

*File
Cumberland Bay*

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a Settlement
Relating to the Cumberland Bay Sludge
Bed - Wilcox Dock Inactive Hazardous
Waste Disposal Site,
by:

ORDER ON CONSENT

Georgia-Pacific Corporation

Index No.A5-0360-9706

Respondent

Site # 510017

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Title 13, of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is issued under the Department's authority under ECL Article 27, Title 13, relevant sections of the State Finance Law, and other applicable authorities.

2. The Georgia-Pacific Corporation (hereinafter "Respondent") is a corporation organized and existing under laws of the State of Georgia, and is doing business in the State of New York.

3. Between 1963 and the present, Respondent has owned and/or operated a paper manufacturing facility located on Margaret Street in the City of Plattsburgh Clinton County, State of New York (hereinafter, the "Plattsburgh Facility"). The Plattsburgh Facility is located adjacent to the western shoreline of Lake Champlain near that section of the lake known as Cumberland Bay.

4. Between approximately 1955 and 1973, the Plattsburgh Facility in conjunction with other unrelated facilities released industrial wastewater which contained sludge and/or waste materials into Cumberland Bay in that area of the bay adjacent to and/or contiguous with the Plattsburgh Facility. Said sludge and/or waste materials eventually filled that area of Cumberland Bay known as the "sludge bed."

5. In 1993, the Department commenced an investigation in a 75-acre underwater area adjacent to Wilcox Dock and within and along the northwesterly part of Cumberland Bay in Lake Champlain (hereinafter referred to as the "Site") due to the presence of polychlorinated biphenyls ("PCBs") in wood chips washing up on the shore of Lake Champlain in the vicinity of the Site.

6. Between 1994 and the present, the Department has undertaken interim remedial measures ("IRMs") to remove the PCB-contaminated wood chips referenced herein.

7. In the course of the investigation and the implementation of the IRMs, the Department incurred response costs as defined in accordance with applicable state and federal law. Furthermore, the Department anticipates that it will incur future response costs for the prospective investigation and remediation of the Site.

8. The Department 's investigation indicates the presence in the Site of hazardous wastes and/or substances as defined pursuant to state and/or federal law including, but not limited to, PCB contaminated materials.

9. The Department has identified and classified this Site as an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, and has listed it as a classification "2" in the Registry of Inactive Hazardous Waste Disposal Sites in New York State, as Site

Number 510017. A map and description of the Site is attached and incorporated hereto as Appendix A.

10. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order. The Department has prepared a Proposed Remedial Action Plan which provides, among other things, for the dredging and capping of a portion of the Site and for the dewatering and off-site disposal of the dredged materials (hereinafter "Dredging Remedy").

11. The Department alleges that Respondent is a responsible party for the Site as defined pursuant to applicable state and/or federal law. Respondent denies said allegation. Respondent admits that it discharged wastewater into Cumberland Bay.

12. However, the Department and Respondent, being desirous of an amicable resolution of the Department's allegations and in furtherance of the expeditious implementation of a remedial program for the Site and its beneficial re-use, have agreed to resolve Respondent's alleged liability for the discharges into Cumberland Bay as described herein and for the Department's remedial response costs and other related costs in accordance with the terms and conditions set forth herein.

13. The goals of this Order are:

(i) To provide releases to Respondent as set forth herein from all legal liabilities, except as set forth herein, associated with the discharges and releases from Respondent's Plattsburgh Facility into Cumberland Bay as described herein, the investigation and remediation of the Site, and reimbursement of the Department's site related response costs and other related costs;

(ii) For Respondent to make payment to the Department in the sum of nine million dollars (\$9,000,000.00) in full satisfaction of the Department's past and future claims for the investigation and remediation of the Site and for the recovery and reimbursement of Site related response costs and other related costs; and

(iii) For the Department to reserve its rights to maintain and pursue claims for natural resources damages.

