



LeCCG



Presentation to the American Association of Port Authorities on Environmental Cost Recovery

Presented by:

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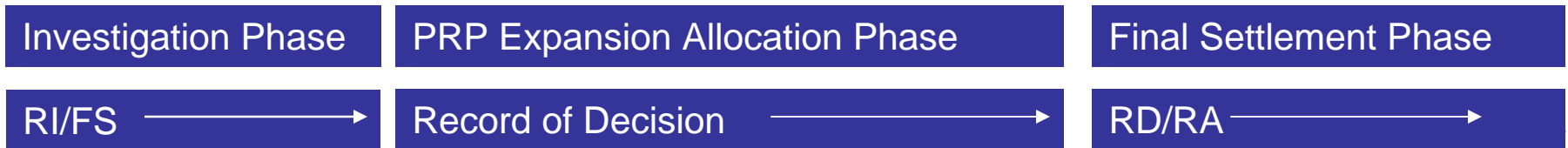
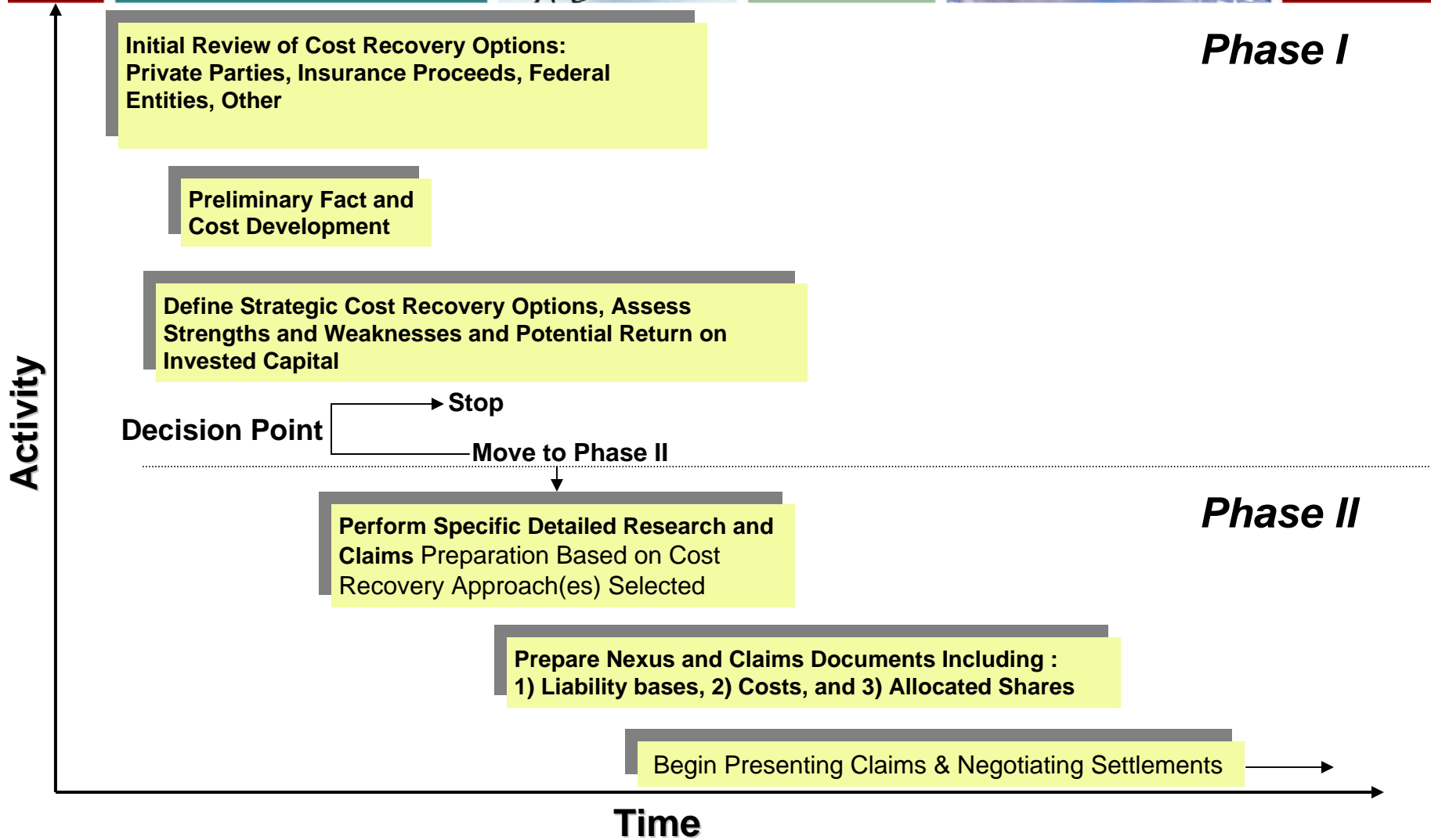
Potential Avenues of Cost Recovery for Ports

