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Environmental
Cleanup Office

10002 Aurora Ave. N., #5546
Seattle, WA 98133
November 16, 2006

United States Environmental Protection Agency, Region 10
Claire Hong, Remedial Project Manager
Environmental Cleanup Office
1200 Sixth Ave. ECL-111
Seattle, WA 98101

Re: 7200 2nd Ave. S., Seattle

Dear Ms. Hong:

In reply to your letter to me dated October 10, 2006, I submit the following comments and information. Researching material at the University of Washington Law Library, I have read 42 U.S.C. &9601, &9606 and &9607 as well as 40 CFR Ch 1, Section 300, particularly No. 312.

First, I want to know why my letter was sent to Boyer Logistics, a company with which I have no business connection at all. My son, Boyer Halvorsen, does run Boyer Logistics, but that is a personal connection to the manager, not a business connection to the company. If your records are in error, please correct them.

Secondly, I must protest the manner in which EPA is proceeding. U.S. v. Bestfoods, et al. (1998) 524 U.S. 51, 141 L.Ed..2d 43, at page 1877 in 118 S. Ct. 18876 states:

> CERCLA imposes the costs of the cleanup on those responsible for the contamination (emphasis added).

EPA is lumping the innocent in with the guilty by demanding documents without determining who is responsible. This was prohibited by the United States Supreme Court in 1954 in Wieman v. Updegraf 344 U.S. 183,, 73 S. Ct. 215, 97 L. Ed. 216; therefore, EPA is proceeding illegally and unconstitutionally. By presuming that everyone is guilty EPA is in violation of our constitutional rights to be presumed innocent until proven guilty as guaranteed under the Fifth Amendment and Fourteenth Amendment to the U.S. Constitution. Furthermore, EPA is demanding documents from the innocent to which you have no right. In this, EPA is violating the innocent parties' right of privacy as guaranteed under the First Amendment to the U.S. Constitution and their right to be secure against unreasonable searches and seizures as guaranteed under the Fourth Amendment to the U.S. Constitution. Lastly, EPA does not apprise the innocent of their right to hire an Environmental Specialist to conduct an Inquiry that will confirm that the pollution is emanating from other than their property which, I believe, is know as the Miranda Rule, and thereby secure release from further interference with their business. I strongly urge the EPA to review its procedures and revise them to be in accordance with the U.S. Constitution and the U.S. Supreme Court rulings.

USEPA SF
1345742

To answer your letter, to establish ownership and control for you of the above-referenced property, please be informed that I gave that property my children, Kirsten, Maia and Boyer in 1987, but retained the lease rights. In other words, my children acquired the property by bequest while I retained control over what could or would operate there. Copy of the Quit Claim deed is enclosed. Under 42 U.S.C. 9601, 35(A)(iii), persons who acquire the property by inheritance or bequest are not liable under CERCLA. Thus, my children have absolutely no liability for the property.

I retain the lease rights to the property and am responsible for how the property is operated. The property has been leased to Richard Schultz since 1983 who operates Riverview Marina at the site, not a business that would produce pollution. Copy of the lease is enclosed herewith. In 2003, Richard Schultz exercised his option to lease the property for 10 more years. The manager of the Marina supervises the proper recycling of the oil and has palettes upon which to place batteries, which he returns to a suitable recycling business four times a year. The pollution is not originating or coming from my leased property.

Under 42 U.S.C. 9607(b)(3):

> There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by...
>
> (3) an act or omission of a third party...

42 U.,S.C.A. 9607(q) Contiguous properties states

(1) Not considered to be an owner or operator

(A) In general

A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from, real property that is not owned by that person shall not be considered to be an owner or operator of a vessel or facility under paragraph (1) or (2) of subsection (a) of this section solely by the reason of the contamination if—

(i)the person did not cause, contribute, or consent to the release or threatened release;

(ii) the person is not—

> potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship…

40 CFR Ch 1, Section 300 (7-1-06) Part 312.1 states that persons seeking to establish the innocent landowner and/or contiguous property owner defenses must hire an environmental professional to conduct an inquiry to identify conditions indicative of releases or threatened releases as defined in CERCLA.