14. Respondent, as a responsible corporate citizen with a desire to further the public interest, and on the understanding that the Department intends to implement the Dredging Remedy hereby waives its right to a hearing in this matter related to the obligations pursuant to this Order, as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. This Order was negotiated, mutually drafted, and executed by Respondent and the Department in good faith to avoid expensive and protracted litigation and is a settlement of claims which were vigorously contested, denied, and disputed as to validity and amount. The existence of this Order and Respondent's consent to, and compliance with, this Order do not constitute, nor shall they be construed or considered as, an admission of liability, fault, wrongdoing, or violation of any law, regulation, permit or order by Respondent or an admission by Respondent of any law or fact, or the applicability of any law, as to conditions at

the Site; nor shall they give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party. Accordingly, with the exception of any proceeding to enforce this Order, this Order shall not be admissible in any judicial or administrative proceeding for use against Respondent over Respondent's objection. In any proceeding to enforce this Order, Respondent reserves any rights it may have to contest, defend against, dispute or disprove any actions, proceedings, allegations, assertions, determinations, or orders of the Department, except with respect to the validity of this Order or its terms, and Respondent reserves its right to notice, to be heard, to appeal, and to any other due process in any action or proceeding by the Department, including any action or proceeding pursuant to or to enforce this Order. Finally, it is further acknowledged, agreed and ordered that the payments made herein by Respondent are not and do not constitute penalties, fines, restitution, or monetary sanctions of any kind.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Payment by Respondent

Subject to the schedule and the terms and conditions set forth below, Respondent shall pay to the Department the sum of nine million dollars (\$9,000,000.00) in full satisfaction of the Department's claim for the recovery and reimbursement of past and future Site-related response costs and other related costs except as stated herein. Such payments shall be by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Environmental Remediation, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233-7010.

The payments totaling such sum shall be in accordance with the following schedule and terms and conditions:

1. Within thirty (30) days after the effective date of this Order, Respondent shall pay two million dollars (\$2,000,000.00).
2. Respondent shall pay seven million dollars (\$7,000,000.00) by January 31, 1998.

Subject to Paragraph II below, such payment shall be in full satisfaction of Respondent's alleged liability, and shall represent Respondent's full reimbursement for, any past and future costs incurred or to be incurred by the State relative to and arising from the Site.

Respondent's obligations under this Agreement shall terminate once Respondent has completed its payment obligation in accordance with Paragraph I hereof.

II. Release and Covenant Not to Sue

A. Upon receipt of the payment referenced in Paragraph I herein, then except for any lawful claims for natural resource damages stemming from the Site pursuant to State and/or Federal law, the Department's receipt of that payment shall constitute a release of, and covenant not to sue, Respondent, its present and former directors, officers, employees, agents, affiliates, predecessors, successors and assigns, individually and in their respective capacities, for each and every cost, claim, demand, remedy or action whatsoever which the Department has or may have pursuant to Article 27, Titles 9 and 13, of the ECL, 42 U.S.C. 9601 et seq., 42 U.S.C. § 6901 et seq., applicable rules and regulations promulgated pursuant to any of such statutes, and common law, any other authorities pursuant to which the Department may seek removal, remedial or response actions, relative to or arising from discharges and releases from

Respondent's Plattsburgh Facility into Cumberland Bay as described herein, the disposal of hazardous wastes and/or substances at the Site, the investigation and remediation of the Site, including, but not limited to, sediments not removed as part of the Dredging Remedy selected in the ROD, and the State's costs related thereto, including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site, as well as for negotiating this Order, activities conducted pursuant to this Order, and administrative costs associated with this Order; provided, however, that

B. The Department specifically reserves its rights concerning, and any such release and satisfaction shall not extend to, any investigation or remediation the Department deems necessary due to:

(i) the discovery, after the effective date of this Order, of environmental conditions in Cumberland Bay resulting from discharges or releases from the Plattsburgh Facility; and

(ii) such environmental conditions could not have been known by the Department; and

(iii) such environmental conditions indicate that response actions in addition to the Dredging Remedy are necessary to protect human health or the environment.