- ✓ Avenues of cost recovery for port sites include:
 - Private parties
 - Federal entities
 - Historic insurance coverage
 - Other (WRDA, DERP/FUDS, Orphan Share Funding)
- ✓ Typically achieve best results using a phased approach that involves:
 - Detailed evaluation of cost recovery options
 - Consideration of transactional costs
 - Coordination with other Port priorities
 - Recognition of the unique characteristics of Ports

Goals of the Phase I Work

- ✓ Determine the initial likelihood of cost recovery from private, federal and insurance sources and other sources
- ✓ Perform historical research to establish a historical fact baseline for the sites
- ✓ Perform conduct preliminary cost development to establish the initial cost boundaries
- ✓ Perform fatal flaw and return on invested capital analysis
- ✓ Develop a cost recovery plan of action

Sample Project Steps and Timeline



Coordinate Activities To Maximize Results

✓ Research

- Develop a combined research plan that focuses on documenting liability broadly enough to encompass both private parties and federal entities
- Where appropriate combine insurance archeology efforts with corporate research activities in Port and other relevant data sets
- Develop a useable records management and retrieval system

✓ Technical

- Ensure cleanup methods selected meet the “substantial compliance” criteria of the NCP to be eligible for federal cost recovery and are integrated with your state law recovery plan
- Ensure cost estimating methods used are considered “acceptable” for the recovery of costs in all areas

✓ Cost Development / Cost Allocation

- Ensure costs are compiled and documented in accordance with “accurate accounting” standards (e.g. *United States v. W.R. Grace, etc.*)
- Use generally accepted cost allocation methodologies (e.g. time temporal, stand alone cost method, etc.) as the basis for cleanup cost apportionment
- Develop allocation scenarios targeting specific constituencies

Assess Strengths and Weaknesses

Insurance Recovery

- ✓ Ability to reconstruct historic coverage
- ✓ State law considerations
 - Direct claims state
- ✓ Policy rights issues
 - Rights issues
 - Successorship issues
- ✓ Coverage value and company viability
- ✓ Defense costs v. indemnity
- ✓ Policy exclusions
- ✓ Fee structure: Fee for service v. Contingency fee
- ✓ Estimated response costs

Assess Strengths and Weaknesses

Federal Recovery

- ✓ Liability assessment
- ✓ Nexus to the contamination
- ✓ National Contingency Plan (“NCP”) compliance
- ✓ Accurate accounting standards
- ✓ Threshold allocated share
- ✓ Estimated response costs

Private Party Recovery

- ✓ Liability assessment
- ✓ Nexus to the contamination
- ✓ Predecessor / successor evaluation
- ✓ Bankruptcy rights reservation
- ✓ Data gap analysis
- ✓ Involvement in cleanup decisions
- ✓ Transactional costs
- ✓ Threshold allocated share
- ✓ Estimated response costs

Unique Considerations for Ports

- ✓ Stringent Port information disclosure requirements
 - Higher standard to disclose than private parties
 - Political considerations (both positive and negative)
 - Stakeholder involvement
- ✓ Tenant considerations
 - Do we sue our tenants?
 - Can you partner with tenants
 - Can you get them in early and cash them out
- ✓ Coordination with other programs
 - Overall Port development
 - Maintenance dredging
- ✓ Cost development considerations
 - Accounting for direct and indirect costs
- ✓ Influencing remedy selection

