



**JOHANNESSEN & ASSOCIATES, P.S.**  
ENVIRONMENTAL & CONSTRUCTION LAW

March 28, 2025

**Via E-Mail Only**

Nick Treat, Unit Supervisor (nick.treat@ecy.wa.gov)  
Voluntary Cleanup Program  
Toxics Cleanup Program  
Washington Department of Ecology  
Northwest Regional Office  
P. O. Box 330316  
Shoreline, WA 98133-9716

Re: Early Notice Letter – Boyer Towing, Inc., Cleanup Site ID 17117  
Site Address: 7318 4th Avenue S., Seattle, WA 98108

Dear Mr. Treat:

This firm represents Boyer Towing, Inc. (“Boyer Towing”) and its wholly-owned subsidiary, Boyer Logistics, Inc.<sup>1</sup> Boyer Towing has requested that we provide this response to the March 4, 2025 Early Notice Letter (“ENL”) issued to Boyer Towing for the above-referenced property. This letter is based on information provided by Boyer Towing and on documents and information that are a matter of public record.

The 7318 4th Avenue South property (King County Tax Parcel No. 6871200210), together with a smaller parcel leased by Boyer Towing from the Halvorsens (King County Tax Parcel No. 6871200100), is used as Boyer Towing’s marine freight terminal (“Freight Terminal Parcels”). The Freight Terminal Parcels together total 3.34 acres in size. Boyer Towing also owns or leases several other parcels along and further upland from the Lower Duwamish Waterway (“LDW”). Those parcels are not the subject of the ENL issued by the Washington Department of Ecology (“Ecology”).

This letter disputes Ecology’s unsupported decision to list 7318 4th Avenue South on its Confirmed and Suspected Contaminated Sites List (“CSCSL”), despite the absence of any confirmed or suspected impacts to, or releases of hazardous substances on or to, the property’s soils or groundwater.

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<sup>1</sup> Boyer Logistics, Inc. manages and operates the marine freight terminal. This firm also represents the Halvorsen siblings, Boyer Halvorsen, Maia Halvorsen, and Kirsten Halvorsen Stahl (collectively “the Halvorsens”).

## **I. Background Information**

Boyer Towing is a family-owned business that has operated since the 1960s. Halvorsen Towing was incorporated in Washington in 1959 and Boyer Towing was incorporated in Alaska that same year. In 1988, the two entities merged, with Boyer Towing as the surviving corporation. Boyer Alaska Barge Line, Inc. (“BABL”) was incorporated in 1975 as a subsidiary of Boyer Towing. In 2003, BABL changed its name to Boyer Logistics.

BABL started a once every two weeks common carriage freight service between the Freight Terminal Parcel and Southeast Alaska on a small scale in 1969. It hauled general freight and groceries northbound and general freight and lumber southbound. Sometime in the early 1980s, as the business grew, the freight service increased to weekly. After Ketchikan Pulp shut down its pulp mill and sawmill in 1997, the barge line had significantly less southbound cargo and, therefore, Boyer Logistics sold its common carriage freight business in 2001. Boyer Towing now focuses on job-specific charter freight<sup>2</sup> for large construction projects, as well as on its tugboat and barge business.

Boyer Towing’s cargo that is shipped north to Alaska includes automobiles, groceries, canned goods, furniture, new modular homes wrapped in plastic, building materials (e.g., plywood, lumber, nails, screws, sheetrock), construction equipment, and (at times) sealed drums containing bulk fluids. Except for items too large to fit in containers, all of the cargo is shipped in shipping containers. Boyer Towing’s cargo that is shipped south from Alaska to the Freight Terminal Parcels includes lumber and shipping containers that are unloaded and trucked off the Freight Terminal Parcels.

This background is provided to demonstrate that Boyer Towing has been an active member of both Washington’s and Alaska’s maritime community for decades. It prides itself on its reputation with its customers and neighboring property owners. As Ecology is well aware, Boyer Towing voluntarily participated, at great expense, in a nearly 10-year alternative dispute resolution/allocation process for the LDW. Boyer Towing has signed settlement agreements and a consent decree – along with approximately 50 other parties – to resolve any alleged liabilities that it may have had as a *de minimis* party for impacts to the LDW, including impacts to banks below the mean higher high water (“MHHW”) mark. It did so in order to avoid further protracted litigation and additional legal and expert consulting costs. As Ecology knows, those settlements are pending administrative review and approval by the City of Seattle, King County, Ecology, and the U.S. Department of Justice.

At no time during that decade-long allocation process has there ever been any evidence offered to support an allegation that Boyer Towing’s Freight Terminal Parcels have “confirmed or suspected contamination that could potentially harm people and the environment” as stated on

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<sup>2</sup> Charter freight means that the trip was arranged (or chartered) as opposed to a regular, pre-scheduled service.

Ecology's Boyer Towing webpage, let alone that any of the other upland parcels owned or leased by Boyer Towing contributed to or caused any sediment contamination. That statement is false and is damaging to Boyer Towing's business and reputation.

Boyer Towing is offended by the lack of care demonstrated by Ecology in issuing the ENR and in listing the Freight Terminal Parcels on the CSCSL based on a report containing so many false statements. Worse, the number of false and intentionally misleading statements contained in the Sharp Report dated July 29, 2024 is not only disturbing but also has caused outrage on the part of Boyer Towing. This letter is intended to bring those statements to your attention and to demand that the Freight Terminal Parcels (7318 4th Avenue South) be removed from the CSCSL and the Boyer Towing webpage taken down. At a bare minimum, corrections to the Sharp Report and to Ecology's webpage should be made as requested below. If Ecology does not act, Boyer Towing will retain legal counsel to evaluate and pursue its civil remedies, including a libel action, to recover damages and other relief to protect its business income and reputation.

