

COMMONWEALTH OF MASSACHUSETTS

IN THE MATTER OF)	BROWNFIELDS COVENANT
)	NOT TO SUE AGREEMENT
)	
LOWELL REGIONAL TRANSIT)	RTN 3-0905
AUTHORITY)	
)	

I. STATEMENT OF PURPOSE

A. This Brownfields Covenant Not to Sue Agreement (this "Agreement") is made and entered into by and between the Office of the Attorney General (the "OAG"), on behalf of the Commonwealth of Massachusetts (the "Commonwealth") and the Lowell Regional Transit Authority ("LRTA") (hereinafter collectively referred to as the "Parties").

B. This Agreement is entered into pursuant to the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, as amended, Massachusetts General Laws, Chapter 21E ("G.L. c. 21E") and the Massachusetts Contingency Plan, 310 CMR 40.0000, (the "MCP") and involves the remediation and redevelopment of 100 Hale Street, Lowell, MA (the "Project").

C. It is the intent of the Parties entering into this Agreement to set forth herein their respective duties, obligations and understanding so that the Project can contribute to the physical and economic revitalization of an area of Lowell, MA. To that end, the Parties hereby agree that this Agreement, pursuant to G.L. c. 21E, §3A(j)(3), addresses potential claims by the Commonwealth as to LRTA and is predicated upon LRTA's compliance with the terms and conditions of this Agreement. This Agreement also addresses potential claims brought by third parties for contribution, response action costs or property damage pursuant to G.L. c. 21E, §§ 4 and 5 or for property damage under common law, except for liability arising under a contract.

D. The Commonwealth believes that this Agreement is fair, consistent with G.L. c. 21E and in the public interest, and has entered into this Agreement as part of an effort to revitalize an area of Lowell, MA.

II. THE PARTIES

A. The OAG is a duly constituted agency of the Commonwealth of Massachusetts charged with the legal representation of the Commonwealth and maintains offices at 200 Portland Street, Boston, Massachusetts. Included within the OAG's authority is the authority to enter into Brownfields Covenants Not to Sue Agreements pursuant to G.L. c. 21E, §3A(j)(3), which provides liability relief under G.L. c. 21E, as amended.

B. LRTA is a public body politic and corporate, duly organized and existing pursuant

to Chapter 161B of the general laws of the Commonwealth of Massachusetts. In accordance with this Agreement, LRTA shall undertake the Project as discussed in Section IV, Paragraph A, subparagraph 3.a., below.

III. STATEMENT OF FACT AND LAW

A. The Commonwealth enters into this Agreement pursuant to its authority under G.L. c. 21E, §3A(j)(3) and 940 CMR 23.00: Brownfields Covenants Not to Sue Agreements.

B. Unless otherwise expressly provided herein, terms used in this Agreement, which are defined in 940 CMR 23.00, *et seq.*, shall have the meaning assigned to them under such regulations. Terms not defined in 940 CMR 23.00, *et seq.*, but defined elsewhere under G.L. c. 21E and the MCP, shall have the meaning assigned to them under G.L. c. 21E and the MCP.

C. The Project involves approximately 6.5 acres at 100 Hale Street in Lowell, Massachusetts (the "Property"), which is also known as the former Astro Circuits facility. Prior owners and operators performed electroplating operations at the Property from 1979 until 1992. The Property contains 13,000 square feet of office space and 57,000 square feet of warehouse and light industrial space. The Property is more particularly described in Exhibit 1A and depicted in Exhibit 1B, attached hereto and incorporated into this Agreement.

D. Former activities including historic ash and cinder filling, debris dumping as well as use of the site for auto salvage and circuit board manufacturing (including electroplating) contaminated the Property with volatile and semi-volatile organic compounds, metals, polychlorinated biphenyls, and total petroleum hydrocarbons. The Department of Environmental Protection ("DEP") assigned release tracking number ("RTN") 3-0905 to the releases of oil and/or hazardous material released on the Property. Contaminants of concern for the Property are depicted in Figures 4-10 of the Phase II Comprehensive Site Assessment, former Astro Circuits/Multi-Care Facility, 100 Hale Street, Lowell, MA, by Enpro Services, Inc., dated October, 1994, attached hereto as Exhibits 2A-G, and incorporated into this Agreement. For purposes of this Agreement, the releases of oil and/or hazardous material assigned RTN 3-0905 constitute the "Site," as further defined in 310 CMR 40.0006.

E. In 1997, the former owner filed with DEP a Class A-3 Response Action Outcome Statement (the "Class A-3 RAO") with respect to RTN 3-0905. The presence of copper and nickel in the groundwater is currently above applicable upper concentration limits. Accordingly, the requirements for a Class A-3 RAO have not been satisfied and the Site is currently not in compliance with the MCP.

F. On May 31, 2000, LRTA held a public hearing at the Lincoln Elementary School in Lowell to discuss the Project. Minutes of the Public Hearing are attached as Exhibit 3. In addition, LRTA shall conduct such other public involvement activities as required by the MCP.

IV. COMMITMENTS AND OBLIGATIONS

NOW THEREFORE, in consideration of the representations made and promises exchanged by and between the Parties, each of them does hereby covenant and agree to the terms and conditions which follow.

A. REPRESENTATIONS AND COMMITMENTS BY LRTA

1. LRTA represents that it is not at the time of execution of this Agreement a person with potential liability for the Site pursuant to G.L. c. 21E. LRTA further represents that it is not now nor has it ever been previously affiliated with any person having such potential liability at the Site, except as set forth below. Thus, LRTA represents that it is an Eligible Person. LRTA also represents, and, for the purposes of this Agreement, the Commonwealth relies upon those representations, that LRTA's involvement with the Site has been limited to the following:

- a. Evaluating the Property for purposes of acquiring the Property;
- b. Negotiating to acquire the Property; and
- c. Communicating with the Commonwealth and local authorities with respect to the design and planning of improvement projects and various permitting issues with respect to the Property.

2. LRTA represents that none of the activities listed in Section IV, Paragraph A, subparagraph 1., has caused or contributed to the release or threatened release of a oil and/or hazardous material at the Site under G.L. c. 21E.

3. LRTA agrees to the following terms and conditions:

a. LRTA shall construct a new bus service and maintenance operations center as part of its upgrade of the regional transportation system generally and the Gallagher Internodal Transportation Center in particular. LRTA shall use best efforts to develop the Project so as to create approximately 120 new jobs for the City of Lowell that would generate more than \$3.8 million a year in new payroll dollars. By using the Property to maintain and service its bus fleet, LRTA shall move its fixed route bus service from the Page Street area of downtown Lowell to the Gallagher Terminal area. This move will result in saving fuel, reducing traffic congestion, improving air quality and increasing the bus system's on-time performance. A copy of LRTA's proposed conceptual plan is attached as Exhibit 4.

b. LRTA shall achieve and maintain either a Permanent Solution, Remedy Operation Status or Temporary Solution at the Site in accordance with G.L. c. 21E and the MCP. Within 90 days of executing this Agreement, LRTA shall retract the Class A-3 RAO

and submit a Response Action Outcome Statement (“the RAO”) to DEP which complies with the MCP. If the Proposed Remediation Status for the Site set forth in the RAO is a Temporary Solution, LRTA shall demonstrate that a Permanent Solution is not feasible pursuant to 310 CMR 40.0860 and shall prepare a plan which outlines definitive and enterprising steps to be taken toward achieving a Permanent Solution pursuant to 310 CMR 40.1050(5). LRTA shall also conduct Periodic Evaluations of the Temporary Solution every 5 years to assess whether or not achievement of a Permanent Solution is feasible pursuant to 310 CMR 40.1050(5).

c. LRTA shall cooperate fully with DEP, including, without limitation, providing prompt and reasonable access to the Property to DEP for any purpose consistent with G.L. c. 21E and the MCP.

d. LRTA shall comply with the release notification provisions established by G.L. c. 21E and the MCP;

e. LRTA shall respond in a reasonably timely manner to any request made by DEP or the OAG to produce information as required pursuant to G.L. c. 21E;

f. To the extent necessary to address a new or unknown release requiring notification to DEP under 310 CMR 40.0300, LRTA shall take reasonable steps: (i) to prevent the exposure of people to oil and/or hazardous material by fencing or otherwise preventing access to the Property; and (ii) to contain any further release or threat of release of oil and/or hazardous material from a structure or container, upon obtaining knowledge of a release or threat of release of oil and/or hazardous material; and

g. LRTA shall conduct response actions at the Site in accordance with the MCP and in accordance with the Standard of Care, as defined in G.L. c. 21E, §2.

4. LRTA is not at the time of execution of this Agreement subject to any outstanding administrative or judicial environmental enforcement action arising under any applicable federal, state or local law or regulation.

B. THE BROWNFIELDS COVENANT NOT TO SUE

1. LRTA

In consideration of the Representations and Commitments by LRTA set forth in Section IV, Paragraph A of this Agreement, and subject to LRTA’s compliance with the terms and conditions of this Agreement and the Termination for Cause provisions, described below in Section IV, Paragraph B, subparagraph 4, the Commonwealth covenants not to sue or take administrative action against LRTA, pursuant to G.L. c. 21E, for response action costs, contribution, natural resource damages or injunctive relief for the Matters Addressed at the Property Addressed by this Agreement. This Covenant shall vest on the effective date of this

Agreement as defined in Section IV, Paragraph D, subparagraph 5. This Agreement shall not affect any liability established by contract. For purposes of this Agreement, the Property Addressed shall be the Site as defined in Section III, Paragraph D, and the Matters Addressed shall be defined as those releases of oil and/or hazardous material at the Site which are fully described and delineated in the RAO to be submitted to DEP with respect to RTN 3-0905, so long as the response actions upon which the RAO relies meet the Standard of Care in effect as of the time of submittal of the RAO.