Goals of the Phase II Work

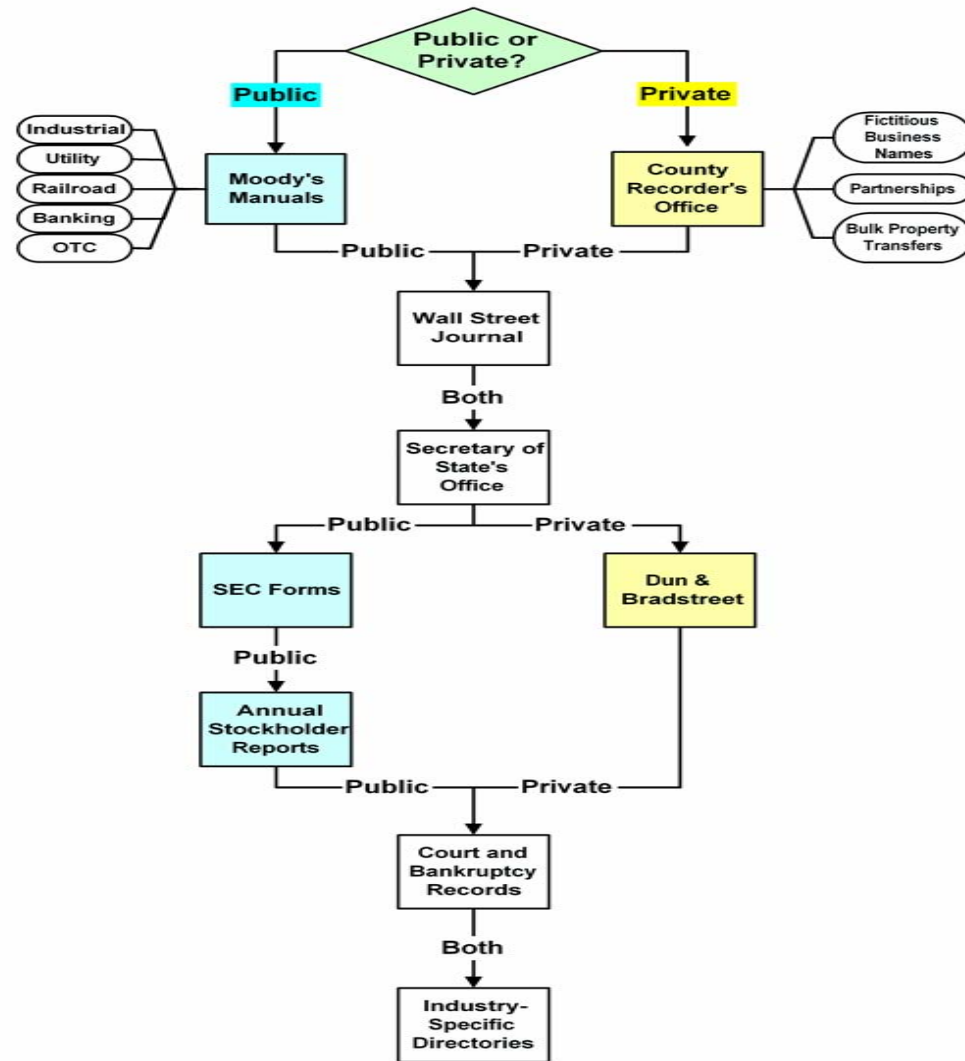
- ✓ Conduct internal and external records research to fill data gaps and develop nexus arguments.
- ✓ Develop and implement a plan to obtain oral evidence (if needed).
- ✓ Develop detailed technical and cost data based on actual or projected expenditures.
- ✓ Develop defensible allocation models.
- ✓ Draft narrative fact basis and allocation reports
- ✓ Initiate settlement discussions.



Key Components of a Cost Recovery Claim to be Developed in Detail in Phase II

- ✓ **Legal** – Information detailing the legal basis for the claim and remedial drivers
- ✓ **Liability/Historic** – Historic information detailing basis for liability and historic fact bases
- ✓ **Technical** – Data relating to past and future remedial activities at the site
- ✓ **Nexus** – Data linking the activities of a specific party to the contamination being addressed
- ✓ **Cost** – Detailed cost buildup information (e.g. invoices, authorizations for expenditure, estimates, etc.) relating to past and future site work
- ✓ **Allocation** – Data detailing the basis for an allocated share and demand

Corporate Research Decision Tree





Corporate History Sources

Private Companies

- ✓ Secretary of State
- ✓ Dun & Bradstreet
- ✓ County Recorder's / Assessor's Office
- ✓ *Wall Street Journal Index*, Corporate News
- ✓ Court / Bankruptcy Records
- ✓ Industry-Specific Directories