Therefore, since I am innocent, have the option of hiring an Environmental Specialist, and not wishing to overburden EPA with unnecessary, irrelevant and superfluous documents, I am not furnishing any further documents other than the Quit Claim Deed and the copy of the lease to Richard Schultz, as those are the only two documents germane to the issue at hand. Exercising my right under 40 CFR Ch 1, Section 300 (7-1-06), Part 312.1, I will hire an Environmental Profession to conduct an inquiry and certify that the pollution is emanating from another source. I would like to mention that what with Thanksgiving and Christmas very nearly upon us, I do not think I can employ one much before January and I have no idea how long it will take to conduct this inquiry. Therefore, I cannot give you a date certain when this inquiry will be completed, but rest assured, it will be done as expeditiously as possible.

Thank you for your attention to this matter.

Very truly yours,

M.C. Halvorsen

M. C. Halvorsen

cc: Senator Patty Murray
Senator Maria Cantwell
Richard Schultz

LEASE AGREEMENT

THIS LEASE AGREEMENT, made in Seattle, King County, Washington, this 3rd day of May 1983, is by and between Mary Catherine Halvorsen hereinafter referred to as "Lessor", and Richard D. Schultz, hereinafter referred as to as "Lesee."

1. NONSTANDARD PROVISION: The following entries constitute the non-standard provisions of this lease and are referred to elsewhere herein:

A. The premises consist of 15,000 +/- square feet as described in the plot plan attached hereto and by this reference thereto incorporated herein which is a parcel of land situated on the Duwamish waterway at Second Avenue South in the city of Seattle, South Park, King County, Washington described as follows:

Portland and Puget Sound Railway addition Volume 5-74 Block 5, Lots 1 & 12, and 59, 60, 61, 62 and 13, 14, 57, 58, and N. 10 feet of 56, less Commercial Waterway #1, together with submerged lands lying adjacent to and between the shoreline and Commercial Waterway No. 1 (Channel).

B. GOUND AREA: The agreed rentable area of the premises is 15,000 +/- square feet less the residence until July 15, 1984. (There is approximately 273 feet lineal feet on the Duwamish Waterway. This includes 33+/- additional lineal feet by utilizing the east half of Second Avenue South road. If there is less than 263 lineal feet, the lease will be renegotiated.)

2. BUSINESS PURPOSE: The premises are to be used for the purpose of conducting thereon any lawful business as may be decided by the Lessee. The Lessee shall have and is hereby granted the right to improve the said real property in any manner not unlawful, providing such improvements shall not depreciate the value of the said real property.

3. TERM: The term of this lease shall be for twenty (20) years with rental adjustment every four years. It shall commence on the first day after securing necessary permits to construct moorage, and ending on the first day 20 years later. If said permits are denied, said agreement is void. If said permits are not obtained by November 1, 1983, this agreement is void.

4. LEASE OPTION: The option to renew shall be for ten years, rent to be negotiated. If agreement has not been reached six months before expiration of lease, each party shall appoint and pay an arbitrator, who shall be qualified in the area of rentals. The two arbitrators shall determine the rental for

the upcoming renewal. Should the arbitrators not reach agreement, they shall appoint a third arbitrator who will be paid jointly by the lessor and lessee. Determination of rental by the arbitrators shall be binding.

5. SECURITY DEPOSIT: The security deposit shall be $1,000 payable on the date the lease is executed. This deposit shall be applied toward the last month's payment on this lease, provided lessee has faithfully and fully complied with all of the covenants, agreements, terms and conditions of this lease. Said deposit shall be deposited in an insured interest bearing account with interest accrue to lessee.

6. RENT: Lessee covenants and agrees to pay the lessor for the first four (4) year term, a monthly rent of $1,000.00. Payments will be made in lawful United States currency, in advance on the first day of each calendar month of the lease term, to Lessor or to such other party or at such other places as the Lessor may hereafter designate. Six (6) months prior to expiration of the first four (4) year terms, parties shall agree to adjust the rental amount for the second four (4) years of this lease based upon increases or decreases in the Consumer Price Index for that period. If agreement has not been reached within one month, each party shall appoint and pay an arbitrator who shall be qualified in the area of rentals. The two arbitrators shall determine the amount of rent for the upcoming rental adjustment. Should the arbitrators not reach an agreement, they shall appoint a third arbitrator who will be paid jointly by the lessor and lessee. Determination of rental by the arbitrators shall be binding. The same procedures shall be followed for each ensuing four year terms.