## **II. Boyer Towing Webpage Language and Cleanup Site Details**

The Boyer Towing webpage states that "This [7318 4<sup>th</sup> Avenue S] site has confirmed or suspected contamination that could potentially harm people and the environment." Ecology knows the statement is false because its own documents provided on the webpage (1) confirm that the only "confirmed or suspected contamination" is entirely on property owned by the Port of Seattle ("Port");<sup>3</sup> and (2) contain nothing to infer or suggest that PCBs or dioxins/furans were ever released on or from the Freight Terminal Parcels, from any of the tugboats or barges that berth along the LDW, or from any of the permitted dock and other in-water structures owned by Boyer Towing.

The "Site" is identified on the webpage as the Freight Terminal Parcels that are located at 7318 4th Avenue South. As Ecology is well aware, Boyer Towing does not own any sediments in the LDW, as those are owned by the Port. The Port's predecessor in interest, the Commercial Waterway District No. 1, acquired, by purchase and condemnation in 1911 and 1912, a right-of-way channel approximately 5 miles long and 500 feet wide across the Seattle tide flats. *See* attached Port Survey Sheet No. 12 (Attachment A). As discussed in more detail in Sections III and IV below, there is no evidence in Ecology's posted documents that supports an allegation that the Freight Terminal Parcels are the source (or even *a* source) of the confirmed sediment contamination or the contaminants listed on the webpage (i.e., PCBs or dioxins/furans).

Boyer Towing requests that Ecology remove the Freight Terminal Parcels from the CSCSL and delete the Boyer Towing webpage in its entirety as there is no evidence of upland

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<sup>3</sup> The webpage only lists Port-owned sediment as the media of concern because it has no documentation to support any allegation or speculation that soils or groundwater on the Freight Terminal Parcels are impacted.

soil, groundwater or surface water contamination on those parcels that has caused or contributed, or is currently causing or contributing, to (1) the PCB sediment exceedances on the Port property; or (2) to the dioxin/furan exceedance detected in *one* 2018 sample collected 50 feet offshore of the Freight Terminal Parcels. See Section IV.A below for a more detailed discussion of those results. Any statement that the soils, groundwater, or surface water on the Freight Terminal Parcels could potentially harm people or the environment is, in Boyer Towing's view, libelous. If Ecology insists on maintaining the Boyer Towing webpage, then it must correct the false statement to instead state: "This site is located adjacent to confirmed or suspected sediment contamination that could potentially harm people and the environment."

The Cleanup Site Details incorrectly list "World Fuel Services" and "Associated Petroleum Products" as "Alternate Names" for Boyer Towing. Those companies are not associated with Boyer Towing, but rather are fuel suppliers to the freight terminal. Boyer Towing requests that those names be removed from the Cleanup Site Details. If there is a reason those names were listed, then a definition of "Alternate Names" should be added to the Glossary that explains that phrase's meaning and purpose to ensure that the public does not conclude that these companies are somehow Boyer Towing-owned or -affiliated companies.

### **III. Hart Crower's March 13, 2012 Bank Sampling Report**

Any reliance by Ecology on Hart Crowser's March 13, 2012 Bank Sampling Report ("Hart Crowser Report") to suggest that Boyer Towing's upland freight terminal operations are a source of PCBs or dioxins/furans in sediment is misplaced and faulty for four reasons. First, the four samples (BT-BS-1, BT-BS-2, BT-BS-3, and BT-BS-4) were collected entirely on property owned by the Port. This is acknowledged in the text of the report on page 19, where it states: "The [Boyer-Trotsky Street End bank sampling] site is owned by the Port[.]"<sup>4</sup> Furthermore, when one compares the Port survey conducted in 2005 (Sheet 12) (Attachment A) to Figure 6 of the Bank Sampling Report (Attachment B), there is a considerable distance between the locations of the BT-BS-1 and BT-BS-3 samples and the boundary of any of the nearest upland parcels owned or leased by Boyer Towing. Furthermore, the northern boundary of Parcel 6871200210 (the northern portion of the Freight Terminal Parcels) is 250 feet to the south. Nothing supports a conclusion or allegation that the Freight Terminal Parcels were the source of any impacts to those sediment samples.

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<sup>4</sup> Boyer Towing disputes, and there is no citations to support, the Report's statement that the Boyer-Trotsky Street End bank sampling site "is sometimes used as a public access point to the LDW." See page 19 of Bank Sampling Report. There are no boating launching facilities or public access walkways or paths that lead to the LDW along that portion of the Port-owned bank. Furthermore, Boyer Towing disputes that the samples "were collected between the apparent [mean higher high water] MHHW elevation and the vegetation line." *Id.* To Boyer Towing's knowledge, no survey of the MHHW elevations within the Middle Reach of the LDW has been conducted. Boyer Towing maintains that the sample locations were collected well below the MHHW mark based on its observations over the decades that it has operated at the Freight Terminal Parcels.

