



PORT OF BELLINGHAM
Washington State

February 21, 2024

**SENT VIA ELECTRONIC MAIL,
VIA HAND-DELIVERY AT PREMISES,
AND VIA REGULAR AND CERTIFIED U.S. MAIL,
RETURN RECEIPT REQUESTED**

A.B.C Recycling Operations Corp
2219 Rimland Drive, Suite 301
Bellingham, WA 98226

A.B.C. Recycling Operations Corp.
c/o SW&W Registered Agents, Inc.
1420 5th Ave, Suite 3400
Seattle, WA 98101-4010

RE: NOTICE OF DEFAULT

Dear Mr. Anthony:

This letter pertains to the A.B.C Recycling Operations Corp (“ABC” or the “Lessee”) and Port of Bellingham (the “Port” or “Lessor”) Harbor Land Lease including Lease of DNR Property dated June 21, 2022, (the “Lease”) for approximately six (6) acres in the Log Pond/Bellingham Shipping Terminal area, Bellingham, Washington 98225 (the “Premises”).¹

This letter contains three (3) separate Notices of Default, each of which are individually actionable. Compliance or curing of one of the Notices of Default does not waive the Port’s rights to pursue action on either of the remaining Notices of Default.

THIRTY DAY NOTICE TO COMPLY OR VACATE FOR UNAUTHORIZED BERTHING

Pursuant to the Lease Section 2.1.5 – Non-Exclusive Use Property, Lessee is in default for bringing a vessel to berth in an unauthorized location, without following the Lease procedures, and without Port permission. Specifically, ABC berthed a vessel on February 17, 2024 (the “Vessel”), without scheduling and without permission of the Port in an unauthorized location in the terminal off of C Street in violation of Section 2.1.5 of the Lease, which provides:

¹ Except as otherwise defined in this letter, the defined terms in the Lease are the same as those used in this letter.

Lessor grants a non-exclusive right to use portions of the Bellingham Shipping Terminal including the truck route and the berthing area adjacent to the Central Pier as depicted on Exhibit "B" or as otherwise designated by Lessor (collectively, the "Non-Exclusive Use Property"), for the purpose of staging and moving cargo for vessel loading and unloading of scheduled shipments. The Non-Exclusive Use Property consists of both Non-PMA Property and PMA Property.

ABC's berthing of the Vessel further violated Section 2.1.5.3 of the Lease, which provides in relevant part:

Lessee shall only use the Non-Exclusive Use Property in accordance with a scheduled shipment. The term "scheduled shipment" shall mean a shipment on a vessel with a berth reservation. Lessee must secure a berth reservation to schedule use of the Non-Exclusive Use Property in advance with Lessor by submitting an Application for Bessel Berth Reservation and Berth Agreement ("Berth Agreement") as least twenty-one (21) calendar days in advance of the requested use. Lessor will respond to submittal of Berth Agreement within two (2) business days of its receipt from Lessee. The use of the Non-Exclusive Use Property shall be subject to the rules and regulations for such use as contained in the Terminal Tariff.

This letter serves as thirty (30) day written notice of cure this default pursuant to the Lease Section 7.13.2. To cure this default, ABC must:

- Refrain from berthing the Vessel, or any other vessel, in an unauthorized location not provided for in the Lease or otherwise approved by the Port.
- Follow the procedures in the Lease and the Port's Terminal Tariff No. 800 required for berthing, including, without limitation, submitting an Application for Bessel Berth Reservation at least twenty-one (21) days prior to the requested berthing, entering into a Berth Agreement in the form then adopted by the Port, and berthing the Vessel, or any other vessel, only in the location provided for in the Lease or other area designed in advance by the Port.

If ABC fails to comply as outlined above or surrender the Premises back to the Port within thirty (30) days of this Notice, then the Port will proceed with its available remedies as identified in the Failure to Comply section of this letter.