7. REPAIRS: The said real property has been inspected and is accepted by the Lessee in its present condition, and Lessee will at all times keep the premises neat, clean and in sanitary condition, will and at all times preserve said premises in as good repair as said premises now are or may hereafter be put to, and all repairs shall be at Lessee's sole cost and expense. Lessee will quit and surrender the said premises without notice, and in a neat and clean condition, and will deliver up all keys belonging to said premises to the Lessor or Lessor's agents at the termination of this lease, unless option to renew is exercised. Lessor agrees to allow demolition of the garage behind the residence. Lessor shall be responsible for structural and exterior maintenance on the residence until such time as further maintenance is eocnomically unfeasable. Lessee may

remove, with lessor's concurrence, the residence providing a replacement in the form of another building is constructed on the property, such structure to become the property of the lessor when lessee quits the property. Lessor's concurrence will not be arbitrarily withheld.

8. IMPROVEMENTS: All permanent improvements on the upland portion of the premises shall become the property of the lessor should the lessee fail to exercise any renewal option or otherwise terminates all interest in the property. All floating property and all non-permanent property on the uplands shall remain the property of the lessee.

9. UTILITIES & TAXES: The Lessee hereby convenants and agrees to pay all charges of any kind, nature or description charged against said real property for heat, light, water and sewer, and for any other public utilities and to pay for all real estate taxes on said premises during the full term of this lease.

10. ACCIDENTS: Any personal property kept on said premises shall be at the risk of Lessee. Lessor, or Lessor's agent, shall not be liable for any damage either to person or property sustained by Lessee or others caused by any defects now in said premises, or hereafter occurring therein, or in any building or structures that may be placed thereon by the Lessee, or due to the happening of any accident whatsoever caused in and about said building. Lessee agrees to defend and hold Lessor and Lessor's agents harmless from any and all claims for damages suffered or alleged to be suffered, in or about the leased premises by any person, firm or corporation.

11. CARE OF PREMISES: The Lessor shall not be called upon to make any improvement or repair of any kind upon said premises, and the said premises, as and if improved by the Lessee, shall at all times be kept and used in accordance with the laws of the State of Washington, and the direction, rules and regulations of the health officer, fire marshall, building inspector, or other proper officer of any pertinent and authorized public authority, at the sole cost and expense of the Lessee.

12. LIENS AND INSOLVENCY: Lessee shall keep the leased premises and the property in which the leased premises are situated, free from any liens arising out

of any work performed, materials furnished, or obligations incurred by Lessee. In the event Lessee becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer appointed for the business of the Lessee, then the Lessor may cancel this lease at Lessor's option, but only if Lessee defaults as outlined in paragraph 17.

13. ASSIGNMENT: Lessee shall not, without the written consent of the Lessor or Lessor's Agents, let or sublet other than to marine oriented tenants, the whole or any part thereof, nor assign this lease or any part thereof without the written consent of the Lessor, or Lessor's agents. In the event of any assignment so consented to, a minimum charge of twenty-five (25%) percent of one month's rent shall be made by Agent for his services in transferring or assgning this lease, and shall be paid by Lessee. This lease shall not be assignable by operation of law. If consent is once given by the Lessor to the assignmnet of this lease, or any interest therein, Lessor shall not be barred from afterwards refusing to consent to any further assignment.

14. FIRE AND OTHER CASUALTY: The Lessee shall cause to be insured at not less than ninety percent (90%) of total value of any improvements placed on the property, and in the event of fire damage, will restore the structures to the condition in which they were prior to the time of said fire, or the amount of said insurance on the existing structures shall be paid over to the Lessor. The Lessee shall be responsible for the full rental of the real property as herein referred to, whether or not any improvements placed on said property by the Lessee shall be damaged or destroyed by fire. The residence is exempted from this provision until after July 15, 1984 or, if present tenant vacates before, at which time the exemption is removed.

15. NOTICES: Any notice required to be served in accordance with the terms of the lease shall be sent by registered mail, the notice from the Lessor to be sent to Lessee at the leased premises.

16. GOVERNMENTAL FEES: All fees due the city, borough or state on account of any inspection made on said leased premises by any officer thereof shall be paid by Lessee.