Second, only the two waterward samples of the four samples collected by Hart Crowser exceeded the Remedial Action Levels (“RALs”): BT-BS-2 for PCBs and dioxin/furans and BT-BS-4 for dioxin/furans. The two samples immediately landward (BT-BS-1 and BT-BS-3) did not exceed those criteria and, in fact, had significantly lower concentrations than BT-BS-2 and BT-BS-4 that are well below RALs. *See* Table 25. Given the distance of those samples from any Boyer Towing-related upland parcel and the complete lack of association with the Freight Terminal Parcels, there is no basis upon which to speculate that the exceedances in BT-BS-2 and BT-BS-4 are associated in any way with Boyer Towing or the operations on any of the closest upland parcels.

Third, nearly every other constituent analyzed for in those four samples showed that the two waterward samples had detections that were significantly higher than the two landward samples. *See* Tables 20 through 23. Furthermore, none of the other constituents analyzed for exceeded the most stringent soil standard to protect potable groundwater, the screening levels protective of sediment standards, or MTCA Method B (Human Health Criteria).

Lastly, Table A-1 of Appendix A of the Bank Sampling Report was prepared to note any concerns associated with the BT-BS samples collected on the Port property.<sup>5</sup> Not one of the four samples collected showed evidence of contamination based on field screening using visual examination, sheen screening, and headspace vapor screening using a photoionization detector (“PID”).

#### **IV. Sharp Report dated July 29, 2024 and Ecology Environmental Report Tracking System (“ERTS”) Incident 429653 dated June 4, 1998**

In all frankness, we find it incredulous that Ecology not only waited 26 years to prepare its Sharp Report after the ERTS Incident, but that it then includes multiple false statements and intentional mischaracterizations of the information provided in that ERTS Incident report. Before addressing those statements in more detail below, we ask Ecology to reassess its “confidence” scores in the Sharp Report. Ecology should ask itself why the “SHARPster” had “medium confidence” that soils and surface water may be impacted, but “low confidence” on the potential for groundwater impacts, when:

- (1) there is absolutely no evidence that upland soils have been impacted by any release or threatened release of hazardous substances on the Freight Terminal Parcels;
- (2) no soil sampling has been conducted because there have been no releases of hazardous substances to soils at the Freight Terminal Parcels;

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<sup>5</sup> None of the BT-BS exploration logs were included in Appendix A and, therefore, were not available for review. Boyer Towing was not given an opportunity to review this report before it was finalized. It questions the accuracy of the latitude and longitude coordinates contained in Table A-1 of Appendix A. Boyer Towing requests Ecology to provide it with copies of the BT-BS-1, BT-BS-2, BT-BS-3, and BT-BS-4 exploration logs.

(3) there is no evidence that groundwater has been impacted by any release or threatened release on the Freight Terminal Parcels;

(4) no groundwater sampling has been conducted because there have been no releases of hazardous substances to soil or groundwater at the Freight Terminal Parcels; and

(5) surface water in the form of stormwater has been sampled for years under Boyer Towing's Industrial Stormwater General Permit and the results have never raised any concerns about surface water causing PCB or dioxin/furan impacts to sediments.

Discussed below are the false or intentionally misleading statements contained in the Sharp Report.

A. Lower Duwamish Waterway Group's Middle Reach Design Sampling

There is no evidence that PCB or dioxin/furan exceedances in sediment samples collected by the Lower Duwamish Waterway Group ("LDWG") offshore of the northernmost and southernmost boundaries of the Freight Terminal Parcels are linked to any past or current release or use of those contaminants on those upland parcels.

In 2018, a surface sediment sample (LDW18-5thAveS) was collected on Port property, approximately 50 feet offshore of Parcel 6871200100 (the smaller Freight Terminal Parcel leased by Boyer Towing from the Halvorsens and located just north of River Mile 2.5). It showed an RAL exceedance for dioxin/furans. What Ecology omits from its Sharp Report is that LDWG resampled areas both to the north and to the south, including surface and subsurface sediment samples in areas landward, of that 2018 sample and those samples did not exceed RALs.

In 2023, LDWG collected Samples 1167, 1168, 1176, and 1814 as part of its Phase I Middle Reach Design Sampling. None of those samples – whether surface or subsurface – exceeded RALs for any constituents, including PCBs and dioxin/furans. *See* Map 3-1d of Preliminary Phase I Map Folio dated September 29, 2023 and AOC5 PDI Phase I Data dated March 19, 2024, published at [www.ldwg.org](http://www.ldwg.org) (Middle Reach Design).

In 2024, as part of its Phase II sampling, LDWG collected a surface sediment grab and a subsurface sediment core from Sample 1485. That sample was located on Port property but closer to the shoreline of Parcel 6871200100. Those surface and subsurface samples collected further landward of the 2018 sample were below RALs for PCBs and dioxin/furans. *See* Draft Map 3d of the "Preliminary Phase II Map Folio" and AOC5 PDI Phase II Data, both dated March 10, 2025, published at [www.ldwg.org](http://www.ldwg.org) (Middle Reach Design).

Based on that 2023 and 2024 Middle Reach sampling, Ecology cannot rule out an in-water source and sediment transport of the one dioxin/furans exceedance that was detected in one 2018 sample offshore of the Freight Terminal Parcels.

Nor did any of the other sediment samples collected in the past on Port property adjoining the length of the Freight Terminal Parcels exceed RALs. Boyer Towing has conducted permitted maintenance dredging on several occasions in the past along its Freight Terminal Parcels and, in 1999 and 2010 when sampling of the to-be-dredged sediment was required, all of the samples collected prior to dredging met the Puget Sound Dredged Disposal Analysis (“PSDDA”) guidelines for unconfined, open-water disposal of dredged material.