THIRTY DAY NOTICE TO COMPLY OR VACATE FOR FAILURE TO COMPLY WITH STORMWATER MANAGEMENT REQUIREMENTS

Notice of Default is further given, pursuant to Section 7.13 "Defaults, Cross Default and Remedies" and RCW 59.12.030(4) that Lessee is in default by its failure to comply with: (i) Lease Section 4.1.1, in which Lessee agreed to abide by all requirements of listed permits, including Industrial General Stormwater General Permit WAR305536; (ii) Lease Section 4.1.2, in which Lessee agreed to comply with all applicable rules, codes, laws, and regulations regarding stormwater management; and (iii) Lease Section 7.6, in which Lessee agreed to confirm to and abide by all applicable rules, codes, laws, regulations, and Port policies in connection with the use of the Premises and not to permit the Premises to be used in violation of any applicable rule, code, law, regulation, Port policy, or other authority.

Under the Lease and existing law, Lessee is required to comply with National Pollution Discharge Elimination System (“NPDES”) Industrial Stormwater General Permit WAR305536 (the “ISGP”), applicable to the Premises. The ISGP provides a table of “benchmark” values for a number of parameters that a permittee is to sample on a quarterly basis.² All facilities must sample for turbidity, pH, oil sheen, total copper, and total zinc.³ Additionally, scrap recycling facilities must sample for total lead, and diesel fraction petroleum hydrocarbons.⁴

The ISGP requires that “The Permittee shall submit sampling data obtained during each reporting period on a Discharge Monitoring Report (DMR)...”⁵ Further:

Discharges shall not cause or contribute to a violation of Surface Water Quality Standards (Chapter 173-201A WAC), Groundwater Quality Standards (Chapter 173-200 WAC), Sediment Management Standards (Chapter 173-204 WAC), and federal human health-based criteria for Washington (40 CFR 131.45). Discharges that are not in compliance with these standards are prohibited.⁶

Additionally:

All discharges and activities authorized by this general permit shall be consistent with the terms and conditions of this general permit. Any discharge of any pollutant more frequently than, or at a level in excess of that identified and authorized by the general permit, shall constitute a violation of the terms and conditions of this permit.⁷

The ISGP further provides that, “The Permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act...”⁸ Moreover:

- B. Ecology will presume compliance with water quality standards, unless discharge monitoring data or other site specific information demonstrates that a discharge causes or contributes to violation of water quality standards, when the Permittee is:
 - 1. In full compliance with all permit conditions...
 - 2. Fully implementing stormwater best management practices contained in stormwater technical manuals approved by the department, or practices that are demonstrably equivalent to practices contained in stormwater technical manuals approved by Ecology...
- C. Prior to the discharge of stormwater and non-stormwater to waters of the State, the Permittee shall apply all known and reasonable methods of prevention, control and treatment (AKART). To comply with this condition, the Permittee shall prepare and implement an adequate SWPPP [(the “Stormwater Pollution Prevention Plan”)], with all applicable and appropriate BMPs, including the BMPs necessary to meet the standards identified in Condition S10.A, and shall install and maintain the BMPs in accordance with the SWPPP, applicable

² ISGP at S5.A, Tables 2 & 3

³ ISGP at Table 2.

⁴ ISGP at Table 3.

⁵ ISGP at S9.B.1.

⁶ ISGP at S10.A.

⁷ ISGP at G1.

⁸ ISGP at G16.

SWMMs [“Stormwater Management Manuals”], and the terms and conditions of this permit.⁹

Lessee has been leasing the Premises from Lessor since June 22, 2022. On January 4, 2023¹⁰, the Washington State Department of Ecology (“Ecology”) issued a Warning Letter to the Port regarding the ISGP based upon an Ecology inspection of the Premises conducted on November 2, 2022 (the “Warning Letter”). A copy of the Warning Letter was provided to Lessee. The Warning Letter documented a number of ISGP violations at the Premises, including, the failure to implement operational, source control and treatment BMPs for ABC Recycling’s activities to prevent contaminants from comingling with stormwater (Violation of S3.B.4). More specifically, as described in the Warning Letter:

- Trucks were maneuvering around the source control BMP of the installed rumble pad for ingress and egress for vehicle and equipment track out;
- The stockpile yard was a large source of sediment and turbidity and was not adequately established to prevent the erosion of soils and other earthen materials, control off-site sedimentation, and prevent violations of water quality standards;
- Observed petroleum sheen, emulsified oil, and petroleum spills/leaks on the ground and in stormwater puddles throughout Lessee’s stockpile yard. Ecology described the sheen and emulsified oil as “egregious”;
- Vehicle maintenance activities performed outdoors in Lessee’s stockpile yard with no cover or containment of parts, contaminants, or fluids; and
- The location of stockpiled metal.

On February 17, 2023, Ecology informed the Port that a number of violations described in the warning letter were not resolved. One of the issues involved the Port not extending the geographic footprint of ISGP WAR305536, and stated that Ecology awaited the decision on permit coverage for the ABC Recycling lease area. A review of Ecology’s Water Quality Permitting and Reporting Information System (“PARIS”) does not reflect a NPDES permit having been issued to Lessee.

Moreover, a review of the benchmark exceedances submitted to Ecology in the DMRs shows that there have been an excessive amount of benchmark exceedances under the ISGP for every quarter that they have been submitted since the beginning of Lessee’s tenancy. Some of these exceedances are more than thirty (30) times the benchmark limit for the parameter. In summary, the DMRs show benchmark exceedances in the following quarters of the following parameters:

Quarter	Parameter Benchmark Exceeded
2022 Q3	Turbidity, copper, zinc
2022 Q4	Turbidity, copper, zinc
2023 Q1	Turbidity, copper, zinc, lead ¹¹
2023 Q2	Turbidity, solids, copper, zinc, lead
2023 Q3	Turbidity, solids, copper, zinc
2023 Q4	Not yet reflected on PARIS

⁹ ISGP at S10.B & C.

¹⁰ This letter is misdated January 4, 2022.

¹¹ It should be noted that this is the first quarter that lead was sampled, based upon Ecology’s Warning Letter.

The benchmark exceedances recorded at the Premises since Lessee's tenancy, particularly those based upon Lessee's failure to follow BMPs, constitute violations of: (i) the ISGP; (ii) applicable rules, codes, laws, and regulations regarding stormwater management; and (iii) applicable rules, codes, laws, regulations, and Port policies in connection with Lessee's use of the Premises.

The exceedances identified in this letter have already occurred and are not curable violations. The Port reserves the right to terminate Lessee by a separate notice of default for these non-curable violations pursuant to RCW 59.12.030(5); however, at this time, the Port will provide an opportunity for Lessee to bring its operations into compliance. As such, this letter and notice of default offers an opportunity for Lessee to comply with the stormwater management requirements in the Lease going forward to avoid.

This letter serves as thirty (30) day written notice of cure this default pursuant to the Lease Section 7.13.2. To cure this default, ABC must institute and utilize appropriate BMPs. The implementation of proper BMPs will be measured by whether there are benchmark exceedances of parameters under the ISGP for 2024 Q1.

If ABC fails to comply as outlined above or surrender the Premises back to the Port within thirty (30) days of this Notice, then the Port will proceed with its available remedies as identified in the Failure to Comply section of this letter.

THIRTY DAY NOTICE TO COMPLY OR VACATE FOR INSURANCE REQUIREMENTS

Notice of Default is further given, pursuant to Section 7.13 "Defaults, Cross Default and Remedies" and RCW 59.12.030(4) that Lessee is in default by its failure to comply with Lease Section 5.2 in which it agreed to procure and maintain a comprehensive general liability policy covering claims arising on the Premises, Lessor's property, or DNR's property as a result of or arising out of its operations under the Lease. The insurance policy was to have a limit of liability of not less than Two Million Dollars (\$2,000,000) for each occurrence and shall name the Port and DNR as additional insureds. The policy should furthermore contain an express waiver of any right of subrogation by the insurance company against the Port. Each of the below bulleted items is a separate default under Sections 5.2 and 5.2.1 of the Lease:

- The Certificate of Insurance ("COI") provided to the Port evidences that Lessee did not provide the Port with Two Million Dollars (\$2,000,000) in coverage as an additional insured as required under the Lease. It only provides that the Port is an additional insured on a One Million Dollar (\$1,000,000) Commercial General Liability ("CGL") policy. It does not identify the Port as an additional insured on the One Million Dollar (\$1,000,000) Umbrella Liability policy.
- The COI does not identify DNR as an additional insured as required under the Lease.
- The COI evidences a limitation of One Hundred Thousand Dollars (\$100,000) in coverage for Damage to Rented Premises, in violation of the Lease requirement of Two Million Dollars (\$2,000,000) in coverage for property damage, including all real and personal property located on the Premises.
- The additional insured endorsement attached to the COI limits the additional insured coverage for the Port to coverage "only with respect to work and/or operations performed by you or on your behalf." This limitation is in violation of the Lease, which requires additional insured

coverage for the Port for claims arising on the Premises, the Port's property, or DNR's Property as a result of or arising out of Lessee's operations under the Lease.

- The endorsement further limits the insurance carrier's waiver of subrogation to a scope that is in violation of the terms of the Lease.

This letter serves as thirty (30) day written notice of cure this default pursuant to the Lease Section 7.13.2. To cure this default, ABC must obtain insurance coverage required under the Lease within thirty (30) days from the date of service of this Notice of Default upon Lessee.

If ABC fails to comply as outlined above or surrender the Premises back to the Port within thirty (30) days of this Notice, then the Port will proceed with its available remedies as identified in the Failure to Comply section of this letter.

MULTIPLE DEFAULT NOTICES

Pursuant to the Lease, Section 7.13.4 – Multiple Defaults in a Year, another default by ABC will result in an unlawful detainer, regardless of whether ABC cures such a default. This letter includes three (3) separate notices of default, all of which occurred within a one-year period. As such, even if these notices are cured, any subsequent violation of any term of the Lease shall result in ABC being in unlawful detainer.

FAILURE TO COMPLY

The Port demands that ABC comply with the requirements in this letter and take actions to cure the above-identified defaults within the applicable timelines, or in the alternative, vacate the Premises and return the same to the Port within such time. If ABC fails to comply with any one of the above-identified Notice of Defaults, the Port will proceed with all remedies permitted under the Lease and by law, including, without limitation, exercising the Port's to file an unlawful detainer lawsuit under Chapter 59.12 RCW to evict ABC and seeking a judgment including attorneys' fees and interest.

Additionally, as a commercial tenant, ABC may be liable for twice the amount of damage suffered by the Port if it fails to comply with the demands in this letter pursuant RCW 59.12.170. Note that the Port's remedies are not limited to the default provisions in the Lease, and the Port reserves the right to proceed with any remedy available to it under the law, including without limitation, proceeding with an eviction based a violation of RCW 59.12.030(5) for carrying on unlawful business, and/or coordinating with the Washington Department of Natural Resource and the U.S. Coast Guard to take action under Chapter 79.100 RCW – Derelict Vessel Act.

Please note that vacating the Premises does not relieve ABC of its contractual obligations under the Lease. These obligations include that ABC shall remain liable for any unmitigated rent and other damages suffered by the Port as a result of Lessee vacating prior to the expiration of the Term.

The Port hereby reserves all of its legal rights and remedies in connection with the Lease and this Premises.

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Sincerely,

PORT OF BELLINGHAM

Rob Fix
Executive Director

Cc: Elliott T. Smith, Director of Real Estate and Asset Management
Tiffany DeSimone, Director of Maritime
Dave Warter, Terminal Manager
Tim Schermetzler, Port Legal Counsel, CSD Attorneys at Law
Holly Stafford, Port Legal Counsel, CSD Attorneys at Law