2. Subsequent Owners and/or Operators

The Commonwealth also covenants not to sue or take administrative action against Eligible Persons who are successors, assigns, lessees or licensees of the real property interests of LRTA, or who are lessees or licensees of its successors and assigns (hereinafter the "Subsequent Owners and/or Operators") having rights in the Property for which LRTA receives a covenant herein, with respect to the Matters Addressed at the Property Addressed, as described in Section IV, Paragraph B, subparagraph 1, above. The liability relief available to such Subsequent Owner and/or Operator shall be subject to the same terms and conditions as those that apply to LRTA.

3. Reservations of Rights

The Brownfields Covenant Not to Sue shall not apply to the following:

- a. any new release of oil and/or hazardous material at, or from the Property that occurs after the date of execution of this Agreement;
- b. any release of oil and/or hazardous material which LRTA, or any Subsequent Owner and/or Operator, causes or contributes to or causes to become worse than it otherwise would have been had LRTA or any Subsequent Owner and/or Operator not engaged in such activities;
- c. any release of oil and/or hazardous material at the Site that has not been discovered as of the time of submittal of the RAO to DEP that could have been discovered had an assessment of the Property covered by or addressed in the RAO been performed consistent with the Standard of Care, in effect as of the time of submittal of the RAO;
- d. any release or threat of release of oil and/or hazardous material from which there is a new exposure that results from any action or failure to act pursuant to G.L. 21E during LRTA's or Subsequent Owners' and/or Operators' ownership or operation of the Property; and
- e. any release of oil and/or hazardous material not expressly described in Section IV, Paragraph B, subparagraph 1, above.

4. Termination for Cause

a. In the event that the OAG determines that LRTA submitted materially false or misleading information as part of its Application to Enter into a Brownfields Covenant Not to Sue Agreement, the OAG may terminate the liability protection offered by this Agreement in accordance with subparagraph 4.d. of this Section IV, below. A statement made by LRTA regarding the anticipated benefits or impacts of the proposed project will not be considered false or misleading for purposes of this subparagraph, if such statement was asserted in good faith at the time it was made.

b. In the event that the OAG determines that LRTA or a Subsequent Owner and/or Operator has violated the terms and conditions of this Agreement, the OAG may terminate the liability protection offered by this Agreement in accordance with subparagraph 4.c., below. In the event that the liability protection is terminated solely because of a violation of one or more of the conditions set forth in 940 CMR 23.08(3)(a) through (d) by a Subsequent Owner and/or Operator, such termination shall affect the liability protection applicable only to such Subsequent Owner and/or Operator.

c. Before terminating the liability relief provided by this Agreement, the OAG will provide LRTA or a Subsequent Owner and/or Operator, as appropriate, written notice of the proposed basis for, and a 60-day opportunity to comment on, the proposed termination. The notice from the OAG may provide a reasonable period of time for LRTA or Subsequent Owner and/or Operator, as appropriate, to cure an ongoing violation in lieu of termination of the liability relief provided by this Agreement in the sole discretion of the OAG.

d. Termination of liability relief pursuant to this section shall not affect any defense that LRTA or Subsequent Owner and/or Operator might otherwise have pursuant to G.L. c. 21E.

C. COVENANT NOT TO SUE BY LRTA OR SUBSEQUENT OWNER AND/OR OPERATOR

In consideration of the Brownfields Covenant Not to Sue in Section IV, Paragraph B of this Agreement, LRTA or a Subsequent Owner and/or Operator hereby covenants not to sue and not to assert any claims or causes of action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the Property or this Agreement, including but not limited to:

1. any direct or indirect claims for reimbursement, recovery, injunctive relief, contribution or equitable share of response costs or for property damage pursuant to G.L. c. 21E;
2. any claims under the Fifth Amendment to the United States Constitution or under the Massachusetts Constitution for "takings";

3. any claims arising out of response actions at the Property, including claims based on DEP's selection of response actions, oversight of response actions, or approval of plans for such activities;

4. any claims or causes of action for interference with contracts, business relations or economic advantage; or

5. any claims for costs, attorneys fees, other fees or expenses incurred.

D. CONTRIBUTION PROTECTION AND RIGHTS OF AFFECTED THIRD PARTIES

With regard to claims for contribution, cost recovery or equitable share brought by third parties pursuant to G.L. c. 21E, §§ 4 and 5, or third party claims brought pursuant to G.L. c. 21E for property damage claims under common law or G.L. c. 21E, §5, against LRTA or Subsequent Owner and/or Operator, based solely on LRTA's or Subsequent Owner's and/or Operator's status as owner or operator of the Property, the Commonwealth and LRTA agree that LRTA or Subsequent Owner and/or Operator are entitled to such protection from such actions or claims as provided by G.L. c. 21E for the Matters Addressed at the Property Addressed; provided, however:

1. that LRTA has satisfied the notification provisions of G.L. c. 21E, §3A(j)(3) and 940 CMR 23.06(1);

2. the OAG has made its determination regarding the nature and extent of the opportunity that Affected Third Parties will have to join this Agreement pursuant to 940 CMR 23.06(3); and

3. the OAG has provided Affected Third Parties an appropriate opportunity to join this Agreement pursuant to 940 CMR 23.06(2) and (3).

E. GENERAL PROVISIONS

1. This Agreement may be modified only upon the written consent of all Parties.

2. Should any term or condition of this Agreement or its application to any person or circumstance be found to be unenforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and each remaining term and provision shall be valid and enforceable to the full extent permitted by law.

3. Each Party warrants and represents to the others that it has the authority to enter into this Agreement and to carry out its terms and conditions.

4. This Agreement may be fully executed by all Parties in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

5. The terms of this Agreement in Section IV, Paragraph B, subparagraph 1, with respect to the Covenant Not to Sue, shall be effective as of the date the OAG issues written notice to the Parties that this Agreement has been executed. The OAG's written notice to the Parties with respect to the Covenant Not to Sue will be Exhibit 5, to be attached hereto and incorporated into this Agreement. The terms of this Agreement in Section IV, Paragraph D, with respect to the Contribution Protection and Rights of Affected Third Parties, are subject to the OAG's determination that Affected Third Parties have had an appropriate opportunity to join this Agreement. The OAG may modify or withdraw the provisions in Section IV, Paragraph D regarding the Contribution Protection and Rights of Affected Third Parties if comments received from Affected Third Parties disclose facts or considerations which indicate that such protection is inappropriate, improper or inadequate. The provisions of this Agreement in Section IV, Paragraph D with respect to the Contribution Protection and Rights of Affected Third Parties shall be effective as of the date the OAG issues written notice to the Parties that the OAG has made its determination regarding the nature and extent of the opportunity that Affected Third Parties have had to join this Agreement. The OAG's written notice to the Parties with respect to the Contribution Protection and Rights of Affected Third Parties will be Exhibit 6, to be attached hereto and incorporated into this Agreement.

In the matter of the Lowell Regional Transit Authority
Brownfields Covenant Not to Sue

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

BY:



James D.P. Farrell
Assistant Attorney General
Brownfields Unit Chief
Environmental Protection Division
Office of the Attorney General
200 Portland Street
Boston, MA 02114


Date:

6/23/00

In the matter of the Lowell Regional Transit Authority
Brownfields Covenant Not to Sue

EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

BY:



Robert Durand
Secretary
Executive Office of Environmental
Affairs
Commonwealth of Massachusetts

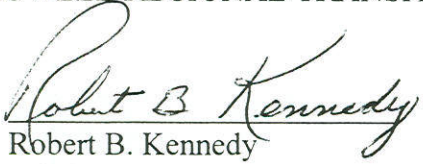
Date:

6/21/00

In the matter of the Lowell Regional Transit Authority
Brownfields Covenant Not to Sue

THE LOWELL REGIONAL TRANSIT AUTHORITY

BY:



Robert B. Kennedy

Administrator

Lowell Regional Transit Authority

145 Thorndike Street

Lowell, MA 01852

Date:

6/22/2000

EXHIBIT 1A

Legal Description

That certain parcel of land situated on the easterly side of Greendale Avenue, the southeasterly side of Hale Street and the southwesterly side of Howard Street in the City of Lowell, Middlesex County, Commonwealth of Massachusetts, and being shown as Lot 1-2C and Lot 1-2D on

a plan entitled, "Compiled Disposition Map of Lots 1-2C, 1-2D & 1-3A in Lowell, Mass., Hale Howard Urban Renewal Area, Project No. Mass. R-130", Scale 1" = 60', dated October 7, 1978, drawn by Dana F. Perkins & Assoc., Inc., Civil Engineers & Surveyors, Lowell & Reading, Mass., recorded with Middlesex North District Registry of Deeds in Plan Book 128, Plan 47; said Lot 1-2C and Lot 1-2D being collectively described according to said plan, as follows:

Beginning at a point on the easterly side of Greendale Avenue and the Lowell Connector as shown on said plan, thence running

409.68 feet to a point in the easterly sideline of Greendale Avenue; thence turning and running

N 34 degrees 52' 42" W 109.70 feet to a point of intersection of Greendale Avenue and Hale Street; thence turning and running

N 58 degrees 46' 08" E 263.94 feet to a drill hole in a stone bound; thence turning and running

N 55 degrees 02' 44" E 377.60 feet to a drill hole in a stone bound, said last two courses being along the southeasterly sideline of Hale Street; thence turning and running

Along a curved line with a radius of 43 feet a distance of 69.92 feet to a point in the southerly sideline of Howard Street; thence turning and running

S 31 degrees 47' 08" E 322.19 feet along the southerly side line of Howard Street to a point of intersection with the Lowell Connector; thence turning and running

S 49 degrees 55' 01" W a distance of 387.20 feet, by the Lowell Connector, to a point; thence turning and running

S 34 degrees 52' 42" W 291.51 feet, by the Lowell Connector, to the point of beginning.