17. DEFAULT AND RE-ENTRY: If any rents above reserved, or any part thereof, shall be and remain unpaid when the same shall become due, or if Lessee shall violate or default in any of the covenants and agreements herein contained, then the Lessor may cancel this lease upon giving the Notice required by law, and re-enter said premises but notwithstanding such re-enter by the Lessor, the liability of the Lessee for the rent provided for herein shall not be extinguished for the balance of the terms of this lease, and Lessee covenants and agrees to make good to the Lessor any deficiency arising from a re-entry and re-letting of the premises at a lesser rental than herein agreed to. The Lessee shall pay such deficiency each month as the amount thereof is ascertained by the Lessor.

18. COSTS AND ATTORNEY'S FEES: If by reason of any default on the part of the Lessee it becomes necessary for the Lessor to employ an attorney or in case Lessor shall bring suit to recover any rent due hereunder, or for breach of any provision of this lease or to recover possession of the leased premises, or if Lessee shall bring any action for any relief against Lessor, declaratory or otherwise, arising out of this lease and Lessor shall prevail in such action, then and in any of such events Lessee shall pay Lessor the attorney's fees and all costs and expenses expended or incurred by the Lessor in connection with such default or action.

19. NONWAIVER OF BREACH: The failure of the Lessor to insist upon strict performance of any of the convenants and agreements of this lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

20. HEIRS AND SUCCESSORS: Subject to the provisions hereof pertaining to assignment and subletting, the covenants and agreements of this lease shall be binding upon the heirs, legal representatives, successors and assigns of any or all of the parties hereto.

INWITNESS WHEREOF the parties hereto have executed this lease the day and year first above written.

LESSEE:

Richard D. Schultz

STATE OF Washington)
COUNTY OF King)

On this day personally appeared before me Richard D. Schultz ~~and~~ ~~and~~ to me known to be the individuals described in and they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 3rd day of May 1983.

Debra L. Allen
NOTARY PUBLIC in and for the State of Washington, residing in Seattle

LESSOR:

Mary Catherine Halvorsen

ON this day personally appeared before me Mary Catherine Halvorsen ~~and~~ to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 3rd day of May 1983.

Debra L. Allen
Notary Public in and for the State of Washington: residing in Seattle

Transamerica Title Insurance Co

A Service of Transamerica Corporation

Filed for Record at Request of

Name Mary Catherine Halvorsen

Address 8324 N.E. Hidden Cove Rd

City and State Bainbridge Island, Wash 98110

THIS SPACE PROVIDED FOR RECORDER'S USE

87 08 17 #0012 A
RECORDING 3.00
CRISHSL 5.00

KING COUNTY
NO EXCISE TAX
AUG 17 1987
E0959202

RECEIVED THIS DAY
AUG 17 1 38 PM '87
BY THE DIVISION OF RECORDS & ELECTIONS KING COUNTY

8708170512

Quit Claim Deed

THE GRANTOR Mary Catherine Halvorsen

for and in consideration of love and affection

conveys and quit claims to Kirsten Halvorsen, Maia Halvorsen, Boyer Halvorsen II, her children

the following described real estate, situated in the County of King State of Washington, together with all after acquired title of the grantor(s) therein:

Portland and Puget Sound Railway Addition, Block 5, Lots 13-14 and the North ten feet of lot 56, all of lots 57-58, less commercial waterway

and

Portland and Puget Sound Railway, Block 5, lots 1 and 12, and 59 through 62 less commercial waterway.

Grantor, Mary Catherine Halvorsen, retains the lease rights to the property and the income from the lease for as long as she shall live.

BETTY A. HALL
NOTARY PUBLIC
OCT 20, 1987
STATE OF WASHINGTON

Dated April 26, 19 87

Mary Catherine Halvorsen
(Individual)

(Individual)

By (President)

By (Secretary)

STATE OF WASHINGTON
COUNTY OF KITSAP } ss.

On this day personally appeared before me MARY CATHERINE HALVORSEN to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that SHE signed the same as HER free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 26th day of April, 1987.

Betty A. Hall
Notary Public in and for the State of Washington, residing at Bainbridge Isle

STATE OF WASHINGTON
COUNTY OF } ss.

On this day of, 19, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared

and

to me known to be the President and Secretary, respectively, of the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for the State of Washington, residing at

Form No. W-748