As to the northernmost tip of the Freight Terminal Parcels, there is an area on Port property that shows a PCB “hotspot” (Sample 1456) with RAL exceedances in the 0-10 cm surface sample and the 0-45 cm subsurface core sample. That sample was collected offshore of the southeast boundary separating Parcel 6871200210 (the northern portion of the Freight Terminal Parcels) and Parcel 6871200350 (a parcel formerly used as a residence and then as a marina).<sup>6</sup> None of the other subsurface sediments collected upstream and downstream of Sample 1456 exceeded the RAL for PCBs (or for dioxin/furans, for that matter). Furthermore, while surface sediments collected downstream of Sample 1456 contain declining concentrations of PCBs, there were never any RAL exceedances for dioxin/furans on Port property located adjacent to Boyer Towing’s Freight Terminal Parcels.

The Sharp Report states:

The surface flow map indicates that the stormwater from the property discharges into the river via the stormwater outfall. The sediment samples taken near this stormwater outfall show high concentrations of PCBs, therefore there is a suspected upland source for PCBs and potentially Dioxin/Furans.

Ecology’s Sharp Report completely ignores that there are currently three stormwater collection points<sup>7</sup> that are piped in to Boyer Towing’s stormwater treatment system. Each of those collection points is equipped with an oil/water separator and pump that pumps the stormwater into the treatment system. As permitted under the Industrial Stormwater General Permit, each collection point has an overflow line in the event of an extreme storm event. But under normal conditions, there is no water discharged from those collection points, but rather

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<sup>6</sup> Boyer Towing entered into a lease for that parcel in December 2013 and began leasing it on January 1, 2014. The Halvorsens were deeded title to that parcel without their knowledge when they were teenagers, which they discovered when responding to a 104(e) Request for Information from the U.S. Environmental Protection Agency in 2007. Their mother, Mary Catherine Halvorsen, controls the lease rights to the parcel, and Boyer Towing’s lease is with Mary Catherine. Prior to Boyer Towing leasing it, Mary Catherine leased the parcel for use as a marina from approximately 1983 to 2013. Boyer Towing currently uses the parcel for medium-term storage of freight as part of its marine terminal operations.

<sup>7</sup> These are erroneously referred to by LDWG as “private storm drain[s]”.

stormwater is discharged out of the main discharge pipe of the treatment system. That is located near the middle collection point (i.e., well south of the PCB “hotspot”).

What is intentionally misleading about this statement in the Sharp Report is that it does not inform the reader that Boyer Towing’s surface water (i.e., stormwater) had been treated – using three-stage oil/water separators – since 1990 and that its more elaborate stormwater treatment system was installed in 2011. Furthermore, the Report ignores and fails to notes that all of the sediment samples collected on Port property that adjoins the Freight Terminal Parcels (south of Sample 1456) were below RALs for PCBs and dioxin/furans. In fact, Sample 1456 was not analyzed for dioxin/furans because all of the Phase I samples collected within the vicinity and to the north of that sample (i.e., Samples 1135, 1136, 1142, 1147, 1148, and 1149) were either below the RAL or were not analyzed for dioxin/furans based on prior lack of impacts. And, as already noted above, in 1999 and 2010, when Boyer Towing completed permitted maintenance dredging events along its Freight Terminal Parcels, the to-be-dredged sediment samples met the PSDDA guidelines for unconfined, in-water disposal.

If Boyer Towing’s current or historical stormwater discharges were a source of PCBs near Sample 1456, as falsely suggested by Ecology, then one must ask: Would it not also be true that those same stormwater discharges from the other outfalls (well before 2011 when they were piped into the treatment system and discharged through the discharge pipe located near the middle collection point) would have caused RAL exceedances all along the boundary of the Freight Terminal Parcels? The fact is that Ecology’s statement is false because there are no RAL exceedances further south of that “hotspot” along the Freight Terminal Parcels. It is not true precisely because Boyer Towing’s upland parcels and stormwater discharges did not cause or contribute to the exceedances at Sample 1456 or the surface sediment PCB exceedances on Port property that were collected further downstream.

Boyer Towing requests that the Sharp Report remove the statements in the “Source/source area description” and in the “Soil comments” sections (on page 2) that there is a suspected upland source for PCBs and dioxin/furans on Boyer Towing’s Freight Terminal Parcels. In addition, in the “Surface water comments” section (on page 3) should inform the reader that surface water samples are collected on a quarterly basis as part of Boyer Towing’s stormwater program. Furthermore, the “Sediment comments” section (on page 3) should be revised to state: “The sediments on Port property had an exceedance of remedial action levels for dioxin/furans in one 2018 sample collected approximately 50 feet offshore of the Freight Terminal Parcels. Other sediment samples collected on Port property north of the northern boundary of the Freight Terminal Parcels show exceedances of remedial action levels for PCBs.” Absent correction, the statements in those sections are, at best, intentionally misleading and, at worst, false and unsupported by any data or facts. Lastly, Boyer Towing requests that the Sharp Report’s assessment be revisited and the confidence levels for surface water and soil on pages 1 and on the conceptual site model changed from “medium” to “low.”



B. “Site History” in Sharp Report and ERTS Incident Report

The “Site history” section (page 4) contains the most egregious of the false and unsupported statements in the Sharp Report. Each false statement, in the order stated in that section, is discussed below.

**1. *The Site Parcels’ Historical Use.***

The site parcels have not always or historically been used for industrial purposes. The Freight Terminal Parcels (Parcel 6871200210 and 6871200100), for example, were open fields and used as residences for decades before Boyer Towing started its towing and freight business. A simple glance at the aerial photographs available on King County Parcel Viewer and on Google Earth show the presence of former residences on nearly all of the parcels now owned or leased by Boyer Towing. The first sentence of the “Site history” section should be revised to read: “The site parcels have been historically used for residential, and then for industrial, purposes.”