Included with the aforescribed parcel is a parcel of registered land described as follows:

That certain parcel of land situated in Lowell, Middlesex County, Commonwealth of Massachusetts, and being shown as Lot 1 on a plan entitled: "Subdivision Plan of Land in Lowell, Mass.," Scale 1" = 60', dated October 30, 1978, Dana F. Perkins & Assoc., Inc., Civil Engineers & Surveyors, Lowell & Reading, Mass., being a subdivision of Land Court Case No. 4898 and being bounded and described, according to said plan, as follows:

NORTHWESTERLY by the line of Hale Street as shown on said plan, 203.43 feet;

NORTHEASTERLY by land of the City of Lowell as shown on said plan, 193.34 feet;

NORTHERLY by said land as shown on said plan, 17.00 feet;

SOUTHEASTERLY by said land as shown on said plan, 231.90;

SOUTHERLY by the line of the Lowell Connector as shown on said plan, 76.00 feet;

SOUTHWESTERLY by land of the City of Lowell as shown on said plan, 296.21 feet;

NORTHWESTERLY by said land, 1.10 feet;

SOUTHWESTERLY by said land, 93.37 feet.

Said Lot 1 being shown on Land Court Plan No. 4898 H filed with Certificate #23236.

EXHIBIT 1B

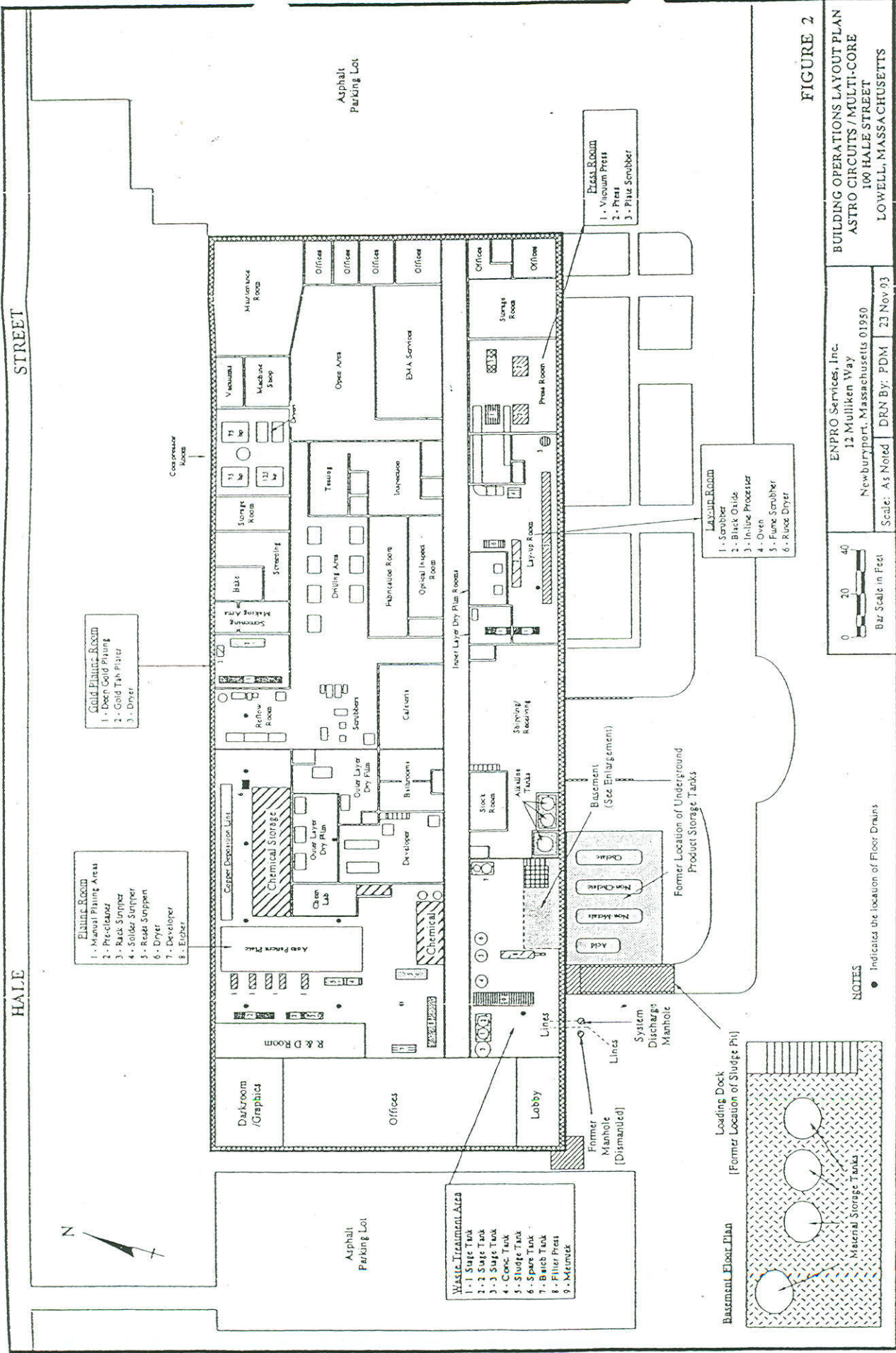


FIGURE 2
BUILDING OPERATIONS LAYOUT PLAN
ASTRO CIRCUITS / MULTI-CORE
100 HALE STREET
LOWELL, MASSACHUSETTS

ENPRO Services, Inc.
 12 Mulliken Way
 Newburyport, Massachusetts 01950
 Scale: As Noted DRN By: PDM 23 Nov 93



NOTES
 ● Indicates the location of Floor Drains

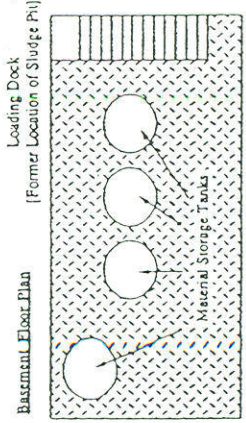
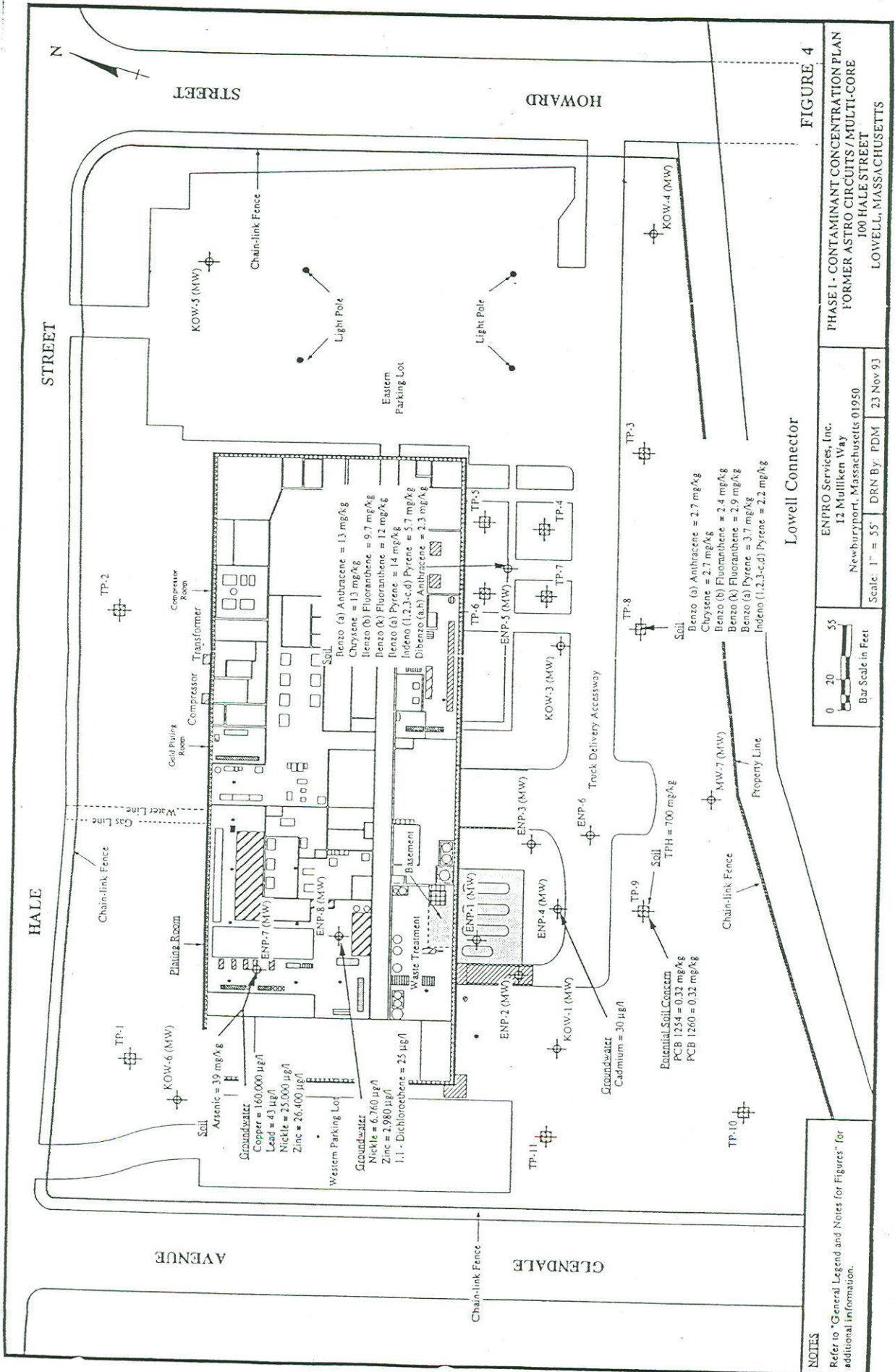


EXHIBIT 2A



NOTES
 Refer to "General Legend and Notes for Figures" for additional information.