The Department shall notify Respondent in writing of such environmental conditions and its basis for determining that additional response actions to protect human health or the environment are necessary.

The provisions of this Subparagraph II.B. shall not apply to: (i) any environmental contaminants or conditions identified (without regard for or limitation to areal extent or depth)

within the Site in any studies or reports prepared by or on behalf of the Department, or in the Department's possession, as of the effective date of this Order, including, but not limited to, the studies and reports listed in Appendix B hereto; or (ii) any sediments contaminated with PCBs outside of the Site to the extent that such sediments are directly attributable to the Department's performance of the Dredging Remedy.

C. This release and covenant not to sue shall inure only to the benefit of Respondent, its present and former directors, officers, affiliates, employees, agents, predecessors, successors and assigns, individually and in their respective capacities.

Nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its present and former directors, officers, employees, agents, affiliates, successors, predecessors and assigns, individually and in their respective capacities.

III. Penalties

Respondent's failure to comply with any term of this Order having been established by the Department in an administrative or judicial proceeding constitutes a violation of this Order and the ECL.

IV. Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's civil, criminal or administrative rights or authorities, except as stated herein.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

C. The provisions of this Order do not constitute and shall not be deemed a waiver of any right Respondent otherwise may have to seek and obtain contribution and/or indemnification from any of its insurers or from potentially responsible parties or their insurers for payments made pursuant to this Order or otherwise. To the extent authorized under 42 U.S.C. §9613, any other applicable law, or common law, Respondent shall not be liable for any claim, now or in the future, under 42 U.S.C. §9607 or §9613 or other applicable statute or under common law, in the nature of contribution, cost recovery, indemnity or indemnification, however characterized. In any future action brought by Respondent against a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the provisions of 42 U.S.C. 9613(f)(3) shall apply. Respondent specifically reserves all rights that it may have to assert claims against any of its insurers and/or potentially responsible parties with respect to the matters addressed in this Order, including, without limitation, claims for breach of contract, cost recovery, contribution, tortious conduct, and indemnity.

V. Miscellaneous

A. Respondent shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondent's responsibilities under this Order.

B. The Department shall cooperate with Respondent to the extent practicable and in compliance with existing law in the assessment of any lawful natural resource damage claims under state and/or federal law related to the alleged releases described herein pursuant to Title 43, Part 11 of the Code of Federal Regulations and/or any other relevant State and/or Federal laws, regulations, or guidance documents.

C. Provided that Respondent complies with its payment obligations under Section I, the Department shall not nominate the Site for inclusion on the National Priorities List.

VI. All references to "days" in this Order are to calendar days unless otherwise specified.

VII. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

VIII. A. The terms of this Order constitute the complete and entire Order concerning the terms of the settlement outlined herein. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound.

B. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Field Unit Leader, Central Field Unit, 50 Wolf Road, Albany, New York 12233-5500 and to the Bureau Chief, Central Remedial Bureau, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233-7010.

IX. The effective date of this Order is the date on which Respondent receives from the Department a fully executed copy, signed by the Commissioner or his designee.

DATED: Albany, New York

July 31, 1997

John P. Cahill
Commissioner
New York State Department of
Environmental Conservation

A handwritten signature in cursive script, reading "John P. Cahill", is written over a horizontal line.

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by this Order.

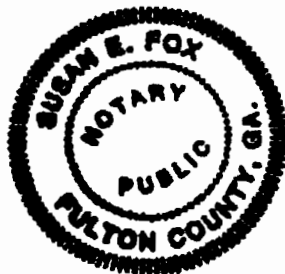
By: *Lee M. Thomas*

Title: Executive Vice President - Paper

Date: July 29, 1997

STATE OF GEORGIA)
) s.s.:
COUNTY OF FULTON)

On this 29th day of July, 1997, before me personally came Lee M. Thomas, to me known, who being duly sworn, did depose and say that he resides in Fulton County, Georgia; that he is the Executive Vice President - Paper of the Georgia-Pacific Corporation corporation described in and which executed the foregoing instrument; that he signed his/her name thereto pursuant to valid authorization of the Corporation.