**2. *Aerial Photographs Going Back to 2000s Allegedly Showing “Drums Stored Near the River.”***

The “Site history” section states that “aerial photos going back to the 2000s show drums stored near the river.” None of the aerial photographs available on King County Parcel Viewer (Basemaps dated 2007, 2009, 2012, 2013, 2015, 2017, 2019, 2021, and 2023) and Google Earth (dated June 2002; July 2003; August 2004; July 2006; August 2006; November 2007; May 2009; September 2009, May 2010; June 2010; August 2011; November 2011; July 2012; May 2013; July 2014; April 2015; June 2016; May 2017; July 2017; May 2018; May 2019; July 2020; August 2020; June 2021; July 2022; August 2022; June 2023; April 2024; July 2024; and September 2024) shows “drums stored near the river.” The only items shown in those photographs are freight that is awaiting loading into shipping containers and onto a barge or that has been recently offloaded from a barge or shipping container and then trucked off-site.

Historically and specifically during the time its common carriage freight business operated, Boyer Towing stored any southbound freight (shipped from Alaska) on the western side of its warehouse/office and along its property’s western boundary with 2nd Avenue South. Northbound freight (to be shipped to Alaska) has always been temporarily stored, pending loading onto a barge, along the shoreline. If aerial photographs exist from the 2000s that show drums, we ask Ecology to provide them to us. If drums were present along the shoreline at any time, they were sealed drums containing bulk fluids that were awaiting loading into shipping containers to be barged northbound or were contained in southbound shipping containers that were unloaded and trucked out.

The second sentence of the “Site history” section should be deleted, absent evidence from Ecology that any drums were in fact stored near the river and that any of the drums were not sealed drums that had been or were being shipped as freight.

### **3. *Intentional Mischaracterizations of ERTS Incident***

The “Site history” section intentionally mischaracterizes the 1998 ERTS Incident and misleadingly suggests that “[t]here were reported leaking drums on the site in 1998 (ERTS #429653), indicating a release of paint material.” As noted in the ERTS report, the drums contained non-regulated household hazardous waste from the City of Ketchikan landfill collection site. The drums were in a “shipper loaded container,” meaning that the container is taken to the shipper (City of Ketchikan, in this case) where the shipper (City) loads their goods in it. It is then delivered to Boyer Towing’s Ketchikan terminal. The container was shipped to Boyer Towing’s Seattle freight terminal in June 1996, where it was offloaded from a barge and stored on the western side of the Freight Terminal Parcels until the shipper (City) arranged for the container or the goods inside the container to be picked up from Boyer Towing’s facility.

In this case, the shipper (City) failed to make arrangements to have the shipment picked up and paperwork was not provided to ensure that the container reached its intended destination. During a Coast Guard inspection in 1998, the container was opened up and one drum inside the container was noted as leaking.<sup>8</sup> Philip Environmental of Kent – the ultimate destination of the container and its contents – came to Boyer Towing’s freight terminal to transfer the drums from the shipping container to another empty container. The drums in the container were staged on a drop cloth, checked for integrity, and transferred into the empty shipping container. None of the drums were stored directly on the ground on Boyer Towing’s property, let alone along the shoreline. As noted above, southbound freight arriving at Boyer Towing’s property during that time period was always stored along the western boundary of 2nd Avenue South and, in 1996, would have been stored on the west side of the warehouse.

The ERTS report notes that Bob Stone, an Ecology inspector, took photographs of the drums in the original container, the drums on the drop cloth, and the drums in the container that was shipped to Kent. We request copies of those photographs.

The statement that there were “leaking drums at the site” is intentionally misleading. There was one drum that leaked inside a container. There is no evidence that there were any associated impacts to the asphalt upon which the container was temporarily stored pending the drums’ shipment to Kent. The third sentence of the “Site history” section of the Sharp Report should be revised to state:

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<sup>8</sup> The ERTS report noted that one other drum failed during handling by Philip Environmental and that a third plastic drum had to be overpacked. But the ERTS report references no spillage or releases associated with those two drums. Only one drum containing paint material leaked inside the container.

There was one reported drum, which contained paint material from a household hazardous waste collection site in Ketchikan, that leaked inside a container stored on the western portion of the site in 1998 (ERTS #429653).

**4. False Statements About Parcels 6871200620, 6871200651, and 6871200660 and Boyer Towing's Activities on Those Parcels.**

The "Site history" section states that Parcels 6871200620, 6871200651 and 6871200660 "were used as auto wrecking and storage yard **by Boyer Towing** in the 1990s." (emphasis added) This is absolutely false. Boyer Towing has never wrecked automobiles or conducted any auto-wrecking operations on any of its parcels. Nor has any auto wrecking activities been conducted on those parcels during Boyer Towing's ownership.<sup>9</sup>

All three parcels are rented to Boyer Towing's tug and barge customers for storage of construction materials, such as timber crane mats, steel beams, steel piling, sectional barges, and crane boom sections. They were used in the past for equipment storage, but nearly always in shipping containers.