EXHIBIT 2B

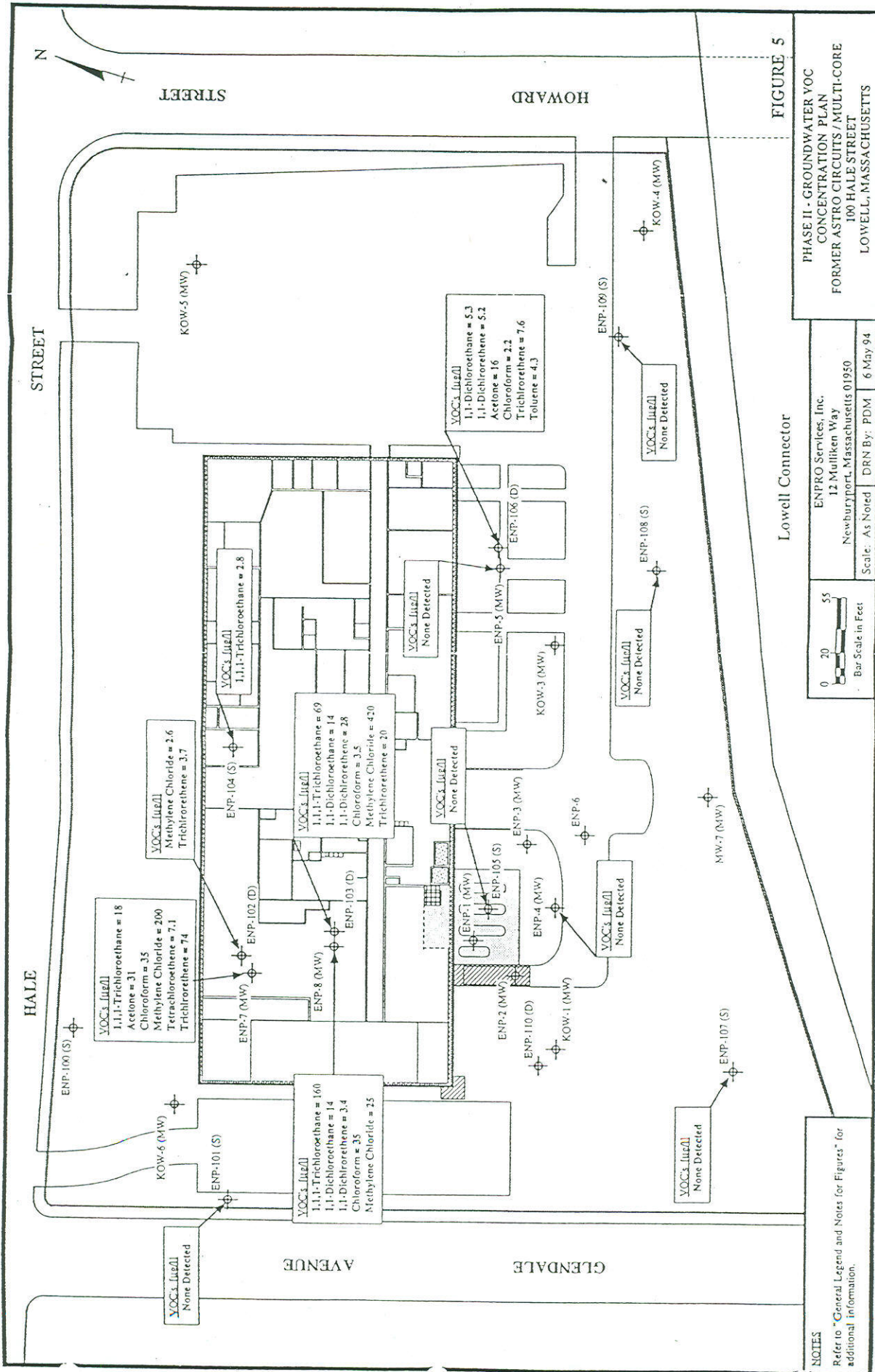


FIGURE 5

PHASE II - GROUNDWATER VOC CONCENTRATION PLAN
FORMER ASTRO CIRCUITS / MULTI-CORE
100 HALE STREET
LOWELL, MASSACHUSETTS

ENPRO Services, Inc.
12 Mulliken Way
Newburyport, Massachusetts 01950
Scale: As Noted DRN By: PDM 6 May 94

0 20 55
Bar Scale in Feet

NOTES
Refer to "General Legend and Notes for Figures" for additional information.

EXHIBIT 2C

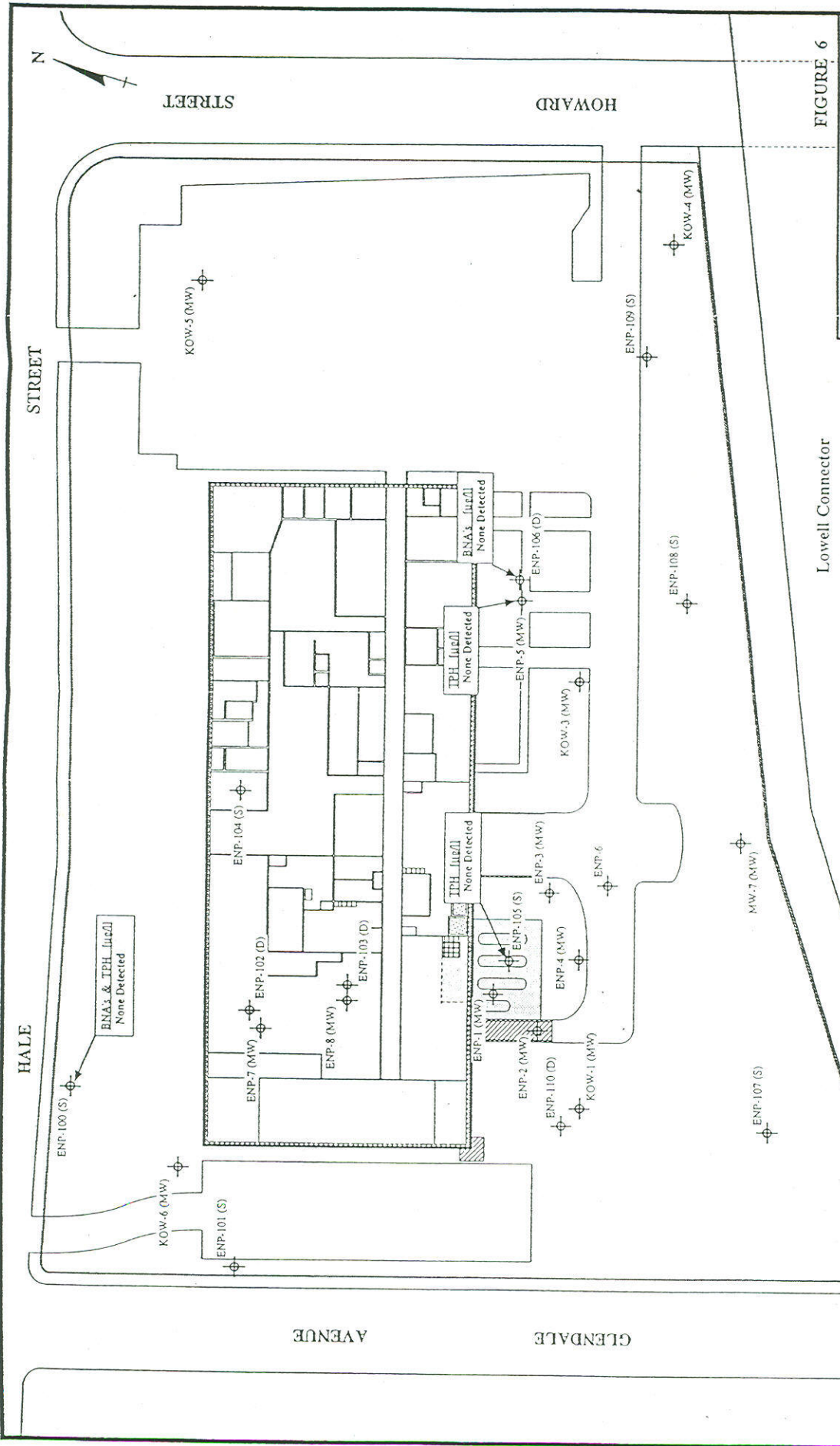


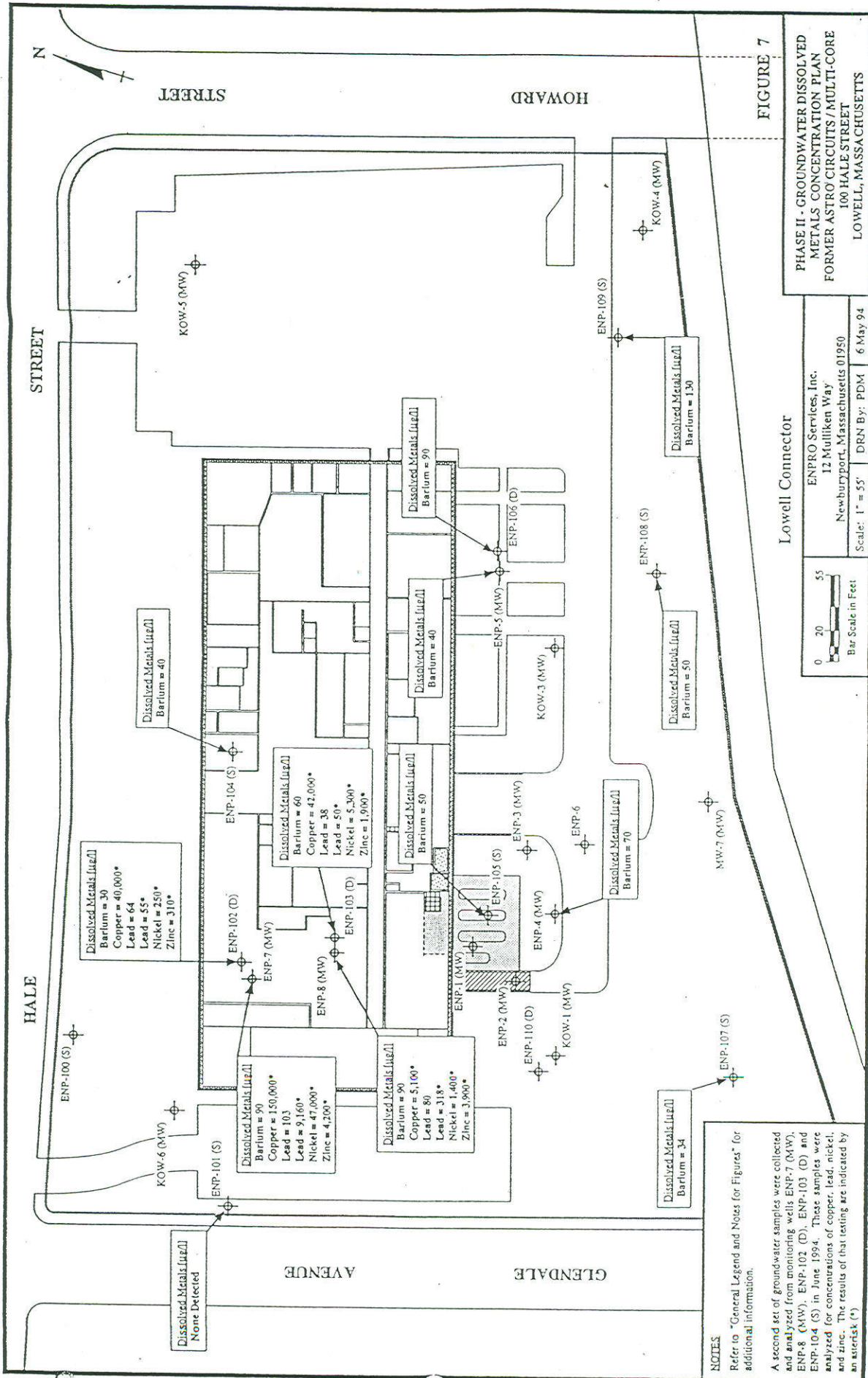
FIGURE 6
 PHASE II - GROUNDWATER BNA & TPH
 CONCENTRATION PLAN
 FORMER ASTRO CIRCUITS/MULTI-CORE
 100 HALE STREET
 LOWELL, MASSACHUSETTS