Susan E. Fox
Notary Public
Notary Public, Fulton County, Georgia
My Commission Expires Feb. 29, 2000

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
 Division of Hazardous Waste Remediation
Inactive Hazardous Waste Disposal Report

4 / 1 / 97

Site Name: Cumberland Bay Sludge Bed - Wilcox Dock			Site Code: 510017	
Class Code: 2	Region: 5	County: Clinton		EPA Id:
Address: Northwestern portion of Cumberland Bay		City: City of Plattsburgh	Zip: 12901	
Latitude: 44 42' 4"		Longitude: 73 25' 31"		
Site Type:		Estimated Size: 75 Acres		

Site Owner / Operator Information:	
Current Owner(s) Name:	*** Multiple Site Owners ***
Current Owner(s) Address:	
Owner(s) during disposal:	*** Multiple Site Owners ***
Operator(s) during disposal:	
Stated Operator(s) Address:	
Hazardous Waste Disposal Period:	From 1930s To 1973

Site Description:

The present site definition includes all underwater areas within and along the northwestern part of Cumberland Bay in Lake Champlain that contain accumulations of contaminated sludge. The site area is about 75 acres in size. The site is the offshore area between an imaginary line drawn due east from the navigational light on the northwestern shore of Cumberland Bay near the Edgewater Estates and an imaginary line drawn due north from the tip of the breakwater south of Wilcox Dock. The western and southern boundary is 75 feet offshore from the mean low water line and is parallel with the shore to just south of the concrete dock at the West Bay Plaza. South of this point, the boundary is the mean low water line extending around Wilcox Dock and to the tip of the breakwater. The sludge bed is composed of wood pulp, wood chip debris, and related processing wastes from wood product industries (sawmills & paper manufacturing/processing facilities) in and around Plattsburgh. Records show that the wastes either settled or were directly discharged in this area of Cumberland Bay for several decades. The untreated waste disposal ended in 1973 when the Plattsburgh Sewage Treatment Plant began treating wastes from the local industries. For several years, the sludge bed was considered nothing more than a public nuisance, emitting unpleasant odors, hampering boating and swimming activities, and washing up along the shoreline. Environmental sampling in 1992, 1993, and 1994 identified PCB and other types of contamination in the sludge. The high levels of PCBs found are currently the major concern. The PCB levels are highest (up to 1,850 ppm) in the layers or beds that contain cellulose wood pulp or fine wood debris. The sludge is usually under 3 to 6 feet of water. Contaminated wood chip debris is readily suspended by wave action or boats and typically washes up along the shoreline. Ice movements may also push or carry the wood chip debris up along the shore. The NYSDEC annually cleans PCB contaminated wood chips from the public beaches north of the site. A Site Characterization/Feasibility Study is underway.

Confirmed Hazardous Waste Disposal:	Quantity:
PCB Waste {in Soil, Sludge, etc.} (B007)	unknown

Analytical Data Available for:	Surface Water Sediment
Applicable Standards Exceeded in:	
Geotechnical Information:	Depth to
Soil/Rock Type: Wood pulp/fiber sludge over lacustrine silt and sand.	Groundwater: Not applicable.