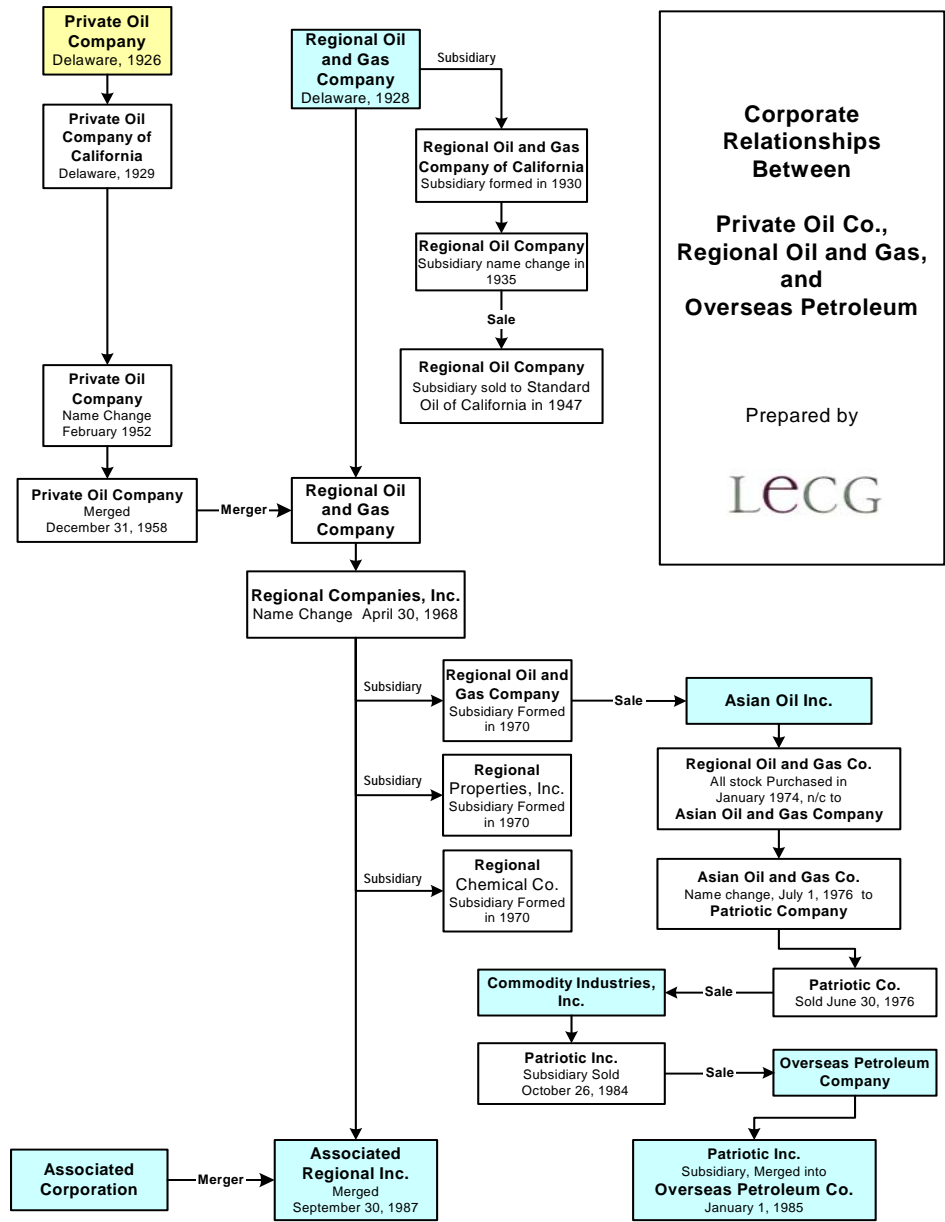
Public Companies

- ✓ Secretary of State
- ✓ SEC, Form 10-K
- ✓ County Recorder's / Assessor's Office
- ✓ *Wall Street Journal Index*, Corporate News
- ✓ Moody's Manuals
- ✓ Published Company History
- ✓ Industry-Specific Directories