ENPRO Services, Inc.
 12 Mulliken Way
 Newburyport, Massachusetts 01950
 Scale: 1" = 55'
 DRN By: PDM 6 May 94

0 20 55
 Bar Scale in Feet

NOTES
 Refer to "General Legend and Notes for Figures" for additional information.

EXHIBIT 2D



NOTES

Refer to "General Legend and Notes for Figures" for additional information.

A second set of groundwater samples were collected and analyzed from monitoring wells ENP-7 (MW), ENP-8 (MW), ENP-102 (D), ENP-103 (D) and ENP-104 (S) in June 1994. These samples were analyzed for concentrations of copper, lead, nickel, and zinc. The results of that testing are indicated by an asterisk (*)

EXHIBIT 2E

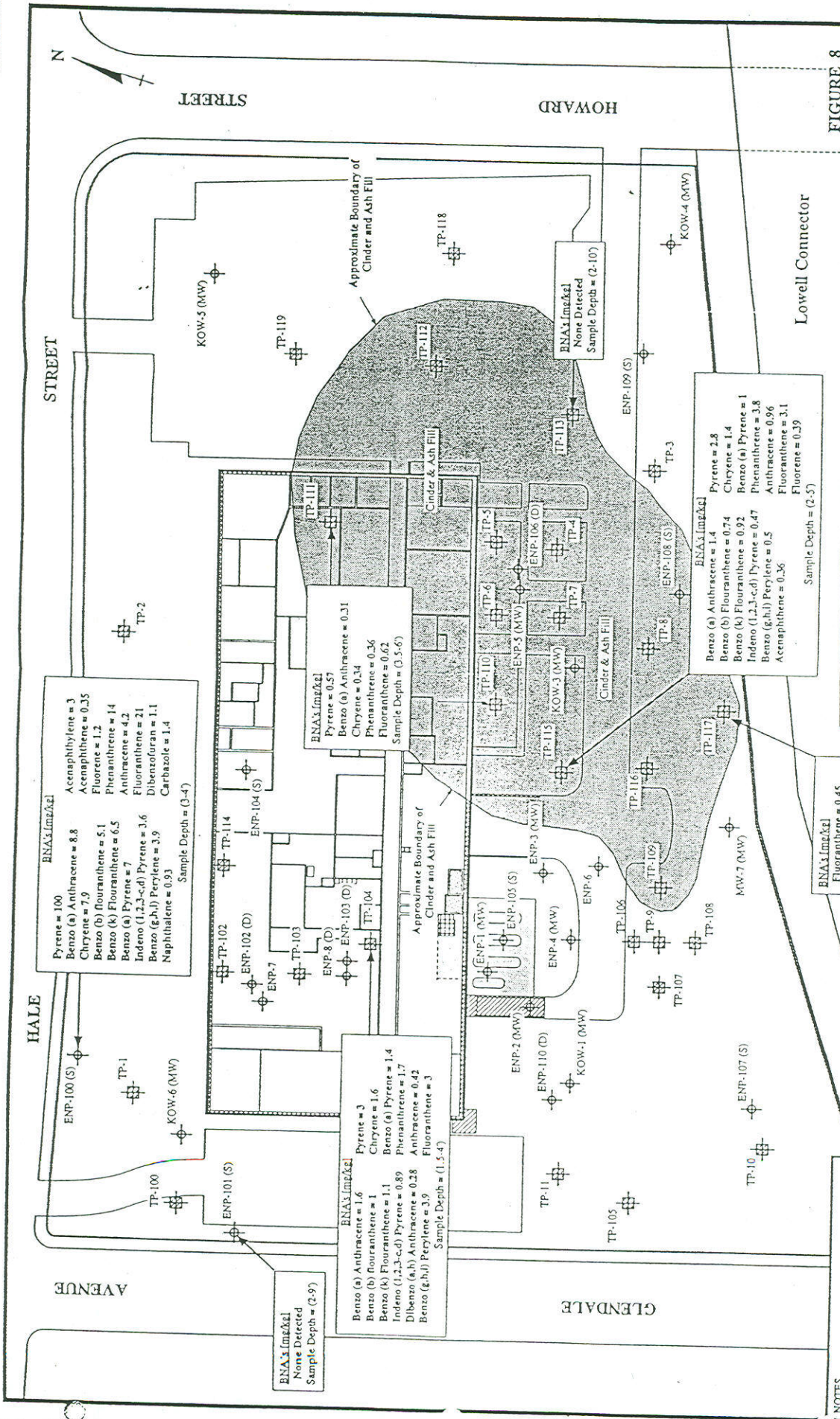
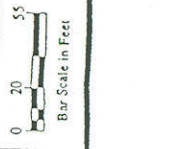


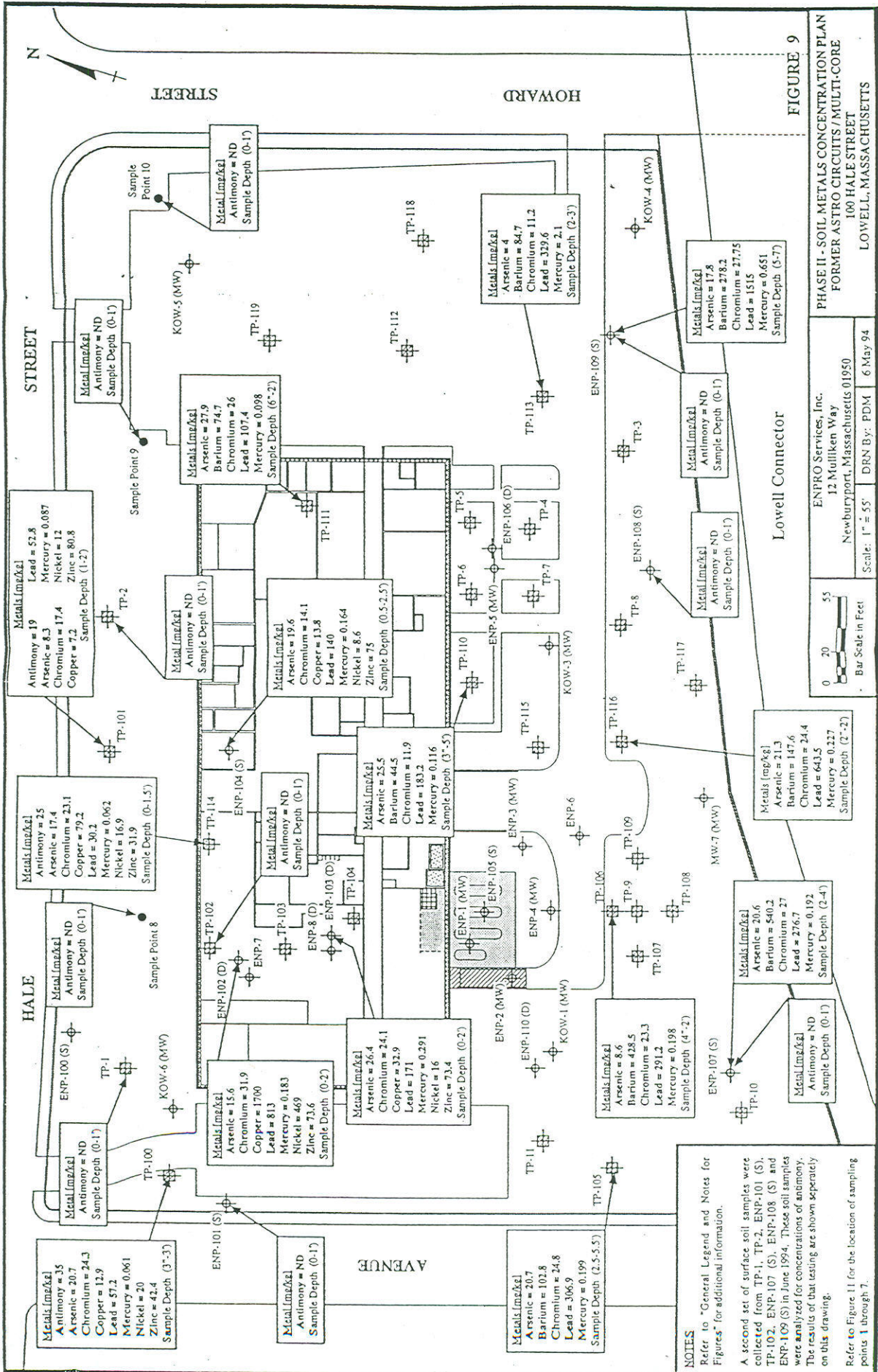
FIGURE 8
PHASE II - SOIL BNA'S CONCENTRATION PLAN
FORMER ASTRO CIRCUITS / MULTI-CORE
100 HALE STREET
LOWELL, MASSACHUSETTS

ENPRO Services, Inc.
 12 Multiken Way
 Newburyport, Massachusetts 01950
 Scale: 1" = 55'
 DRN By: FDM 6 May 94



NOTES
 Refer to "General Legend and Notes for Figures" for additional information.