Below is the history of each of the three parcels referenced in the Sharp Report's "Site history" section:

Parcel 6871200620:

Parcel 6871200620 is located at 7201 2<sup>nd</sup> Avenue South in Seattle and consists of Block 6, Lots 1 through 10 and northern ½ of Lot 40, Lot 41 and Lot 42 of the Portland & Puget Sound Railway Addition. Documents obtained from the Puget Sound Regional Archives show that this property was historically vacant and/or used for residential purposes. Those documents show that the parcel previously bore the following historic street addresses, parcel numbers and improvements:

Address	Parcel No.	Lots	Improved	Built	Torn Down
7212 Occidental Avenue	687120-0795	Blk 6, Lot 40 (N½), 42, 42	Home	1942	--
--	687120-0600	Blk 6, Lot 1	Vacant	--	--
--	687120-0605	Blk 6, Lot 2	Vacant	--	--

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<sup>9</sup> Prior to selling its common carriage freight service in 2001 and for a short period of time as a test market, Boyer Towing shipped processed cars from Ketchikan to Seattle. The autos were drained of all fluids and crushed before they were loaded onto shipping flats and trucked to Boyer Towing's Ketchikan facility. They were then loaded onto a barge for shipment to Seattle. At the Freight Terminal Parcels, the shipping flats were unloaded off the barge, then loaded onto trucks, and trucked to a metal recycling facility. Any wrecked automobiles that were, at any time, present on shipping flats at the Freight Terminal Parcels were freight that was being shipped from point A to point B. Boyer Towing had nothing to do with the wrecking or processing of automobiles, either in Alaska or at any of its upland parcels in Seattle.

--	687120-0610	Blk 6, Lot 3-4	Vacant	--	--
177 Orchard Street	687120-0620	Blk 6, Lot 5-8	Home	1937	--
7215 2 <sup>nd</sup> Avenue South	687120-0640	Blk 6, Lot 9-10	Home	1941	--
7217 2 <sup>nd</sup> Avenue South	687120-0650	Blk 6, Lot 11	Home	1950	1958

In January 1982, Boyer Towing purchased a portion of the property (Block 6, Lots 1 through 8) from Edwin and Helene Beck. *See* Statutory Warranty Deed dated January 25, 1982. In March 1982, Boyer Towing purchased another portion of the property (Block 6, Lots 41 and 42, and the northern ½ of Lot 40) from Norman L. Frost. *See* Statutory Warranty Deed dated March 5, 1983. In January 1983, Boyer Towing purchased the remaining portion of the property (Block 6, Lots 9, 10, and the northern ½ of Lot 11) from Katherine Jean Allbright Shreve. *See* Statutory Warranty Deed dated January 25, 1983.

Parcel 6871200620 is approximately 34,400 square feet (approximately 0.79 acres). The ground is covered entirely by grass and dirt and thus pervious. Any surface water or stormwater on that parcel infiltrates immediately. The parcel has never been used for auto-wrecking related activities by Boyer Towing or at any time during Boyer Towing's ownership.

Parcels 6871200651 and 6871200660:

Parcel 6871200651 is located at 7225 2<sup>nd</sup> Avenue South in Seattle and consists of Block 6, the southern ½ of Lot 11 and Lot 12 of the Portland & Puget Sound Railway Addition. Documents obtained from the Puget Sound Regional Archives show that this property was historically used for residential purposes. Those documents show that the parcel bore the following historic street address, parcel number and improvements:

Address	Parcel No.	Lots	Improved	Built	Torn Down
7216 2 <sup>nd</sup> Avenue South	687120-0651	Blk 6, Lot 11 (S ½), 12	Home	1942	--

Parcel 6871200660 is also located at 7225 2<sup>nd</sup> Avenue South in Seattle and consists of Block 6, Lots 13-15 of the Portland & Puget Sound Railway Addition. Documents obtained from the Puget Sound Regional Archives show that this parcel was also historically used for residential purposes and previously bore the following historic street addresses, parcel numbers and improvements:

Address	Parcel No.	Lots	Improved	Built	Torn Down
7225 2 <sup>nd</sup> Avenue South	687120-0660	Blk 6, Lot 13	Home	1939	--
7225 2 <sup>nd</sup> Avenue South	687120-0660	Blk 6, Lot 13	Home	1950	--

Boyer Towing purchased both parcels in 1999 from Judith Campbell. *See* Statutory Warranty Deed dated June 9, 1999. Both parcels were historically used for residential purposes,

but eventually transitioned to other uses under the ownership of the former owner (Judith Campbell).

The parcels are approximately 11,250 square feet (approximately 0.26 acres) in size. The ground on the parcels is covered by dirt and gravel, as well as some vegetated portions along the parcels' perimeter. All of the property is pervious, and therefore any surface water or stormwater on the parcels infiltrates immediately.

The two parcels located upland and to the west of 2nd Avenue South. They are fenced in together and thus treated by Boyer Towing as one parcel. Those parcels remained vacant from 1999 until 2003, when they were leased out as one unit to various tenants for storage and staging and scaffolding of materials, highway trailers, prefabricated steel items, excavators, front-end loaders, bulldozers, crane booms, and crane counterweights. The parcels are currently used for storage of construction materials. They have never been used for auto-wrecking related activities by Boyer Towing or at any time during Boyer Towing's ownership.

