency seek access for the purpose of (1) inspecting and photographing facilities and devices and obtaining samples of soils and other materials, and (2) seizure of documentary evidence; these items of property further described in the attached property list;

Which are evidence of violations of Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., and the Rivers and Harbors Act of 1899, 33 U.S.C.§§ 403, 407, and 411.

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above-described and the grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s), March 4, 1985, with authority to enter and re-enter for a maximum period of three (3) business days, if

YOU ARE HEREBY COMMANDED to search on or before necessary to complete the search (not to exceed 10 days) the person or place named above for the property specified, serving this warrant and making the search (in the daytime — 6:00 A.M. to 10:00 P.M.) (at any time in the day or night)* and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant to a U.S. Magistrate as required by law.

U.S. Judge or Magistrate

NAME OF AFFIANT	SIGNATURE OF JUDGE ** OR US MAGISTRATE	DATE/TIME ISSUED
KENNETH PURDY Special Agent, EPA	JOHN L. WEINBERG	

*If a search is to be authorized "at any time in the day or night" pursuant to Federal Rules of Criminal Procedure Rule 41(c), show reasonable cause therefor

**United States Judge or Judge of a State Court of Record.

On the premises known as . . . .

1. MPE Duwamish Facility

a) The MPE Duwamish/Fox Street multi-acre industrial facility bounded on the south side by a red, white and blue steel fence approximately 10 feet tall which runs the entire length of the property to the water's edge, continuing along the east and north sides of the facility, down to the water where tugs are moored.

b) A two-story wood structure--white trimmed with blue and red--that is located behind the fence, which appears to be an office building and is identified with a red, white and blue sign that says in part, "Marine Power and Equipment Company Yard 4, 6701 Fox Street."

c) A guardshack along the east side of the property.

d) A Floating dry dock tied to the west (water side) pier.

e) A fixed, table dry dock within the confines of a large, concrete pier on the north end of the property.

f) One large, white-colored warehouse building.

g) Four smaller buildings, white roofed.

h) A small white and blue shack adjoining the Table Dock, on the east end of the Table Dock.

i) Unroofed yard areas containing raw materials and waste.

2. MPE LAKE UNION FACILITY

a) The Marine Power multi-acre industrial ship repair facility located on the north side of Lake Union, at 1441-3 North Northlake Way, Seattle, Washington, bounded on the southwest by the Lake Washington-Seattle Ship Canal and on the north by North Northlake Way, with a white two-story wooden structure identified with the number 1441 North Northlake Way over a wooden door in the center of the building, facing north on North Northlake Way. The northwest end of the building contains a red, white and blue logo with the initials MPE in three places. The bottom floor of the building is brick and glass-fronted. The north westernmost door on the frontage states Marine Power & Equipment Company Employment Office (on the door). The center and main door has the Marine Power & Equipment Company logo on the right side of the door and a black and white sign bearing the initials WFI on the left side of the same door, when seen from the street. Immediately

beneath the address (beneath the words N. Northlake Way) is also the number 1443. Immediately on the west end of the main structure is a cyclone fence entry gate which appears to be manned by a guard. Continuing west from that gate along the edge of the sidewalk is a blue steel rail-type fence which extends the remaining length of the property. To the south edge of that fence is the edge of Lake Union and the dry docks. The east end of the property is adjoined by a driveway on the south end of which at the water surface is another cyclone-type fence. The boundary edge in a easterly direction is terminated with the cyclone fence parking lot of METRO.

b) Five dry docks, labeled on the water side as MPEDD2, MPEDD3, MPEDD8, with two dry docks bearing no visible markings from the water side but adjacent to the labeled ones.

c) A white-roofed, warehouse/workshed adjoining and waterward of the main office building.

d) All other work structures related to the dry docks.

e) All open spaces and uncovered waste storage areas within the boundaries described in paragraph a) above.

AO 106
Rev 6/82

AFFIDAVIT FOR SEARCH WARRANT

United States District Court	DISTRICT WESTERN DISTRICT OF WASHINGTON
United States of America vs. WFI INDUSTRIES, INC., and MARINE POWER AND EQUIPMENT, INC.	DOCKET NO. / MAGISTRATE'S CASE NO. NAME AND ADDRESS OF JUDGE[1] OR FEDERAL MAGISTRATE JOHN L. WEINBERG United States Magistrate 103 U.S. Courthouse Seattle, WA 98104

The undersigned being duly sworn deposes and says: That he/~~she~~ has reason to believe that

☐ on the person of ☒ on the premises known as — DISTRICT WESTERN DISTRICT OF WASHINGTON

The Marine Power and Equipment, Inc. ship repair facilities located at (1) Slip 3, on the Duwamish River, upstream (south) of the First Avenue South Bridge, Seattle, Washington, on the east bank of the River, a multi-acre industrial facility bounded on the west by the Duwamish River and on the east

(Continued on page 2)

The following property is concealed:

In the Western District of Washington there is now being concealed certain property, to which the affiant and other employees of the United States Environmental Protection Agency seek access for the purpose of (1) inspecting and photographing facilities and devices and obtaining samples of soils and other materials, and (2) seizure of documentary evidence; these items of property further described in the attached property list.

Affiant alleges the following grounds for search and seizure[2]

Which are evidence of violations of Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., and the Rivers and Harbors Act of 1899, 33 U.S.C.§§ 403, 407, and 411.

☒ See attached affidavit which is incorporated as part of this affidavit for search warrant

Affiant states the following facts establishing the foregoing grounds for issuance of a Search Warrant

See attached affidavit of Kenneth Purdy.

SIGNATURE OF AFFIANT	OFFICIAL TITLE, IF ANY
KENNETH PURDY	Special Agent, EPA (and Deputy U.S. Marshal)

Sworn to before me, and subscribed in my presence:

DATE	JUDGE[1] OR FEDERAL MAGISTRATE
February ___, 1985	JOHN L. WEINBERG

[1]United States Judge or Judge of a State Court of Record.
[2]If a search is to be authorized "at any time in the day or night" pursuant to Federal Rules of Criminal Procedure 41(c), show reasonable cause therefor.