EXHIBIT 2F



NOTES
Refer to "General Legend and Notes for Figures" for additional information.
A second set of surface soil samples were collected from TP-1, TP-2, ENP-101 (S), TP-102, ENP-107 (S), ENP-108 (S) and ENP-109 (S) in June 1994. These soil samples were analyzed for concentrations of antimony. The results of that testing are shown separately on this drawing.

Refer to Figure 11 for the location of sampling points 1 through 7.

FIGURE 9

**PHASE II - SOIL METALS CONCENTRATION PLAN
FORMER ASTRO CIRCUITS /MULTI-CORE
100 HALE STREET
LOWELL, MASSACHUSETTS**

Lowell Connector
ENPRO Services, Inc.
12 Mulliken Way
Newburyport, Massachusetts 01950
Scale: 1" = 55'
DRN BY: PDM
6 May 94

Bar Scale in Feet
0 20 55

EXHIBIT 2G

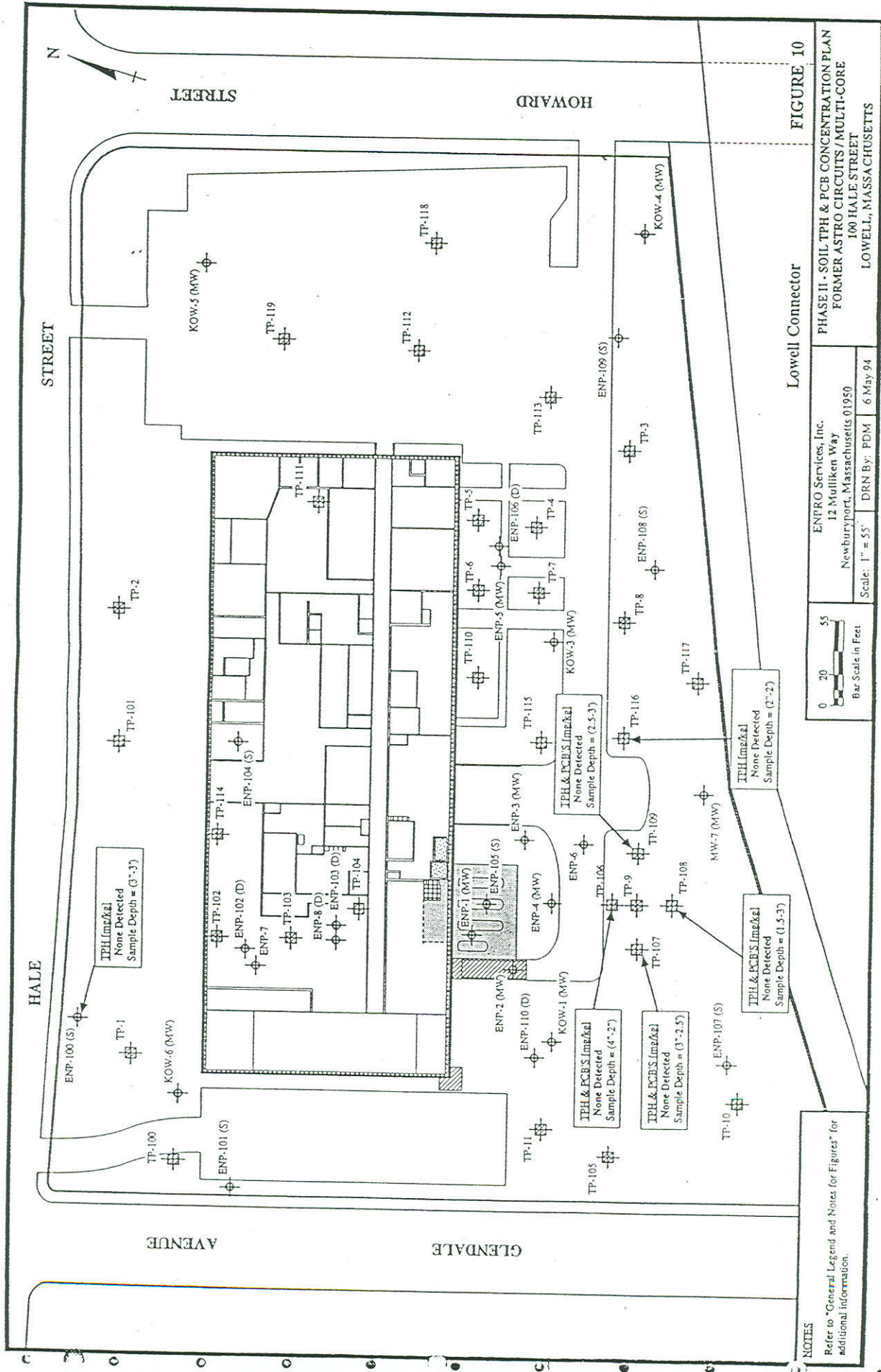
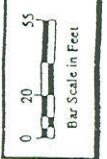


FIGURE 10
Lowell Connector
 PHASE II - SOIL TPH & PCB CONCENTRATION PLAN
 FORMER ASTRO CIRCUITS / MULTI-CORE
 100 HALE STREET
 LOWELL, MASSACHUSETTS

ENPRO Services, Inc.
 12 Mulliken Way
 Newburyport, Massachusetts 01950
 Scale: 1" = 55'
 DRN By: PDM 6 May 94



NOTES
 Refer to "General Legend and Notes for Figures" for additional information.

EXHIBIT 3

**LOWELL REGIONAL TRANSIT AUTHORITY
HALE STREET PUBLIC HEARING MINUTES
MAY 31, 2000**

Robert Kennedy, Administrator, welcomed everyone on behalf of LRTA.

Mr. Kennedy started by introducing members of his staff and others that were present:

Paula Good, Procurement Director
David Bradley, Finance Officer
Thel Sar, Interpreter
Ken Stevens, LRTA Consultant
Atty. Arthur Sullivan, LRTA Counsel
Suellen O'Neill, Access to Jobs Coordinator
Frank Trombly, LRTA General Manager
Ray Grady, Facility Manager
Beverly Woods and Chris Curry of the Northern Middlesex
Council of Governments (NMCOG)

We're also honored to have City Councilor, Rita Mercier here this evening, as well as Carol McCarthy and Norman Poirier, representing the neighborhood councils. Also present is Adam Bakey who is from the city's planning department. Thank you very much for coming.

Just a few opening remarks; the reason for the recorder is to have a record of the questions and answers in case needed for later use.

We're here this evening to describe our plans for improving 100 Hale Street into our bus maintenance and operations center and more importantly, to listen to your ideas and comments.

Before we begin, I would like to briefly describe how this project fits into our overall plans to improve and expand transit opportunities for the residents of Lowell.

The LRTA is in the process of implementing its 21st Century Transit Agenda which includes 4 major capital projects totaling 16 million dollars.

The first major project is the construction of a new 6.2 million dollar parking garage which will be built this summer over the existing railroad Right of Way.

Mr. Kennedy referred to a chart for his first initiative. Using the chart, Mr. Kennedy pointed to its location. Mr. Kennedy said that the new garage would be built over the railroad Right of Way with a new access road to enter and exit from Chelmsford/Westford Street.

Mr. Kennedy continued to say that NMCOG did studies that showed that 40% of the current traffic coming into Gallagher Terminal comes from the Chelmsford/Westford Street direction. Because of traffic jams at the Lord Overpass, many of the commuters use Hale Street to access the Gallagher terminal. We see this at night as well; there are a lot of cars that use Hale Street to access Gallagher Terminal.

This garage will add 450 new parking spaces to the Gallagher Center bringing the total parking to 1200 cars.

We believe that once the garage is completed, it will significantly decrease the amount of traffic that presently uses Hale Street.

The second major capital project is the LRTA's acquisition and renovation plans for 100 Hale Street.

The LRTA will use this site as our bus maintenance, storage and operations center. The facility will accommodate our administrative offices and space for the maintenance and storage of our fixed route buses.

We plan to spend approximately 1.3 million dollars making improvements to the site. These improvements will include the beautification of the site with significant landscape improvements.

We will be doing landscaping along Greendale Avenue and Hale Streets to improve the looks of the site.

Question: Is the building on the 100 Hale Street property staying or coming down?

Mr. Kennedy replied that the building would remain as it is a sound building. He said that there would be some improvements to the building and he was very excited about moving into the building.

Question: Is it a brick building?

Mr. Kennedy replied that it was a steel and cement block building. There is no brick.

The third major capital project is the construction of a new bus transit center at the Gallagher Intermodal Transportation Center.

This new center will allow us to relocate the existing downtown transit center to the Gallagher Terminal which will provide many benefits to the public such as:

- a. More frequent service on our bus routes (the time that is saved by eliminating the need to get in and out of the downtown will allow for more frequent service)
- b. Better and more direct intermodal connections (the LRTA continues to increase its existing Intermodal services. Presently there are buses that go north to Manchester Airport and Montreal and buses that go south to Boston, Worcester, New York City and Foxwoods Casino. These connections will be easier for the people of the Hale Street neighborhood. They won't be waiting for a shuttle downtown to get them to the Gallagher Terminal.)
- c. Increased customer amenities
- d. Improved handicapped access

And overall, a more user friendly transportation center, particularly for commuters and workers who use it everyday.