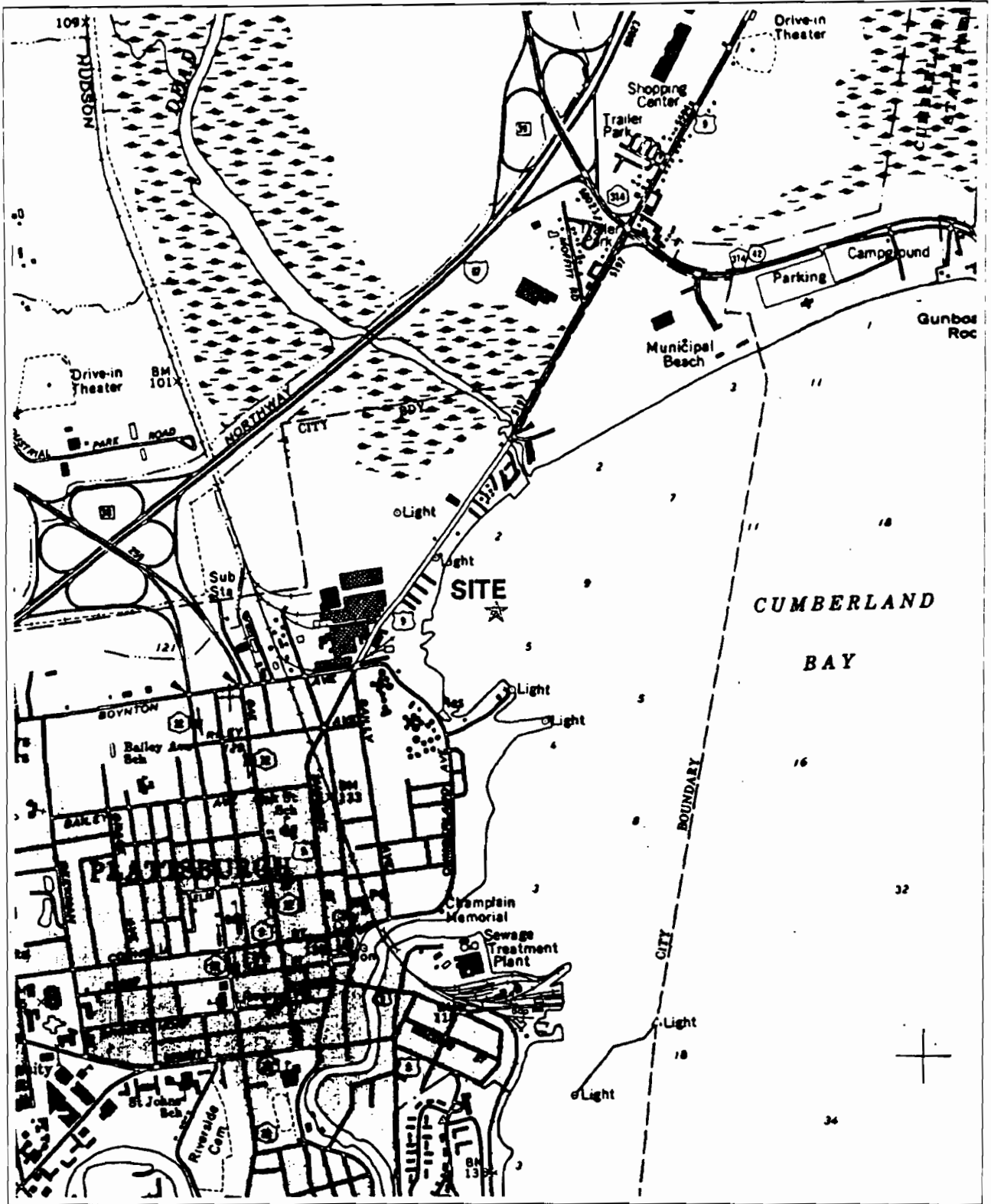
Legal Action: Type:	Status: Negotiation in Progress
Remedial Action: Proposed	Nature of action: IRM and RI/FS projects.

Assessment of Environmental Problems:

The presence of the various identified chemical compounds/contaminated sludge material at the site has adversely impacted aquatic life within the Bay and threatens to further degrade the water quality and continue to affect aquatic life within the Bay and the rest of Lake Champlain.

Assessment of Health Problems:

Wood chip debris that washed up on the shore of the Bay was analyzed for PCBs by the NYSDOH. The NYSDOH also analyzed beach sand, a mixture of beach sand and wood chip debris, and lake water for PCBs. The wood chip debris had the highest levels of PCBs. While the health concern from the levels in the wood chips is low, it is prudent to avoid exposure to PCBs. The wood chip debris should not be discarded with trash, yard waste, or lawn clippings. The wood chip debris should not be used as mulch or in compost. Yellow perch have been added to the existing consumption advisory for Cumberland Bay. Commercial sale of yellow perch from Cumberland Bay is banned.