On the premises known as . . . .

by Fox Avenue) and being further defined by reference to a photograph and chart accompanying this affidavit and incorporated herein by reference, and, (2) the Marine Power ship repair facility located at 1441 North Northlake Way, Seattle, Washington, a multi-acre industrial facility bounded on the southwest by the Seattle Ship Canal on the northwest side of Lake Union, and bounded on the northeast by North Northlake Way; being further defined by reference to a color machine copy of a photograph accompanying this affidavit and incorporated herein by reference, the following property is concealed:

(See attached property list)

PROPERTY LIST

(Duwamish and Lake Union Facilities)

1. Drydocks for ship repair purposes and waste contained therein; all waste storage areas, including sandblasting waste storage and recycling areas; raw material storage areas including those containing stored unused sandblasting abrasives and packaging therefor, paints and solvents used in marine painting (and containers and packages therefor); all waste treatment or disposal equipment; drains, storm drains and discharge pipes; and general equipment used for the purposes of conducting sandblasting and marine repair.

2. Soil, water, and other natural or man-made materials in the vicinity of the above.

3. Books and records (of all sorts, including computer disks or printouts) indicating the name, addresses, and telephone numbers, of all company employees, and all documents which contain job descriptions or other material defining the nature and scope of each employee's responsibility at each Marine Power facility, and records which show time and attendance of said employees, including time cards, or other such records reflecting employment history, such records to include those of former employees no longer currently employed by the company.

 PROPERTY LIST

4. Documents demonstrating purchases of raw materials for use in the sandblasting process including but not limited to abrasive grit purchases.

5. All waste disposal records and shipping records demonstrating times and quantities and manner of disposal of spent sandblasting materials.

6. All disposal or shipping records demonstrating the time, quantity and manner of disposal of waste from marine painting operations, including solvents and contaminated paint.

7. All purchase records for marine painting raw materials, to include paints and solvents.

8. All documents indicating the chemical constituents of sandblasting or painting materials and related waste, including laboratory analyses.

9. All correspondence between officials of MPE and the Washington State Department of Ecology, the City of Seattle (METRO), the United States Environmental Protection Agency, the United States Coast Guard, and the United States Corps of Engineers, which correspondence relates to any pollution problems at either MPE ship repair facility, including but not limited to, administrative orders, civil penalties orders, applications for

permits, information letters informing MPE officials as to the requirements of the law, and all documents which demonstrate internal distribution of these materials to various corporate officers.

10. Internal memoranda and correspondence generated following receipt of communications with federal and state environmental agencies, demonstrating knowledge on the part of corporate officers.

11. Records of payments to consultants (such as environmental engineering firms) concerning pollution-related work for MPE.

12. Maintenance and operations logs containing records of the operation of MPE drydocks and tugboat operations.

13. Invoices, contracts, and repair order forms, for vessels the subject of ship repair work at the Marine Power facilities.

14. Oil or fuel transfer logs concerning the pumping of oil or fuel from drydocked vessels prior to sandblasting and painting operations, including vacuum truck service records.

15. Documents reflecting the design specifications and construction of MPE drydocks.

PROPERTY LIST

16. Records showing water depth measurements in the vicinity of MPE drydocks and all records demonstrating any dredging operations in the vicinity of those drydocks including records of disposal of dredged material.

17. Articles of incorporation of WFI and MPE, bylaws of same, and corporate minutes which may relate to pollution problems at MPE facilities.

A F F I D A V I T

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

KENNETH PURDY, being first duly sworn on oath, deposes and says:

1. I am a Special Agent with the Environmental Protection Agency (EPA). I hereby incorporate by reference my affidavit in support of an application for a search warrant which was obtained from this Court on January 26, 1985 in Magistrate's No. 85-019M-01.

THE MPE DUWAMISH FACILITY

2. My earlier affidavit herein stated that during the course of my investigation I observed large quantities of sandblasting debris (still wet from submersion) being removed from the Floating Dock and transported to a storage area on the premises of MPE's Duwamish facility. The storage area is located on the southeast side of the main MPE work building at the Duwamish Facility. An aerial overflight of the MPE Duwamish facility occurred at my request during January of 1985 and I have examined photographs which were printed after that overflight. The photographs show that to the southeast side of the main MPE work building there is a dark area with mounds of piled debris, with an adjacent area of the same material containing multiple truck tire tracks. I hereby incorporate that aerial overflight photograph, marked as Exhibit 1 and provided herewith, by

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reference in this affidavit. This debris material was removed from the Floating Dock by use of a crane and metal boxes. I was able to observe considerable quantities of water dripping from the loaded boxes as they were hoisted through the air by the crane during the removal from the Floating Dock, confirming for me that these materials had previously been submerged in the water when the Floating Dock had been lowered for purposes of either loading or unloading vessels from the dock. To supplement the material in my earlier affidavit, I will briefly recite below some additional observations which were made by the surveillance agents during the period from January 10, 1985, until the time of obtaining the search warrant from this Court on January 26, 1985.

3. On January 10, 1985, I observed that the Floating Dock was submerged and a blue barge by the name of ARCTIC STAR had been loaded into the dry dock. At the time of my observations, early in the morning, I observed a distinct sheen on the water between the dry dock and the shore, indicating the presence of pollutants. While I was on surveillance that morning, I observed the Floating Dock being raised from the surface of the water and a strong flow of water over the bow of the dock. As the dock first came into view, I noticed numerous piles of debris interspersed with puddles of water. The piles were those that I had seen the previous day, left behind after quantities of the piles had been removed by crane to the southeast side of the main MPE work building. Since the material was on the dock when the dock was raised, I can obviously conclude that the material was there when

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the dock was lowered, exposing it to the water and exposing it to being washed into the water.