Sample Corporate History Chart

Private

Public



Corporate Relationships Between Private Oil Co., Regional Oil and Gas, and Overseas Petroleum

Prepared by

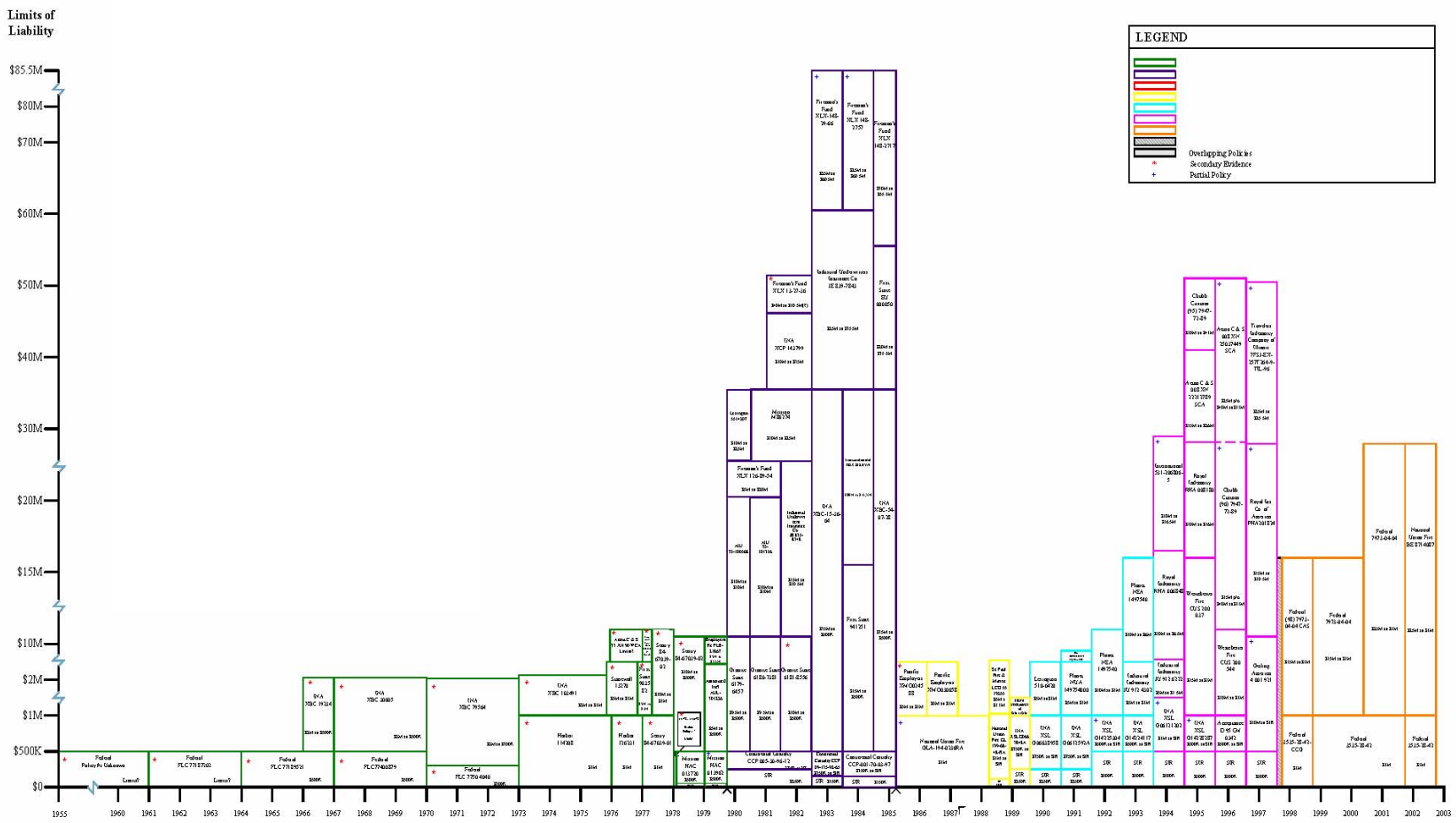
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Insurance Coverage Data Sources

- ✓ Insurance Department Records
 - Policies
 - Certificates of insurance
 - Claims data
- ✓ Accounting Records
 - Cancelled checks to brokers
 - Journal entries
 - Risk Management memoranda and risk assessments
- ✓ Contracts
 - Proof of insurance records
- ✓ Legal Department Files
 - Coverage lawsuits
 - Claims notices