Prior to Boyer Towing's 1999 purchase of these two parcels, B&J Truck Wrecking operated on Parcels 6871200651 and 6871200660.<sup>10</sup> Prior to those parcels being occupied by B&J Truck Wrecking in 1994 and long prior to Boyer Towing's purchase, two feet of petroleum hydrocarbon contaminated soil from an unknown area was removed from the property. This was at a time when the soil cleanup standard was 200 ppm, not the current cleanup level of 2000 ppm. In 1994, prior to taking occupancy, B&J Truck Wrecking retained Marsh Industrial Research to conduct a pollution survey at the parcels to determine if all of the petroleum-impacted soil had been removed. In September of 1994, Marsh Industrial Research drilled and sampled four borings on the parcels. The results found that the amount of petroleum-impacted soil removed from the previous remedial action was not sufficient, and that an average of two to three extra feet (approximately 829 cubic yards) might need to be excavated from the entire former excavation pit in order to remove all of the petroleum-impacted soil.

Boyer Towing has been unable to locate records documenting the additional soil excavation. However, was refilled with gravel following the completion of the soil excavation in 1994. B&J Truck Wrecking ("B&J") then erected several portable steel buildings (resting on a thin layer of concrete) after taking occupancy. Boyer Towing purchased the property in 1999 and removed the portable steel structures that had been abandoned in place by B&J. The removed structures were reused by Boyer Towing or shipped offsite for recycling. Boyer Towing has no reason to believe that there are any pathways from those two parcels to LDW sediments. Nor has Boyer Towing any reason to believe that historical use of those two parcels prior to its ownership has had any impact on Port-owned sediments in the LDW.

The last sentence of the "Site history" section of the Sharp Report should be revised to read:

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<sup>10</sup> B&J Truck Wrecking never occupied Parcel 6871200620.

Additionally, based on the historical research conducted by Ecology staff at Puget Sound Regional Archives at Bellevue College, parcel numbers 6871200651 and 6871200660 were used, prior to Boyer Towing's purchase of those parcels in June 1999, by B&J Truck Wrecking. Other than the name of the business, the exact nature of that company's operations is unknown.

## **V. Conclusion**

Based on all of the foregoing, Boyer Towing maintains its position that the false and intentionally misleading statements, as well as the omissions, on the Ecology webpage and the Sharp Report are causing it reputational and business harm. We request that you remove 7318 4th Avenue South (the Freight Terminal Parcels) from Ecology's CSCSL and take down the Boyer Towing webpage. If Ecology refuses to do so, then it must rectify the omissions and false and misleading statements contained in the Sharp Report and on the webpage to minimize further harm to Boyer Towing.

If Ecology refuses to remove the Freight Terminal Parcels from the CSCSL and take down the webpage, or if steps are not taken to make the corrections requested above to the Sharp Report and the webpage, Boyer Towing will have no choice but to evaluate other remedies to pursue in order to restore and prevent further damage to its business and reputation. Pending completion of those steps, Boyer Towing requests that this letter and the attachments be posted with the other documents on the webpage.

I appreciate your diligent consideration of the information presented by and on behalf of Boyer Towing in this letter.

Very truly yours,



Kim Maree Johannessen

/kmj

Attachments:

- A Port of Seattle Survey Sheet 12
- B Figure 6 of Hart Crowser's March 13, 2012 Bank Sampling Report

cc: *(all via e-mail only with attachments)*

Ryan Gardiner, Ecology (ryan.gardiner@ecy.wa.gov)

Beau Johnson, Ecology (beau.johnson@ecy.wa.gov)

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Ivy Anderson (ivy.anderson@atg.wa.gov)

# **ATTACHMENT A**



PORTIONS OF SECTIONS 18, 19, 30, 29, 32, AND 33, TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M.  
PORTION OF SECTION 4, TOWNSHIP 23 NORTH, RANGE 4 EAST, W.M.



BASIS OF BEARING  
WA STATE PLANE, NORTH ZONE (NAD 83/91)

0 50 100 200 300  
SCALE IN FEET  
1" = 100'