4. After these early observations, your affiant and other EPA agents located a fixed surveillance post elevated above the docks permitting the agents to look down on the surface of the Table and Floating Docks, and the remainder of the MPE Duwamish facility. While I was present in the observation post on January 21, 1985, I observed the lowering of the Table Dock into the river. Although certain isolated areas of the Table Dock near its water end were free of debris, the major part of the dock was still covered with sandblasting debris that had been present on the dock since January 10, 1985. As the dock was lowered, several ports in the upstream side of the adjoining pier became exposed. The Table Dock, which is a table that moves up and down within the confines of a concrete pier which surrounds three sides of the dock, excluding the water end of the dock, is permanently fixed next to the concrete pier. The top edge of the Table Dock is roughly on the same level as the concrete pier which surrounds it. As I watched the dock begin to submerge on January 21, 1985, ports on the upstream side of the adjoining pier became exposed. As the Table Dock sank below the surface of the water, I noticed a distinct geyser of water emerging from each of these ports, producing a strong flow of water across the surface of the dock and the sandblasting debris which had been left on the dock before it submerged.

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5. After the dock was submerged, a tugboat removed a barge, and the dock was raised to the surface. As it surfaced from the river, I observed rows of indentations across the dock at regular intervals throughout its length, confirming the information provided to me by a Seattle METRO representative that the dock is indeed permeated with a regular arrangement of holes allowing water (and sandblasting debris) to pass both directions as the dock is being raised or submerged. The debris appeared to be spread over the surface of the dock in a rippled fashion, suggesting that the hydraulic action of the water had moved the debris around.

6. After the dock surfaced, employees of MPE used a forklift to reposition the concrete blocks (blocks supporting vessels being worked on) on the surface of the Table Dock. No efforts were made at all to remove any of the debris from the surface of the dock during this period when the dock was unencumbered and accessible. In the early afternoon of that day, Special Agent Mann watched the Table Dock being submerged. After the dock was completely submerged, a brown scum formed on the water over the top of the submerged Table Dock. Later that afternoon a tugboat maneuvered a large blue barge, later determined to be the ULTRA PROCESSOR, onto the Table Dock. When the MPE employees began to raise the Table Dock from the water, Agent Mann observed the reappearance of the brown scum. The slick moved from the Table Dock area to a location close to the observation post. The slick was a thick film on the water, on

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which was carried numerous brown globules of material. This material remained on the water until receding tide and current eventually carried it away.

7. That afternoon MPE personnel attempted to raise the Table Dock with the ULTRA PROCESSOR on the dock. These efforts were apparently unsuccessful for, late in the afternoon, a tug pulled the ULTRA PROCESSOR from out of the Table Dock and moved it upriver. The empty Table Dock was then raised in a manner similar to before. It was observed when the dock was raised that there were piles of debris remaining on the surface, which had not been cleaned before the dock was lowered.

On January 22, 1985, EPA agents conducted further surveillance at the MPE Duwamish facility. The Table Dock remained above the surface on that date and agents observed no efforts during their surveillance to remove any of the accumulated grit and debris from the Table Dock, although most of the surface was accessible. In the afternoon on January 22nd, the Table Dock was again submerged and a tugboat again unsuccessfully attempted to put the ULTRA PROCESSOR into the Table Dock slip.

On January 23, 1985, shortly after noon, the Table Dock was again submerged into the water. Once again, I noticed that there were numerous jets of water bubbling up from the dock, coming through the holes in the dock's surface previously described. No change had been made in the amounts of debris and grit that had been observed on the surface of the dock the previous day. The dock was covered with sandblasting waste,

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portions of which inevitably entered the water when it was lowered and raised. The ULTRA PROCESSOR was loaded onto the Table Dock, and the Table Dock was raised. Spent sandblasting debris covered the surface of the Table Dock and water on the surface rapidly drained off through the numerous holes in the dock.

8. On January 24, 1985, at approximately 5:00 p.m. your affiant observed that the Floating Dock contained the vessel ARCTIC STAR and the Table Dock the vessel ULTRA PROCESSOR. Sandblasting operations were being conducted on both vessels. Later, it was observed that in the calm water north and east of a barge adjoining the MPE facility could be seen an obvious thick, hazy film on the water. This thick surface film was also seen emanating directly from underneath the Table Dock and from the stern (waterside) of the Floating Dock, and accumulating along the hull of a nearby vessel. Samples of the film were obtained. When a sample jar was lowered into the water, it broke a surface tension which allowed the film to adhere to the exterior portions of the container. The jars were coated with a slippery film that had visible particulate matter embedded in it. During surveillance that evening, sandblasting clouds from MPE drifted as far north as South River Street and caused the agents respiratory discomfort. Government vehicles parked on South River Street during surveillance became covered with a fine gritty film over the entire surface.

9. On the morning of January 26, 1985, a search warrant was issued herein by United States Magistrate John Weinberg. Agents

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from EPA thereafter traveled to the vicinity of the MPE Duwamish facility and launched a small boat from a public boat ramp in the direction of the MPE facility. The boat was tied up alongside the Floating Dock and your affiant obtained a sample of the material contained within the dock. There was a very strong odor of a solvent, such as lacquer thinner, in the dry dock. The piles of debris previously noticed during surveillance indeed consisted of quantities of sandblasting grit that had piled up to depths of two to two and one-half feet throughout the entire bottom surface of the dry dock. This material had accumulated against the sides of the barge support blocks and at the intersections of the wall of the dry dock and the bottom deck.

After samples were obtained from the Floating Dock, the agents traveled to the Table Dock surface. Agent McClary obtained a sample and examined the small depressions in the deck observed earlier when the dry dock had surfaced. On the west side of the Table Dock, Agent McClary found that there was a layer of grit with regular rows of cleared spots approximately eight to ten inches in diameter in the center of which was a hole approximately two inches in diameter. These holes appeared to penetrate through the dock and provided a direct path to the river below. Further east on the surface of the Table Dock, the cleared spots decreased in size, as the grit increased in depth, until there were only depressions visible in the gritty material where the next row of two inch holes should have been. The grit varied from approximately eighteen inches to two feet deep in places. The

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shape of the holes confirmed that portions of the grit material on the bottom were routinely discharged during the lowering and raising of the dock through the water.