Insurance Coverage Chart



Federal Data Sources

- ✓ National Archives and Records Administration
 - Ownership records
 - Contracts
 - Leases
- ✓ Federal Records Centers
 - Agency-specific records
 - Correspondence
- ✓ Federal Agencies
 - Agency libraries
 - Agency-specific publications



Sample Photo of A Navy Owned Shipyard

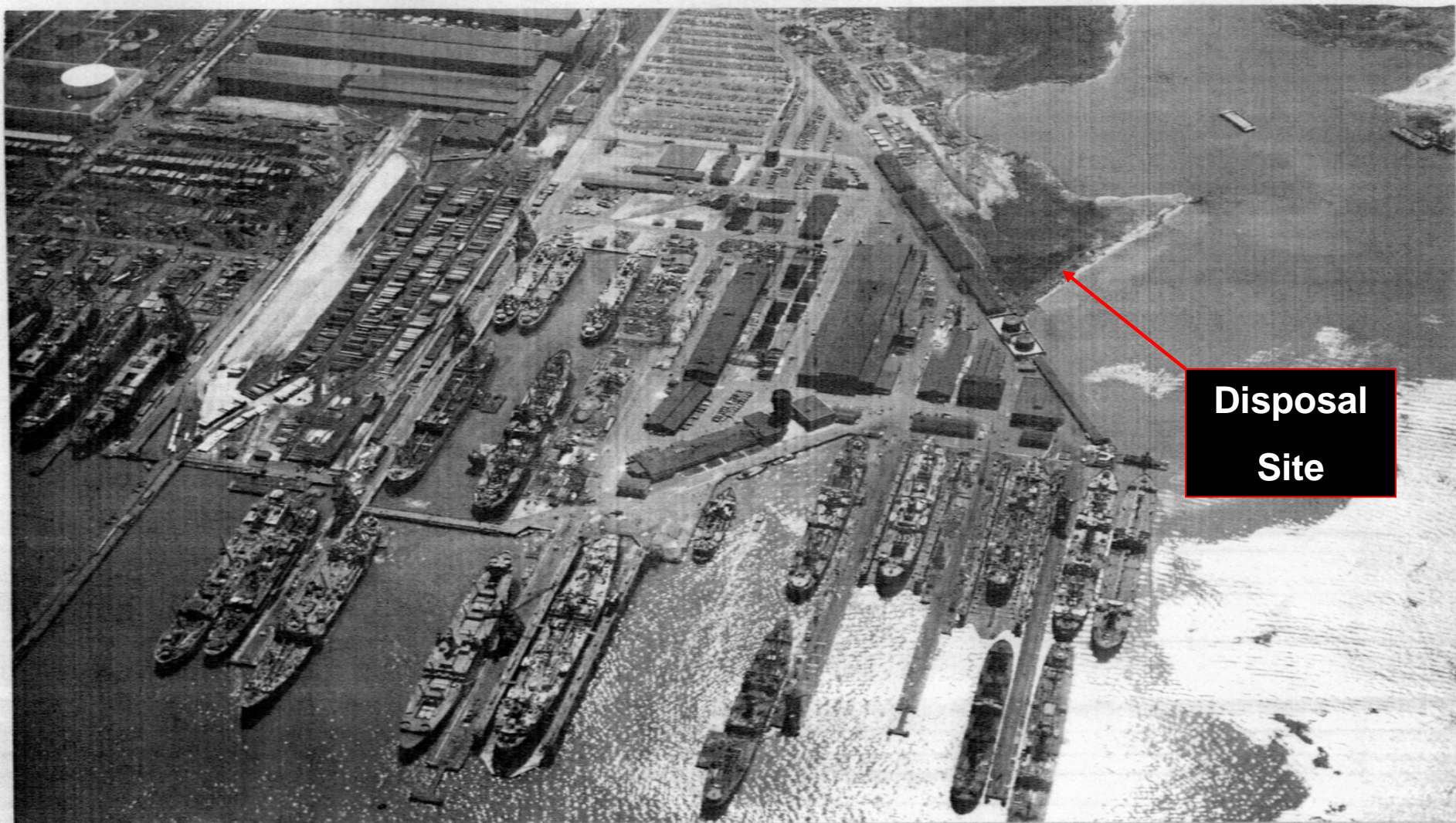
April 29, 1943

66897

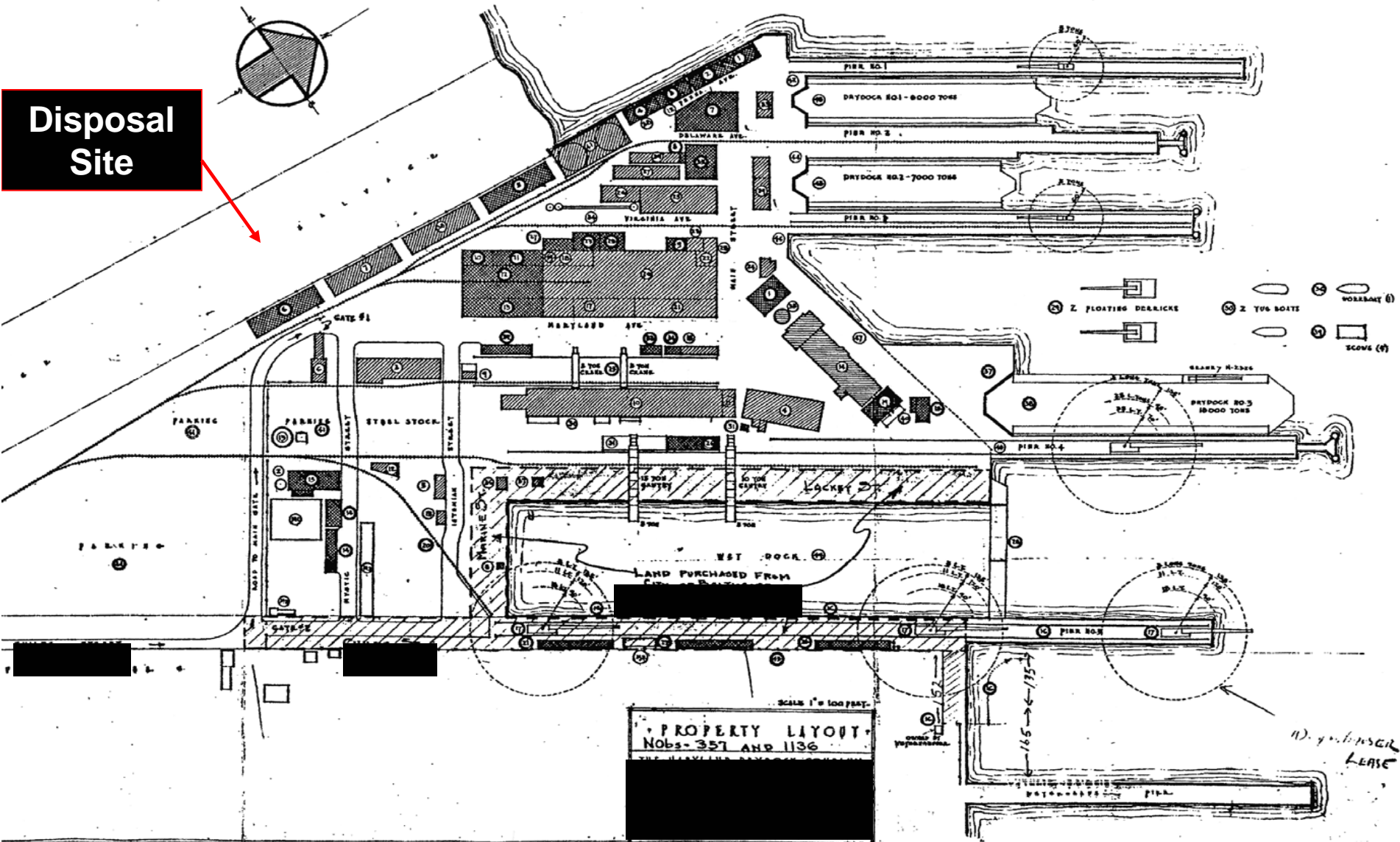
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Looking West

N. Aer.



Sample Layout Drawing of Navy Owned Site



Disposal Site

PROPERTY LAYOUT
Nobs- 357 AND 1136

LEASE