For those of you familiar with Gallagher Terminal and the LRTA, we now have 38 fixed route buses that use the entire downtown as their staging area.

What we propose to do is move all of those buses out of the downtown and to Gallagher Terminal where all of the buses will come into this new state of the art hub.

The fourth capital project is a new and expanded downtown shuttle service.

This new shuttle will operate every 5-7 minutes and stop at every key location in the downtown, including the hotel, the auditorium, Middlesex Community College, the high school, the arena, the ball park, University of Mass at Lowell, every city museum, every city garage, all tied through the Gallagher Intermodal Terminal. This new shuttle service, which we are proposing to operate "free of charge", will utilize state of the art, replica 18th Century trolleys.

The most important benefit of our new service for this neighborhood is its close proximity to the Gallagher Center and the easy access you will have to ride these new and exciting trolleys, free of charge, to every key location in the downtown.

These replicas of the turn of the century trolleys will be powered by compressed natural gas. They will kneel like our existing buses and they will take on wheel chairs like our existing buses. The interior is magnificent. We found by talking with other transit authorities in the country, that people are attracted to these trolleys and will bring their families just to ride them---particularly when they are free of charge. The routes will be down through the city, to the hotels, the auditorium, the Arena, LeLacheur Park, the museums and other major locations. These major locations will be serviced by the trolleys every 5 to 7 minutes.

Question: *How many seats are on the trolley, compared to the size buses we use today?*

Mr. Kennedy said the seat capacity was about the same with 36 seats.

Question: *Are we getting these buses real soon?*

Mr. Kennedy said that we would, in the very near future, have these look alike trolleys that are just getting off the assembly line now. We should have them in 2 - 3 months.

Question: *Do they look like the trolleys in San Francisco?*

Mr. Kennedy said they do and they are beautiful---people will love them.

I'd like to now focus our attention on the main purpose of this meeting, which is to hear your questions and comments on the LRTA's planned acquisition of 100 Hale Street.

First, I'd like to show you a map which depicts the direction that our buses will use to enter and leave 100 Hale Street.

Mr. Kennedy pointed out 100 Hale Street on the chart showing the end that was closest to the neighbors---where the administrative offices would be.

In the morning, the buses will exit the facility from a gate that is already there and take a right to head to Gallagher Terminal or directly to Thorndike Street. In the evening, the buses will return to the facility from Gallagher Terminal entering through a gate on Howard Street. The buses will not be left outside, they will all be parked inside the building.

Question: *What type of road leads to Gallagher Terminal from Hale Street?*

Mr. Kennedy replied that it is a paved road that is sufficient to allow two buses to pass.

Mr. Kennedy invited anyone who was interested to tour the facility with him.

Next, I'd like to show a rendering of some proposed landscape improvements along Greendale Avenue and Hale Street.

(Mr. Kennedy showed several posters with the proposed landscaping).

Mr. Kennedy said that he would welcome any suggestions regarding the landscaping.

Mr. Kennedy asked for any other questions.

Question: *Were all the neighbors notified?*

Mr. Kennedy replied that we went door to door with the public notice flyers. We also advertised the hearing in The Sun.

Question: *Is the neighborhood mostly homeowners or renters?*

Mr. Kennedy thought they were mostly homeowners with some renters.

Mr. Ralph Mercier said that it sounded like a good and sound plan and felt that Mr. Kennedy should proceed with his plans; knowing that whatever Mr. Kennedy did, it would be done right.

Mr. Kennedy replied that it would be done right and we would work in close conjunction with the neighborhood. Mr. Kennedy said there would be more transit service, more frequently, and to more locations. In general, the transit service would be improved.

Question: *What time do the buses start in the morning?*

Mr. Kennedy replied that the buses start at 6:30 am.

Question: *What are the taxes on the Hale Street property?*

Mr. Kennedy replied that the taxes are currently \$60,000 for the building. He continued to say that he is negotiating with the City Manager, Brian Martin, to come to some kind of agreement to make a payment in lieu of taxes. Mr. Kennedy told those in attendance that the Authority is prohibited to pay taxes under chapter 161B; however, we are reviewing what methods are available to make a payment in lieu of taxes.

Question: *Are there any hazardous waste materials generated from that building on Hale Street?*

Mr. Kennedy replied no. He said the building would be renovated and restored under the direction and guidance of the fire marshall and our environmental experts and consultants that we have retained.

Mr. Frank Trombly added that an example of concern could be the Bus Washer. He said that with the technology today, the water reclamation contains and cleans its own water and doesn't put it back out into the environment. This is the type of technology that will be instituted in the new building for all aspects of storage and maintenance.

Question: *Does this project need city council approval?*

Mr. Kennedy said that it doesn't because it is properly zoned and sized. However, Mr. Kennedy added that the people are important and that is why he wanted to bring this project before the public. Mr. Kennedy said that he would be continuing to inform other groups of this undertaking as well. He feels that the more people know of this, the better off everyone will be.

Question: *Will you be infringing on the brook that runs along side the property?*

Mr. Kennedy replied no. He said that the building wouldn't be enlarged and anticipated no construction anywhere else on the site.

Question: *How long before you are in the Hale Street building?*

Mr. Kennedy said that he hoped to be in the building by March or April of next year (2001).

Question: *How many buses are there?*

Mr. Trombly said that there are 38 buses.

Mr. Kennedy added that 58 buses could be parked inside the building on Hale Street.

Question: *Do you think the value of the property in the neighborhood will go down?*

Mr. Kennedy said he thought the property would increase in value.

Question: *Do you plan to keep the property maintained?*

Mr. Kennedy said absolutely. He invited anyone to come over to the Gallagher Terminal to see how well maintained that property is. He said we are constantly painting and making repairs as needed.

Question: *What time does the bus service end at the end of the day?*

Mr. Kennedy said that the buses presently stop at 6:30 pm. He said he is hoping to extend the hours and the days, including holidays.

Question: *Will there be advertising on the trolleys?*

Mr. Kennedy said we have no plans to advertise on the trolleys at this time.

Mr. Kennedy asked Councilor Mercier if she had any other questions from the neighborhood. Councilor Mercier said no.

Mr. Kennedy ended the public hearing by thanking each and everyone that was there. He also told them not to hesitate to call him with any other questions or concerns.

EXHIBIT 4

Hale
Entry

Track
Crossing

100
Hale St.

New
'Pulse'
Terminal

Existing
Terminal

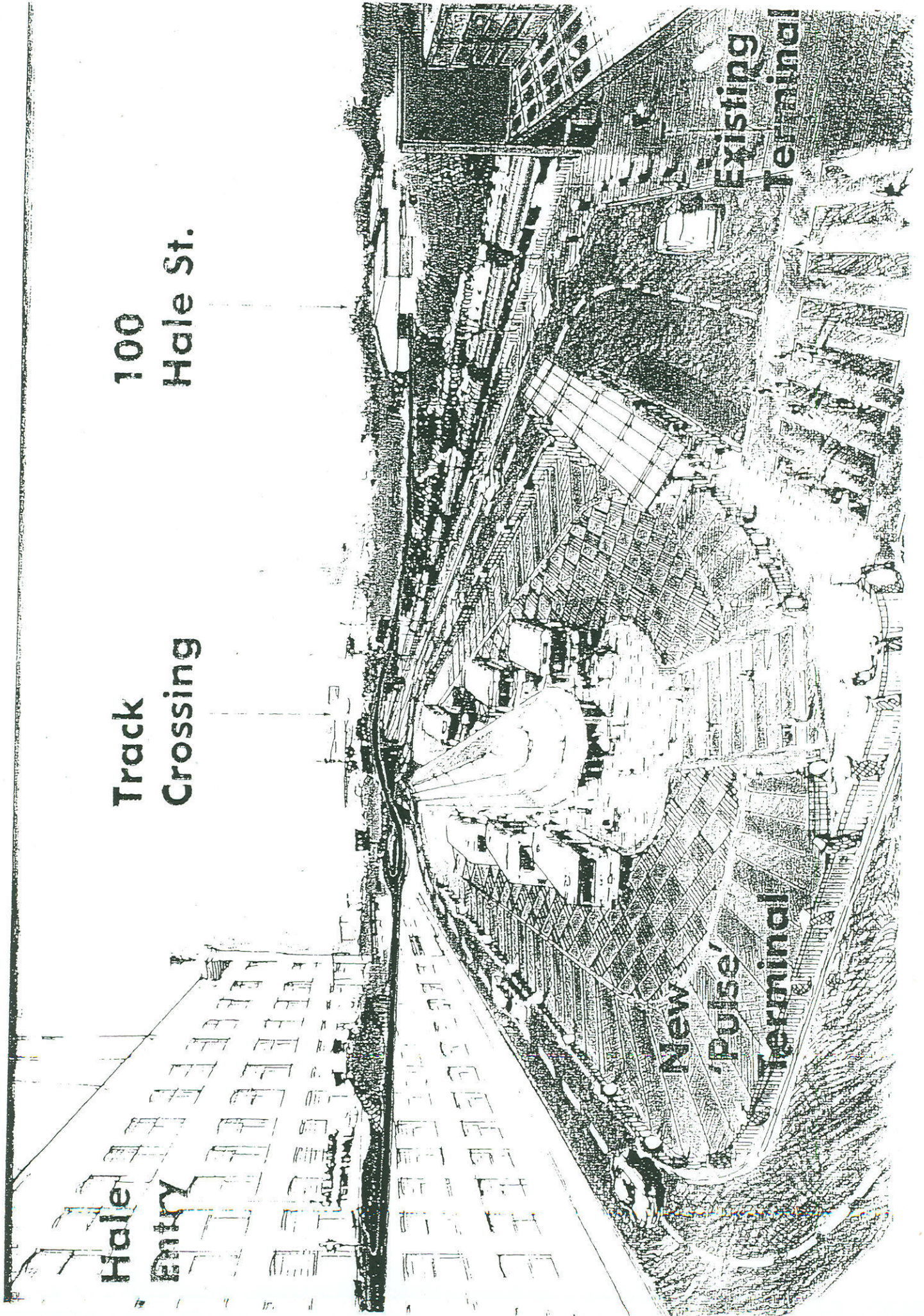
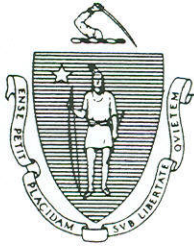