10. During the period from January 26, through January 28, sandblasting operations and painting operations were conducted at the Table Dock on the bottom of the ULTRA PROCESSOR. On the afternoon of January 28, your affiant observed that all work had ceased on the ULTRA PROCESSOR, except for one workman observed repainting the vessel's name of the stern. The main dock of the MPE Duwamish facility, which adjoins the Table Dock, contained several large puddles of standing liquid. No rain had fallen for several days in the Seattle area and the source of this liquid, which appeared to be consistently present on the dock, was not determined.

11. On January 28, 1985, your affiant observed a significant discoloration of the river near the MPE docks, consisting of a oily sheen on the water, which reflected a rainbow of colors. Although the exact source of this material was not discernible, it was noticeable slightly upstream from the barge that was tied to the MPE dock. Later that day, in the early evening, Special Agent McClary observed a very noticeable slick along the shore and along the water near the public boat dock which is north of MPE. A young man in the area commented to Special Agent McClary that the area around the boat dock always seemed to be dirty and required a careful cleaning and scrubbing of any vessel hull coming out of

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the Duwamish at that location. The young man stated that the river was generally much cleaner just upstream from the boat dock.

12. Early on the morning of January 29, 1985, your affiant observed that the Table Dock was still elevated with the ULTRA PROCESSOR in place. The debris spread over the Table Dock the previous day had not been removed or cleaned up. The water was then clear in the area of the MPE facility. While your affiant was conducting surveillance, the Table Dock was submerged by the MPE employees, containing sandblasting waste which had not been cleaned up. Shortly after the Table Dock was submerged, a grey colored scum appeared on the surface of the water over the area of the Table Dock. This material drifted with the tide to locations under the adjoining pier and towards the east shore. The ULTRA PROCESSOR, assisted by a tug boat, was cleared from the Table Dock before noon on January 29, 1985, and the Table Dock was raised. Your affiant clearly observed a grey/brown scum on the water that had been trapped near the east end of the slip and beneath the pier. When the dock emerged from the water your affiant observed that the surface still contained quantities of sandblasting grit and puddles of water. Immediately after the dock surfaced, workmen began shoveling the debris away from selected spots on the dock, to reposition the concrete blocks on the surface to make it suitable for a new vessel.

13. On the morning of January 30, 1985, Special Agent Mann arrived at EPA's observation post and observed that the Table Dock was again submerged and another barge was in a position to be

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raised on the dock. Agent Mann observed that a grey/brown scum had once again formed on the water in the area of the Table Dock and was drifting into the relatively still waters of the inlet. The film lacked the rainbow sheen of oil and appeared to be thicker and heavier. There were particles of brown material embedded in the film which was spread over the water in discrete shapes rather than a thin sheet over the whole surface.

14. On January 31, 1985, your affiant observed two workmen approach the water end of the Floating Dock. They went from one spot to another at the end of the dry dock carrying what appeared to be a sounding chain which they were dropping into the water as if to determine the depth at the end of the dock. The high tide for that day occurred at approximately the same time that this sounding operation was taking place. In the afternoon of January 31, 1985, your affiant observed that a tanker truck appeared on the concrete portion of the MPE main dock, adjacent to the water end of the barge on the Floating Dock. Hoses were run from the tank truck to the vessel ARCTIC STAR. The truck was placarded with a flammable material placard, indicating the truck was transporting hazardous material number 1270. Hazardous material identification number 1270 is a Department of Transportation identification number relating to petroleum oil.

15. On the morning of February 1, 1985, MPE personnel unsuccessfully attempted to pull the ARCTIC STAR from the Floating Dock. The tugs involved detached themselves and departed down stream. Your affiant observed the Floating Dock slowly begin to

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rise from the water, at an angle, with its shore end visible. A visible film emerged from the interior of the dry dock and slowly moved in the direction of the shore end, forming a very noticeable brown and grey thick looking scum on the surface of the water inside the dock. This material flowed over the end of the dock into the river in the vicinity of the pier adjoining the Floating Dock. The flow continued until the dock had sufficiently emerged from the water to prevent further discharge into the river. After the dry dock had fully surfaced, employees went to both ends of the dock and carefully measured, with a sounding chain, the depth of water beneath the dock. They also carefully measured with a tape measure to various points in the dry dock itself, apparently at the level of the waterline which depicted maximum depth of submergence. Six hours later, noticeable film was still on the water north and east of MPE.

16. On Monday, February 4, 1985, an early morning high tide occurred at 5:20 a.m. Your affiant arrived at the MPE Duwamish facility at approximately 5:00 a.m. on that day and observed that the Floating Dock was already submerged and efforts were underway to remove the ARCTIC STAR, which again proved unsuccessful. The dry dock was again raised out of the water and, as had occurred on February 1, the dry dock came out of the water with the water end rising first and the shore end remaining under water, again at an angle. Agents again observed the same type of scum observed on February 1, flowing from the shore end of the dry dock, towards adjoining pier.

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17. On February 5, 1985, the morning high tide occurred again at 5:45 a.m. A third, and this time successful, attempt was made to move the ARCTIC STAR from the Floating Dock. The dock was submerged as it had been in the past; the condition of the dry dock remained as seen on the previous day, including piles of grit and other debris on the surface of the dock. No attempt was made to remove the material prior to the time the dock was submerged. After the Floating Dock was lowered, the ARCTIC STAR was removed. Agent Mann observed a sheen on the water which appeared to be flowing from the dry dock. At 6:40 a.m., Agent Mann observed that a heavy scum was forming at the front of the barge which was still located in the vicinity of the dry dock. At about 9:30 a.m., agents observed a front loader being lowered into the dry dock on a crane. Two persons were observed shoveling black grit next to the front-end loader. The pile appeared to be about waist-high. The front-end loader was scooping this black grit up into piles which were then being loaded into dump boxes and removed from the Floating Dock to the nearby Table Dock surface. The removal of grit and debris from the Floating Dock continued throughout the day. Workmen inside the Floating Dock were working with shovels to clear specific areas, apparently for the purpose of relocating concrete blocks as support blocks for a new vessel. The removal of the material by the front-end loader made no significant change in the quantity of the material that remained in the dock. The original amount was so large that the front-end loader just barely

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made a dent in the quantities on the surface of the Floating Dock.