### REFERENCE

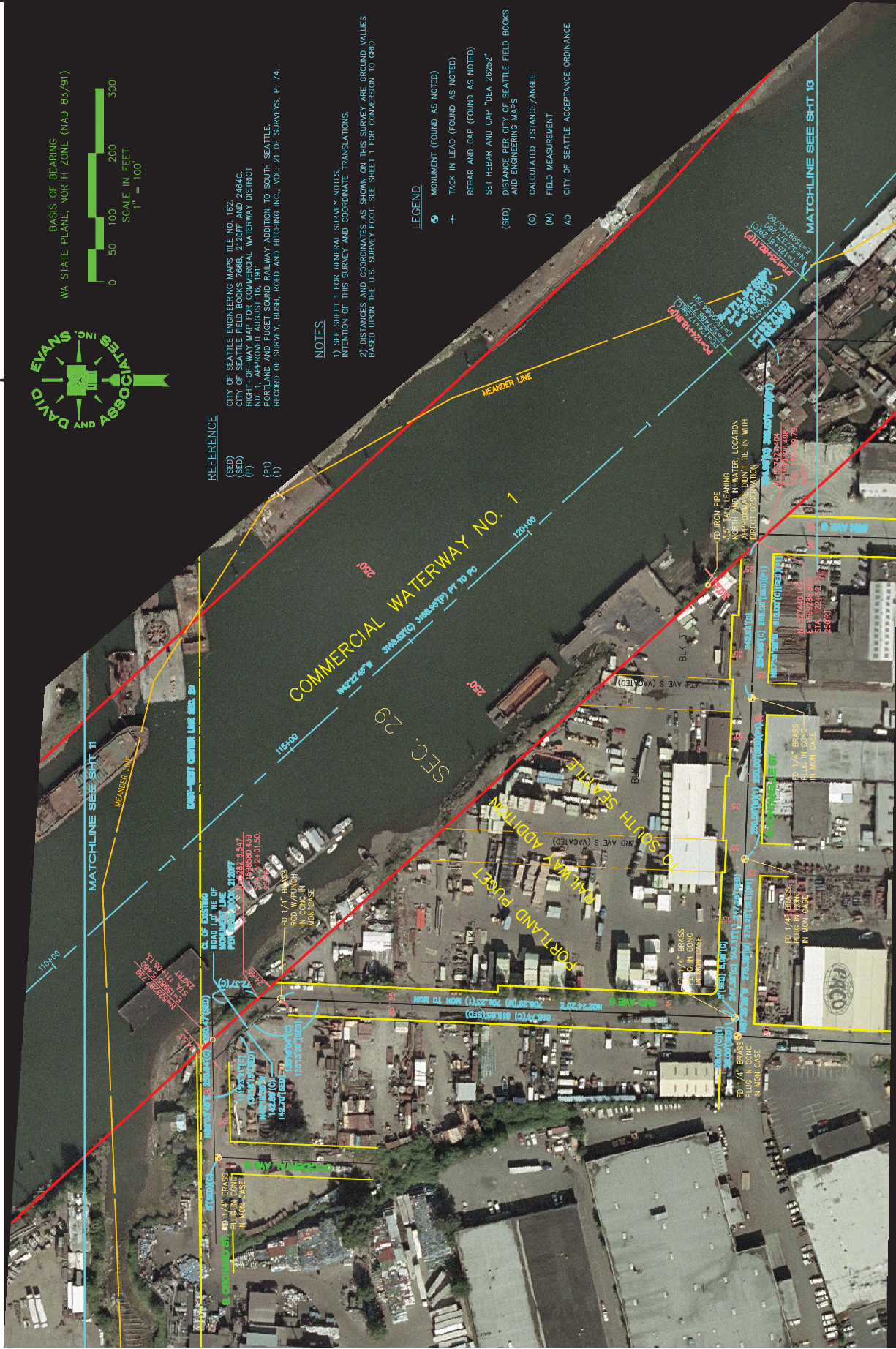
- (SED) CITY OF SEATTLE ENGINEERING MAPS TILE NO. 182.  
(SED) CITY OF SEATTLE FIELD BOOKS 766B, 7120FF AND 2464C.  
(P) RIGHT-OF-WAY MAP FOR COMMERCIAL WATERWAY DISTRICT  
(PT) PORTLAND AND BUELT SOUND RAILWAY ADDITION, TO SOUTH, SEATTLE  
(T) RECORD OF SURVEY, BUSH, ROED AND HITCHING INC., VOL. 21 OF SURVEYS, P. 74.

### NOTES

1. SEE SHEET 1 FOR GENERAL SURVEY NOTES.  
2. INTENTION OF THIS SURVEY AND COORDINATE TRANSLATIONS.  
3. DISTANCES AND COORDINATES AS SHOWN ON THIS SURVEY ARE GROUND VALUES  
BASED UPON THE U.S. SURVEY FOOT. SEE SHEET 1 FOR CONVERSION TO GRD.

### LEGEND

- MONUMENT (FOUND AS NOTED)  
+ TACK IN LEAD (FOUND AS NOTED)  
REBAR AND CAP (FOUND AS NOTED)  
SET REBAR AND CAP "DEA 26252"  
(SED) DISTANCE PER CITY OF SEATTLE FIELD BOOKS  
AND ENGINEERING MAPS  
(C) CALCULATED DISTANCE/ANGLE  
(M) FIELD MEASUREMENT  
AO CITY OF SEATTLE ACCEPTANCE ORDINANCE



**SURVEYOR'S CERTIFICATE**  
THIS MAP CORRECTLY REPRESENTS A SURVEY  
MADE BY ME OR UNDER MY DIRECTION IN CON-  
FORMANCE WITH THE SURVEY RECORDING ACT  
AT THE REQUEST OF  
PORT OF SEATTLE  
ON DECEMBER, 2005  
SIGNATURE CERTIFICATE NO. 26262 DATE

**RECORDING CERTIFICATE**  
FILED FOR RECORD THIS 18th DAY OF Dec  
2005 AT 11:13 AM IN BOOK 108 OF  
SURVEYS AT PAGE 276 AT THE REQUEST  
OF DAVID EVANS AND ASSOCIATES, INC.  
MANAGER/AUDITOR  
SUPT. OF RECORDS/DEPUTY AUDITOR  
RECORDING NO.

**RECORD OF SURVEY**  
FOR  
**PORT OF SEATTLE**  
**COMMERCIAL WATERWAY NO. 1**  
SEATTLE, WASHINGTON

**DAVID EVANS**  
**AND ASSOCIATES INC.**  
415 - 118th Avenue SE  
Bellevue Washington 98005-3518  
Phone: 425.616.6600

**DAVID EVANS**  
12 OF 21  
SCALE 1"=100'  
SURVEYED MW2.BM2.RECA.SCM  
DATE DECEMBER 12, 2005  
DRAWN PCT.MAGR  
CHECKED RAD  
FILE PTSE0000-0044



## **ATTACHMENT B**



**Source:** Base map prepared from Google Earth Pro, 2010.

**BT-BS-1** ⊕ Bank Sample Location and Number

**Previous Investigation Sample Location and Number**

**LDW-SS85** ● Surface Sediment (Windward 2010a)

0 100 200  
Scale in Feet



Lower Duwamish Waterway  
Seattle, Washington

**Bank Sampling Location Plan  
Boyer-Trotsky Street End**

17800-17

11/11



Figure

**6**