EXHIBIT 5



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

200 PORTLAND STREET
BOSTON, MASSACHUSETTS 02114

TOM REILLY
ATTORNEY GENERAL

(617) 727-2200

June 23, 2000

Robert B. Kennedy
Lowell Regional Transportation Authority
145 Thorndike Street
Lowell, Massachusetts 01852

Re: Brownfields Covenant Not to Sue Agreement


Dear Mr. Kennedy:

Pursuant to Section IV, Paragraph E, subparagraph 5 of the Brownfields Covenant Not to Sue Agreement involving the Lowell Regional Transportation Authority's ("LRTA") redevelopment project located at 100 Hale Street, Lowell, MA, this letter serves to provide written notice to the Parties that the Agreement has been executed and the Covenant Not to Sue, as set forth in Section IV, Paragraph B, subparagraph 1, is in effect, subject to the terms and conditions of the Agreement.

A copy of this letter will be attached to the Agreement as Exhibit 5.

With respect to the Contribution Protection and Rights of Affected Third Parties under Section IV, Paragraph D, I will contact you upon completion of the process set forth in Section IV, Paragraph E, subparagraph 5 of the Agreement.

Sincerely,


James D.P. Farrell
Assistant Attorney General
Brownfields Unit Chief

cc Robert LaRochelle
Arthur Sullivan, Esq.
Michael Scott, Esq.
Thomas LaRosa, Esq.
Catherine Finneran, DEP



EXHIBIT 6



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

200 PORTLAND STREET
BOSTON, MASSACHUSETTS 02114

TOM REILLY
ATTORNEY GENERAL

(617) 727-2200

October 26, 2000

Robert B. Kennedy
Lowell Regional Transportation Authority
145 Thorndike Street
Lowell, Massachusetts 01852

Re: Brownfields Covenant Not to Sue Agreement

Dear Mr. Kennedy:

Pursuant to Section IV, Paragraph E, subparagraph 5 of the Brownfields Covenant Not to Sue Agreement involving the Lowell Regional Transportation Authority's ("LRTA") redevelopment project located at 100 Hale Street, Lowell, MA, this letter serves to provide written notice to the Parties that pursuant to Section 3A(j)(3)(c) of Chapter 21E, G.L. c. 21E, §3A(j)(3)(c), and 940 C.M.R. 23.06, the Office of the Attorney General has provided Affected Third Parties a 90-day period within which to seek to join the Agreement. The 90-day period provided notice to potential third parties of its intent to seek liability protection against claims for response action costs or contribution brought by third parties pursuant to G.L. c. 21E, or for third party claims brought pursuant to that chapter or for common law of property damage. The 90-day period has expired. The Office of the Attorney General received no requests to join the Agreement during that 90-day period.

Accordingly, the process has been completed with respect to Contribution Protection and Rights of Affected Third Parties under Section IV, Paragraph D of the Agreement and the Agreement with respect to Contribution Protection and Rights of Affected Third Parties under Section IV, Paragraph D is now in effect.

A copy of this letter will be attached to the Agreement as Exhibit 6.

Sincerely,

A handwritten signature in cursive script, appearing to read "James D.P. Farrell".

James D.P. Farrell
Assistant Attorney General
Brownfields Unit Chief

cc Robert LaRochelle
Arthur Sullivan, Esq.
Michael Scott, Esq.
Thomas LaRosa, Esq.
Catherine Finneran, DEP

EXHIBIT 7



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

200 PORTLAND STREET
BOSTON, MASSACHUSETTS 02114

TOM REILLY
ATTORNEY GENERAL

September 14, 2000

(617) 727-2200

Robert Kennedy
Administrator
Lowell Regional Transit Authority
145 Thorndike Street
Lowell, Massachusetts 01852

Re: Brownfields Covenant Not to Sue Agreement for a Project at 100
Hale Street, Lowell, MA

Dear Mr. Kennedy:

This letter responds to your letter of September 5, 2000, submitted on behalf of the Lowell Regional Transit Authority's ("LRTA") requesting a one (1) month extension to October 31, 2000, to prepare a Phase III feasibility study and Response Action Outcome ("RAO") Statement regarding the redevelopment project at 100 Hale Street, Lowell, MA.

As you know, the Covenant Not to Sue Agreement entered on June 23, 2000, between the Commonwealth and the LRTA, requires the LRTA to retract the Class A-3 RAO Statement and submit an RAO to DEP that complies with the MCP within 90 days of the effective date of the Agreement or September 21, 2000. *See* Section IV, Paragraph A, subparagraph 3(b). I have consulted with Mary Ellen Smith, the technical expert the Office of the Attorney General retained for this matter, DEP and EOE, concerning your request for additional time. The Commonwealth concurs that the LRTA shall have until October 31, 2000, to submit the material required by Section IV, Paragraph A, subparagraph 3(b) of the Agreement.

A copy of this letter, including your letter of September 5th and the letter dated August 24, 2000, from Haley & Aldrich, will be attached to the Agreement as Exhibit 7, and incorporated therein.

Sincerely,


James D.P. Farrell
Assistant Attorney General
Brownfields Unit Chief

enclosure

cc Arthur Sullivan, Esq.
Michael Scott, Esq.
Tom LaRosa, EOE
Catherine Finneran, DEP



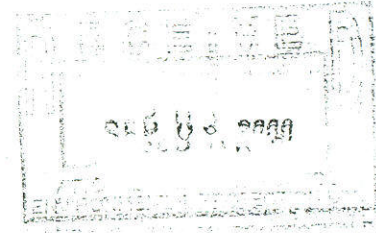


Gallagher Intermodal Transportation Center

145 Thorndike Street • Lowell, MA 01852
978-459-0164 • Fax: 978-458-9673

September 5, 2000

James D. P. Farrell
Assistant Attorney General
Brownfields Unit Chief
200 Portland Street
Boston, MA 02114



Dear Jim,

Many thanks again for the fine job you did on behalf of the Commonwealth and the Lowell Regional Transit Authority in providing us with a Covenant Not to Sue Agreement. This Agreement has provided the LRTA with an opportunity to design a state of the art bus maintenance and storage facility and a model intermodal transportation center at the Gallagher Terminal.

Attached is a letter I received from Haley & Aldrich, who have been retained by the LRTA to prepare a Phase III feasibility study and a RAO Statement which is due ninety (90) days from the effective date of the Covenant (June 23, 2000). As a result of procurement delays, it was impossible for Haley & Aldrich to begin their work until very recently.

Due to the scope and complexity of the work, it is their opinion that a one (1) month extension, to October 31, 2000, will be necessary to adequately prepare the required submission.

I would greatly appreciate your consideration and understanding of this request.

Sincerely,

A handwritten signature in cursive script that reads 'Robert B. Kennedy'.

Robert B. Kennedy
Administrator

Haley & Aldrich, Inc.
465 Medford Street
Suite 2200
Boston, MA 02129-1400
Tel: 617.886.7400
Fax: 617.886.7600
www.HaleyAldrich.com



24 August 2000
File No. 12666-040

Lowell Regional Transit Authority
145 Thorndike Street
Lowell, Massachusetts 01852

Attention: Mr. Robert B. Kennedy

Subject: Environmental Consulting Services
Former Astro Circuits/Multi-Core
100 Hale Street
Lowell, Massachusetts

Dear Mr. Kennedy:

As you know, Haley & Aldrich, Inc. recently finalized our contract with the Lowell Regional Transit Authority (LRTA) to provide environmental consulting services associated with the retraction of the current Class A-3 Response Action Outcome (RAO) and the preparation of a Class C RAO for the property at 100 Hale Street in Lowell, Massachusetts, RTN: 3-0905.

We have reviewed the "Brownfields Covenant Not to Sue Agreement" between the LRTA and the Commonwealth of Massachusetts, and we note that it stipulates that the Class A-3 RAO for the site be retracted, and that the revised RAO be submitted to the Department of Environmental Protection (DEP) within 90 days of the 23 June 2000 effective date of the Covenant Not to Sue. In accordance with that timeframe, the RAO retraction/revised RAO is due to DEP by 21 September 2000.

The work to be completed in this effort includes: retraction of the current Class A-3 RAO; a comprehensive review and recompilation of the existing site data and information; a detailed evaluation of the existing risk characterization and preparation of a Substantial Hazard Evaluation; and, the preparation of a Phase III Feasibility Study and RAO Statement.

Given the scope and complexity of the work involved, along with our current workload and staffing demands, we believe that an extension to the current 21 September 2000 due date will be necessary to adequately prepare and submit the required MCP documents for the site.

OFFICES

Charles Town
West Virginia

Cleveland
Ohio

Denver
Colorado

Detroit
Michigan

Hartford
Connecticut

Los Angeles
California

Manchester
New Hampshire

Newark
New Jersey

Portland
Maine

Rochester
New York

San Diego
California

San Francisco
California

Tucson
Arizona

Washington
District of Columbia

Lowell Regional Transit Authority

24 August 2000


Page 2

We appreciate the opportunity to undertake this work and look forward to working with the LRTA to complete this work in a expeditious manner. Please do not hesitate to contact us if you have any questions or require additional information.

Sincerely Yours,
HALEY & ALDRICH. INC.



Stewart A. Wiley
Senior Engineer


for Maureen Hill Collins
Vice President

F:\1266\040\detsy.doc