18. On February 6, 1985, your affiant arrived at the EPA observation post in the afternoon. The Floating Dock was not in its normal position on the north end of the MPE facility, but had been moved to a half mile north of the First Avenue South Bridge. It was tied to a barge next to Terminal 115. Two tug boats were observed moving a naval vessel from the MPE main dock to a point down stream in the direction of the MPE Floating Dock. The MPE Floating Dock was tied so that its open end was facing upstream in line with the direction of the river's outgoing current. The Floating Dock was submerged in the river to approximately ten feet. The naval vessel USNS NARRAGANSETT, was in the Floating Dock with its bow facing upstream. MPE personnel had detached the Floating Dock from its normal mooring and had moved it down stream to an area where it could be lowered sufficiently for loading of another vessel, suggesting that the water depths underneath the Floating Dock were insufficient (perhaps due to the accumulations of the abrasive sandblasting grit). The agents observed that the material removed from the Floating Dock the prior day had been deposited on the north side of the Table Dock along the length of its north edge. The areas cleared on the Floating Dock now contained blocks down the center of the dock and an aluminum building similar to a trailer.

19. From the period between 3:20 p.m. and 7:15 p.m. on February 6, 1985, the Floating Dock remained submerged in its new

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position in the Duwamish River. The current was flowing longitudinally through the dock during the entire time that it was underwater. After the dock was raised at approximately 7:15 p.m., tugs then moved the dock upriver under the First Avenue South Bridge to the MPE main dock. The Floating Dock was then maneuvered to a position alongside the MPE main pier, rather than returning it to its normal inlet. The Floating Dock was positioned parallel to the river current against the MPE main dock. The condition of the deck had demonstrably changed since the previous day. The end of the dock that faced upstream during this trip was the waterside seen from the observation post during the past month. The metal surface of the deck near the bow was significantly cleaner. The piles of debris were reduced in size and much of the accumulated deposits along the bulkheads had vanished. The transverse steel beams visible along the bottom of the dock, until that evening obscured by piles of debris, had become clearly visible. Even the longitudinal beams, located on the bulkheads several feet above the deck, had been cleansed of their deposits of sandblasting grit. During the period that the Floating Dock had been submerged in the strong currents of the river preceding and following the high tide, the river currents had removed significant quantities of the materials that remained on the dock the previous day.

20. On the morning of February 7, 1985, your affiant observed a tank truck parked on the dock. The truck bore a flammable materials placard. On subsequent days, your affiant

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observed additional tank trucks present on the dock with hoses leading to the Floating Dock. Agent McClary, who is familiar with the operations of both of the tank companies whose trucks were observed on the MPE facility, concluded these vehicles were pumping liquids from the USNS NARRAGANSETT for subsequent disposal.

Between the period from February 7, 1985 and February 13, 1985, sandblasting was conducted on a consistent basis. On February 12, 1985, Special Agent Mann observed a front loader removing material from the Table Dock. The grit being scooped from the surface of the Table Dock was being taken to a location along the south side of the large white warehouse on the MPE property. No attempt was made during the time the grit was being removed to cover the holes on the bottom of the Table Dock. While the scraping was taking place, a heavy film appeared in the water adjoining the dock.

Similar maintenance activities were being conducted on February 13, 1985. The front loader continued its activity, generating a large volume of brown scum and grit in the water surrounding the Table Dock. Simultaneously, sandblasting activity was taking place. Sandblasting dust contributed to the scum already in the water when it settled out of the air.

21. At approximately 2:30 p.m. on February 13, 1985, an oil slick was observed in the water in front of the First Avenue South Bridge. The oil slick came from the direction of the Floating Dock. There was no other oil sheen on the water surface other than that area immediately adjacent to the dry dock. The oil

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1 slick made numerous rainbow affects in the water. That afternoon
2 the First Avenue South Bridge tender came by EPA's observation
3 site and commented he had observed an oil slick in the water and
4 "it's the worst he'd seen." The bridge tender also observed that
5 the oil was coming from the direction of the MPE facility.
6 22. In the later evening of February 13, 1985, shortly after
7 10:00 p.m., agents observed men on the deck of a barge docked
8 perpendicular to the Table Dock and north of the Floating Dock.
9 The men appeared to be operating a pump on the deck of the barge.
10 Around the entire perimeter of the barge were numerous hatches,
11 two feet by three feet, with the covers removed. A hose from the
12 pump disappeared into one of the hatches located approximately
13 midships on the Table Dock side of the barge. A larger hose,
14 approximately four inches in diameter, led away from the pump and
15 over the inboard Table Dock side of the barge. Shortly
16 thereafter, at approximately 10:10 p.m., the two men pulled the
17 hose out of the hatch and held it over the side of the barge,
18 allowing fluid to run down from the hose into the river. At
19 approximately 10:20 p.m. from a new vantage point, Agent McClary
20 could see that the discharge hose indeed entered the water. The
21 hose appeared to be a semi-rigid four inch hose and the end was
22 emerged in the water six to eight feet. The pump connected to the
23 hose was operating, causing discharge of materials from the hose.
24 The discharging caused the hose to pulsate against the side of the
25 barge and periodically would surface and spew water into the air.
26 The discharge appeared to be chocolate brown in color and

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occasionally foamy. Where the hose was discharging, there was a dark brown patch in the water approximately ten feet long and six feet wide and visible turbulence. Periodically, a patch of foamy material would surface and be pushed under the Table Dock by the turbulence.