Site Location Map

510017 Cumberland Bay Sludge Bed - Wilcox Dock

NYSOT Planimetric Quadrangle(s):
PLATTSBURGH



0 500 1000 1500 2000



FEET

Scale 1:24,000

Appendix B

SITE CHARACTERIZATION INFORMATION CUMBERLAND BAY SLUDGE BED - WILCOX DOCK SITE, PLATTSBURGH, NY

- March 1974 - Myer, G. and K. Loach, "Preliminary Report of the Physical Parameters of the Plattsburgh, New York Sludge Bed," in *SUNY Plattsburgh Lakes and Rivers Research Laboratory 1973 Technical Report*.
- July 1979 - Frederick R. Harris, Inc., *Mudflats Removal Feasibility Study, Plattsburgh, NY*.
- September 1993 - Data package from NYSDEC sediment sampling (6/8/93), samples from cores were analyzed for PCBs.
- January 1994 - McIntosh, A., ed, *An Assessment of Sediment - Associated Contaminates in Lake Champlain, Phase I*.
- June 1994 - NYSDEC, Registry Site Classification Decision.
- August 1, 1994 - Rowell, H.C., NYSDEC, *Preliminary Report on PCBs and Dioxins in Sediment of Cumberland Bay, Plattsburgh, NY*, results of June 1993 and March 1994 sampling.
- September 15/18, 1994 - Lab data sheets, dioxins results for sediment samples collected in August 1994.
- October 4, 1994 - Data package from NYSDEC sediment sampling (9/19/94), samples from one core were analyzed for PCBs.
- January 24, 1995 - Letter from NYSDEC (C. Rowell) to BBL transmitting information related to the March 1994 sediment sampling. Cores were analyzed for PCBs and dioxins.
- March 1995 - NYSDOH news release, *Lake Champlain Fish Advisory Issued*, contains yellow perch data.
- April 25, 1995 - Results of NYSDEC/NYSDOH wood chip sampling.
- November 9, 1995 - NYSDEC results of soil and sediment sampling performed on November 9.

- November 1995 - Rust Environment and Infrastructure, *Site Characterization Report: Sludge Bed - Wilcox Dock IRM Cumberland Bay*, includes results of August 1995 sampling.
- December 7, 1995 - TAMS Consultants, Inc., Data Validation Report (PCB and Dioxin Analyses) for sediment samples collected in August 1995 for NYSDEC.
- March 6, 1996 - Rust Environment and Infrastructure, *Feasibility Study Report: Cumberland Bay Sludge Bed - Wilcox Dock*.
- May 6, 1996 - R. Sloan and C. Rowell, NYSDEC, *Proposed Monitoring of Fish in Cumberland Bay Before Remediation of Wilcox Dock Sludge Bed, Plattsburgh, NY*, includes results of surface water sampling.
- May 1996 - Rust Environment and Infrastructure, *Sediment Core Dating Analysis Report: Cumberland Bay Sludge Bed - Wilcox Dock*.
- October 14, 1996 - Letter from BBL to NYSDEC (S.B. Hammond) transmitting results of BBL's split sediment sampling performed in August 1995.
- January 22, 1997 - Letter from BBL to NYSDEC (R. Edwards) transmitting results of sediment sampling performed by BBL in October 1996. Samples were analyzed for PCB and TPH.
- January 24, 1997 - Transmittal from NYSDEC (R. Sloan) to BBL re: fish data for numerous species and compounds/analytes (including PCB, metals, pesticides, dioxins) from 1970 to 1994.
- Date Unknown - NYSDOH, Cumberland Bay/Wilcox Dock Sample Data Report, includes data from August, November, and December 1994.
- NYSDEC, Cumberland Bay/Wilcox Dock Sample Data Report, data from August 1994 sediment sampling.
- NYSDEC, Division of Water, Data results of surface water and sediment trap samples from the 1990s.