At approximately 10:40 p.m. the discharge noticeably increased and the dark patch of water had more foam. The size of dark water increased to approximately twenty feet long and ten foot wide. One of the individuals working on the barge was observed pulling the discharge hose far enough out of the river water so that the end was exposed and suspended a few feet above the river's surface. Discharges were observed in distinctive pulses. At that time, the liquid turned a milky color. After several pulses, the discharge increased and began violently gushing a dark brown foamy fluid. The hose fell back into the water. The dark patch of water continued to be present as the hose pulsated against the side of the barge and periodically surfaced, spewing contaminated water within the air. The pumping continued with no change until approximately 11:50 p.m., at which time one of the individuals observed turned off the pump and pulled the hose from the hatch and disconnected the hoses from the pump.

Earlier, on the day that this pumping took place, a tank truck was present at MPE and appeared to be pumping from the naval vessel USNS NARRAGANSETT.

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23. The observations of February 13, 1985, were similar to those made earlier by Special Agent McClary on October 18, 1984, at the very beginning of EPA's surveillance activities at MPE. On that date, at approximately 7:30 p.m., Special Agent McClary had been in the vicinity of the First Avenue Avenue South Bridge looking in the direction of the MPE dry dock facilities and observed a barge tied up to the west side of the MPE facility south of the Table Dock. An employee put a hose through a railing of the barge and started a pump discharging through a four to six inch discharge pipe. A constant flow of fluid was observed approximately ten feet long into the river. Agent McClary departed to get a camera to take a picture of the discharge and when he returned at 8:15 p.m. that evening the hose was still visible but the discharge had stopped. Observations during the short period of discharge watched by the agent were very similar to those seen on February 13, 1985. The fluid was a milky color, foamy when it hit the river.

24. On February 14, 1985, the Table Dock was lowered into the water, with no vessel on it. Numerous piles of grit were observed along the edges of the Table Dock at the time that it was lowered. Within a couple of minutes after the Table Dock deck disappeared under water, scum started appearing on the water surface. Tugs in the vicinity were moving a barge. As soon as the barge was moved somewhat, a very large oil slick was observed in the water near one of the tugs. The oil slick was observed floating in the direction of the bridge and north shoreline area

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adjacent to the public boat ramp. The origin of the oil slick was the Table Dock. There was no oil sheen visible upriver.

25. On February 14, 1985, the Table Dock was observed slowly rising with a barge and another vessel on top of the dock. As the dock broke surface, on the Table Dock decking were visible piles of grit along the exterior border of the dock. The piles of grit along the northern border were smaller in size than originally noted when the dock was submerged earlier that morning. A dead Bufflehead Duck was observed floating in the brown scum in the area near the public boat ramp where the film had migrated from the Table Dock. Later that morning the yellow front loader was observed on the Table Dock. The loader was scraping and scooping the grit that had been left on the Table Dock prior to the time it was first submerged on February 14, 1985.

26. The MPE Duwamish/ Fox Street facility is bounded on the south side by a red, white and blue steel fence approximately 10 feet tall which runs the entire length of the property to the water's edge. The fence continues along the east side of the facility. About mid-way the length of the property, it terminates at a guard shack where there is a drive-through gate. A second fence continues from that guard shack to the north end of the property. At the north end of the property the fence continues down to the water where the tugs are moored. There is a two-story wood structure--white trimmed with blue and red--that is located behind the fence. This appears to be an office building. The building is identified with a red, white and blue sign that says

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in part, "Marine Power and Equipment Company Yard 4, 6701 Fox Street." There is a guardshack along the east side of the property. There is one large, white-colored warehouse building and four smaller buildings, white roofed, adjoining and waterward of the main office building. There is a small white and blue shack adjoining the Table Dock, on the east end of the Table Dock.

MPE LAKE UNION FACILITY

27. There is a Marine Power ship repair facility located on the north side of Lake Union. That facility is at 1441 North Northlake Way, Seattle, Washington. It is bounded on the southwest by the Lake Washington-Seattle Ship Canal and on the north by North Northlake Way. There is a white two-story wooden structure identified with the number 1441 North Northlake Way over a wooden door in the center of the building. The building faces north on North Northlake Way. The northwest end of the building contains a red, white and blue logo with the initials MPE in three places. The bottom floor of the building is brick and glass-fronted. The north westernmost door on the frontage states Marine Power & Equipment Company Employment Office (on the door). The center and main door has the Marine Power & Equipment Company logo on the right side of the door and a black and white sign bearing the initials WFI on the left side of the same door, when seen from the street. Immediately beneath the address (beneath the words N. Northlake Way) is also the number 1443. Immediately on the west end of the main structure is a cyclone fence entry gate which appears to be manned by a guard. Continuing west from

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that gate along the edge of the sidewalk is a blue steel rail-type fence which extends the remaining length of the property. To the south edge of that fence is the edge of Lake Union and the dry docks. The east end of the property is adjoined by a driveway on the south end of which at the water surface is another cyclone-type fence. The boundary edge in a easterly direction is terminated with the cyclone fence parking lot of METRO. One can observe a dry dock identified as dry dock #1 on the east end of the property. There are vessels on dry docks visible but not identifiable directly behind the main building. On the west end are identified dry dock #2 and dry dock #8 with additional tugs and vessels moored in and about the dry docks. The westernmost end of the property terminates at a number of gray-colored buildings apparently unassociated with this business. A chain link fence from the sidewalk toward the water separates these buildings from the MPE property. The main building contains offices on the second floor as well as the first floor.

On the MPE Duwamish facility there is a white-roofed, warehouse/workshed adjoining and waterward of the main office building. There appear to be, from an aerial photograph of the facility made available to me, several smaller structures/sheds affiliated with the dry docks.

28. Reports from Dun & Bradstreet obtained by EPA in the fall of 1984 show that the Marine Power facility at 1441 North Northlake Way is the main corporate headquarters. According to

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Dun & Bradstreet reports, in April 1984, by a vote of the board of directors of MPE, a holding company, WFI Industries, was formed, which now is the parent company of Marine Power. MPE is now a subsidiary of WFI Industries, Seattle, Washington. According to correspondence examined by your affiant between Phil Ballinger, an officer of MPE, and Seattle METRO, dated April 13, 1984, WFI Industries also maintains its corporate headquarters at 1441 North Northlake Way. The letter observed by your affiant is on WFI Industries letterhead and the signature by Phil Ballinger states that he is representing Marine Power and Equipment Company.

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29. EPA agents conducted surveillance at the MPE Lake Union facility during a several week period beginning in mid February. Agents obtained an observation post on the ship canal across from the MPE Lake Union facility, which observation post provided an unobstructed view of the water side of the MPE dry docks at that location.

30. Prior to establishing their observation post at the Lake Union facility, EPA agents interviewed a former employee of Marine Power who had worked at both the Lake Union facility and the Duwamish facility. This individual has informed EPA that the Lake Union facility is older, larger, and has demonstrated even worse concern about environmental problems than the Duwamish facility.

31. The most easterly dock at the Lake Union facility is labeled MPEDD8 and is open on two sides. Directly west of MPEDD8 sits a larger submersible dock. The end of this dock facing the lake is closed. Directly to the west of the partially enclosed dock is another submersible dry dock whose identification numbers are blocked from view by a floating crane. During the time of surveillance this dock does not appear to have been used. Also located west of the partially enclosed dock is a submersible dock labeled MPEDD2. To the west of the dock labeled MPEDD2 sits a submersible dock labeled MPEDD3.

32. On February 11, 1985, EPA Special Agent Gerd Hattwig conducted surveillance at the EPA observation post on Lake Union. On that date he observed sandblasting operations taking place in

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the enclosed dock between DD8 and DD2. Within the dry dock, was observable a vessel named the SURVEYOR. During the time the sandblasting was taking place, clouds of dust could be observed arising from the left side of the SURVEYOR.

33. On February 13, 1985, Agent Hattwig observed debris on the deck of MPEDD8 of similar appearance to the abrasive sandblasting material observed at the Marine Power Duwamish facility. The material was piled on the south end of DD8 up against rails that run across the width of the dry dock. In places the material is piled to approximately one-half the heighth of the rails, a total of six inches. Also observed on February 13, 1985, was a pile of abrasive material on the southwest corner of MPEDD2. At the time of the observations the dock also contained a vessel which was only partially visible. On subsequent observations on February 14, it was determined that the vessel was the fishing vessel GOLDEN DAWN. On February 13, 1985, the MPEDD3 contained a tug named the ROBERT W which bore the MPE logo. MPEDD8 also contained a tug bearing the MPE logo.

On February 13, 1985, the tug named ROBERT W in MPEDD3 was clearly visible. The hull of the vessel had not been cleaned. Corrosion and marine growth and deposits were clearly visible below the waterline of the hull. On that date piles of black abrasive material about one to two feet high and seven to eight feet long below the bow of ROBERT W were obvious. The material was smooth as if it had been underwater. Since the hull of the ROBERT W had not been sandblasted as of the time of our

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observations on February 13, the debris obviously had been left over from prior activities and therefor must have been present at the time that the tug was loaded on the dry dock. Based upon our observations at the MPE Duwamish facility, it too is causing discharges of this material into a navigable water.

34. On February 14, 1985, Special Agent Hattwig observed MPEDD2 submerge at approximately 3:50 p.m. and the fishing vessel GOLDEN DAWN back out of the dock and then steam off in the direction of the Aurora Bridge. MPEDD2 had earlier been observed the prior day as containing piles of abrasive debris on the surface of the dock. After the GOLDEN DAWN was removed from the MPEDD2, the dock was fully raised. The abrasive sandblasting debris seen the prior day became visible above the waterline when the dry dock surfaced. Obviously no attempts had been made to clean the dock before it submerged, because the material was visible in the same general locations as the prior day when the dock broke the surface of the water.

35. On February 19, 1985, while Agent Hattwig was on location, MPEDD8 was submerged and the tug was removed from the dry dock and the dry dock was then raised. After the dry dock was raised, piles of abrasive sandblasting materials could be observed on the surface of the dry dock and workmen were observed cleaning areas with shovels to make spaces for concrete blocks to support a new vessel.

36. Based on these observations at the Marine Power Lake Union facility, it appears clear that the same bad housekeeping

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practices are being followed at that facility as are being followed on the Duwamish, resulting in large quantities of spent sandblasting materials containing heavy metals being continually discharged in the water on every occasion that dry docks are lowered without being first cleaned.

HISTORY OF REGULATORY ACTIVITIES

37. Your affiant has examined various documents made available to him through state and local regulatory agencies. The documents demonstrate that attempts have been made by Seattle METRO and the Washington State Department of Ecology (DOE) to obtain compliance by Marine Power with environmental laws. Records of the Seattle METRO reflect that on June 29, 1983, a complaint call was referred to METRO from the DOE regarding a black scum seen floating on the surface of Slip 3 at the Duwamish River where Marine Power's Duwamish facility is located. METRO documents reflect that METRO personnel were able to collect a sample of material deposited on the First Avenue South Boat Ramp and samples were obtained by the Coast Guard on and adjacent to the Marine Power dry dock at Slip 3. The samples were analyzed by the METRO laboratory and the results indicated that the water sample contained high concentrations of copper, lead, zinc, and nickel. Solid material on the dry dock and the boat ramp also contained high concentrations of heavy metals. EPA samples of sediments collected at Slip 3 in September of 1982 showed the same patterns and were among the highest concentrations of heavy metals

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found in 33 sites sampled along the Duwamish. A week after samples were taken on June 29, 1983, DOE responded to another complaint call about black scum being observed at the Slip 3 area. Based on these facts, experts at the DOE concluded in June of 1983 that sandblasting wastes were present in the water around the Marine Power facilities. In August 1983, DOE issued a letter to MPE requesting full cooperation to resolve this water pollution problem, but MPE chose not to respond to the Department's request. On November 15, 1983, DOE issued a warning letter to MPE indicating violation of state water pollution control laws resulting from the discharge of sandblasting waste. Subsequent to November 1983, DOE received further complaints indicating a continuing practice of discharging sandblasting wastes into navigable waters.

38. The files of Seattle METRO reflect that on October 11, 1983, various representatives of METRO met with Marine Power officials to discuss the history of the Marine Power facility on the Duwamish. When METRO officials met with Marine Power personnel at their Duwamish facility, it was observed that the synchrolift dry dock (referred to above in this affidavit as the Table Dock) had up to three inches of spent sandblasting material on the deck. METRO officials observed numerous holes in the bottom of the deck which allowed waste sandblast material to fall directly into the river. METRO experts noted that the holes were necessary for breaking surface tension when the Table Dock was raised and lowered. The officials observed a scum on the surface

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of Slip 3 between the Table Dock and the Marine Power main dock. The officials observed that no attempts had been made to cover the holes in the Table Dock to prevent loss of sandblasting material into the water.

39. In April 1984, because of concerns about heavy metals in the vicinity of Slip 3 in the Duwamish River, sediments in the Fox Street Drainage System and the Duwamish River were sampled by METRO. On April 18, 1984, METRO officials were collecting river sediment samples in the vicinity of Slip 3. After collecting an upriver sample, METRO officials headed north towards the mouth of Slip 3 and observed large volumes of brownish colored water running from the deck of MPE's facility to the river through a drain pipe. An oily sheen was seen on the river and a scum with fine black particulates had formed at the river end of the Table Dock. The METRO officials concluded, based on their observations, that sandblasting waste and oily products were being washed off the surface of the Table Dock through a discharge pipe. Lab analysis of those samples led DOE to conclude that the discharges on that date significantly violated EPA water quality criteria for saltwater aquatic life for arsenic, copper, lead, and zinc, causing DOE to notify Marine Power officials by letter that such discharges were a violation of state water pollution laws. DOE's letter of June 1, 1984, which provided this information to Marine Power, reminded Marine Power that they had been warned in November of 1983 regarding such violations. The letter informed Marine Power that administrative penalties were going to be sought by DOE

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for the illegal discharges at the Duwamish River facility on April 18, 1984. DOE thereafter notified the company that they would be required to pay a monetary penalty based on their violations of the law.

40. During DOE's communications with Marine Power subsequent to the summer of 1984, Marine Power has represented that the company's dry dock facilities supposedly take precautions to minimize the discharge of sandblast grit into the water. The company's response to DOE's administrative penalty order stated that whenever feasible the company made it a practice to scrape dry docks before lowering into the water to minimize the discharge of material to the greatest extent possible. That response further indicated that a mechanical sweeper was used to clean the yard in order to minimize the amount of sandblast grit around the shipyard. In other words, the response indicated that MPE was following "best management practices". Obviously, based on the observations of EPA investigators beginning in the fall of 1984 and continuing through January and February of this year, Marine Power is not using best management practices and in fact is making no attempt whatsoever to prevent any of its waste sandblasting material from entering the water.

41. Because this history of regulatory activities demonstrates that correspondence has taken place between local regulatory officials and the Marine Power officers, I have reason to believe that various officials of Marine Power have indeed been notified by the distribution of these memoranda that the conduct

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of the company is in violation of the law. Based on my prior experience and other environmental cases, I believe it is reasonable to expect that these communications with regulatory agencies were distributed to some extent within the company hierarchy for purposes of formulating a response. Since this correspondence establishes knowledge of company officials that the company has been violating the law, internal memoranda of the company that may have been generated following these communications with regulatory officials, are relevant evidence.

42. Based on my experience with the EPA and my familiarity with industrial processes gained through discussions with other employees of the EPA, DOE, and METRO, it is likely that Marine Power at both of its dry dock facilities maintains records of their purchases of raw materials used in their ship repair business, such records maintained for the purpose of business tax deductions. In addition, Marine Power must maintain production records indicating the vessels which they have repaired, sandblasted, and painted. It is also my experience that industrial facilities, such as the Marine Power facility, keep maintenance and operations records for their equipment, including the number of hours which have been run on their various motorized devices, to determine when routine maintenance needs to be performed.

On several occasions during affiant's surveillance at the Marine Power facilities, your affiant observed walk-throughs by a security guard at the Duwamish facility. In your affiant's

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experience, it is common for industrial facilities to maintain logs of security inspections. It is similarly common for such facilities to maintain logs of operations of their major heavy equipment such as their dry docks. Based on the ton quantities of these sandblasting materials which I estimate are going into the water on a regular basis, corroborated by the difficulty the Marine Power Company had in lowering the dry dock to float off the ARCTIC STAR from the Floating Dock earlier in this month, it is likely that Marine Power has had to have its inlet at Slip 3 dredged on prior occasions. Accordingly, I have reason to believe that the records of the company may contain records relating to their contracting with dredging companies to deepen the area around their dry docks on a periodic basis.

43. Regulations of the United States Coast Guard require that certain logs be maintained pertaining to marine transfers of oil or fuel. Based on my observations and the observations of my fellow agents, it is known that various tank trucks have removed fuel from vessels prior to repair work being performed on them. Accordingly, I have reason to believe that the company will have maintained at both of its facilities, fuel and oil transfer records. Similarly, based on the quantities of sand blasting materials that have been observed being stored in the vicinity of Marine Power's main building at the Duwamish facility, there is reason to believe that the company has had to dispose of its waste products on a periodic basis in the past. Painting operations of any sort, whether marine or otherwise, commonly generate

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quantities of contaminated paints and solvents which require disposal. Accordingly, the records and files of the Marine Power facilities should contain documents which demonstrate the time, quantity, and frequency of disposal of various waste materials, including spent abrasive sand blasting grit and various paints and solvents. All of these documents would relate to ordinary business expenditures, which Marine Power would have a substantial tax reason for maintaining in their records to justify any business deductions taken on their tax returns.

ABSENCE OF PERMITS

44. I recently reconfirmed, through a records check with DOE, that no NPDES permit has been applied for or granted to MPE or WFI to discharge wastes into navigable waters in the manner described above. Another EPA agent has also confirmed through the United States Army Corps of Engineers that no permits have been issued to MPE or WFI to fill or to discharge the refuse materials described above in the manner described above.

KENNETH PURDY

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 1985.

JOHN L. WEINBERG
United States Magistrate

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