

December 18, 2023

VIA E-MAIL TO: ecyrewqiano@ecy.wa.gov
MAIL TO: PO Box 47696, Olympia, WA 98504-7696

ATTN: Water Quality Program – Industrial Stormwater
Washington State Department of Ecology
P.O. Box 47696
Olympia, WA 98504-7696

Re: Comments on ABC Recycling Bulk Storage Facility's Notice of Intent for Permit Coverage

Dear Department of Ecology Water Quality Program and to Whom It May Concern:

We are writing on behalf of ourselves and on behalf of Save the Waterfront to express our concerns regarding the ABC Recycling Operations Corporation's recent Notice of Intent for coverage under the Washington State Department of Ecology's NPDES General Permit for Stormwater Discharges Associated with Industrial Activities.

The industrial site, known as ABC Recycling Bulk Storage Facility (ARBSF), has been operating illegally without an NPDES permit since June 1, 2022. It is a metal recycling collection facility that has had no environmental review due to the activity having no prior permit requirements imposed. The specific impacts from the use of the Log Pond area on the waterfront have not been identified, analyzed or mitigated in previous EIS documents for the waterfront planning process. This type of industrial activity in this area was never anticipated through the 2008 to 2012 EIS process, nor within the Waterfront Sub-area Plan.

Moreover, the association of this use of this area with the proposed industrial metal shredder on Marine Drive necessitates a comprehensive SEPA review. This review should encompass not only the environmental impacts of the metal shredder but also the transportation of shredded metal residue via trucks or trains to the Waterfront for storage and ultimate loading onto ocean-going ships.

A. The ABC Recycling operations are not exempt from SEPA Review

The applicant, ABC Recycling (ABC), asserts in its application that the application is 'Exempt' from SEPA Review under RCW 43.21C.0383(1). They are in error.

RCW 43.21C.0383 states:

The following waste discharge permit actions are not subject to the requirements of RCW 43.21C.030(2)(c):

- (1) For existing discharges, the issuance, reissuance, or modification of a waste discharge permit that contains conditions no less stringent than federal effluent limitations and state rules;...

This requirement is not a reason for exemption of SEPA when the activity has never been subject to a SEPA review and the existing discharge is not currently covered under a permit. It simply states that when dealing with already existing waste discharges, any changes or updates made to the permit must ensure that the conditions imposed are at least as strict as the federal effluent limitations and state regulations. Any interpretation otherwise would make a mockery of the process. The permit application must be viewed as a new application for a new discharge, which is what we believe DOE intended when it informed ABC Recycling that a new permit was required.

The applicant further asserts that it is exempt from SEPA review under a “Planned Action Exemption.” Again, the applicant is in error. The industrial use is not exempt from SEPA review on this basis. To fall into this category, the action must be formally designated as a planned action and must meet all of the requirements in RCW 42.21C.440 and WAC 197-11-164. The City of Bellingham and the Port of Bellingham have both confirmed that no documents exist relating to coverage of this activity under the Waterfront District Planned Action Ordinance. They’ve also both confirmed the absence of any request for or preparation of a finding of consistency as mandated for SEPA coverage under the ordinance. And it doesn’t end there. As we explain in detail below in section D of this letter, this use does not meet several other requirements set forth in these provisions.

Last, SEPA is not only triggered by DOE’s action related to the NPDES permit coverage, but also by the Port of Bellingham’s decision to lease publicly owned land to ABC Recycling in the first place. The action of leasing the land required SEPA review, which was not undertaken.

B. SEPA Obligation

While the Applicant has indicated that the Port of Bellingham is the Lead SEPA agency, it is imperative that the Department of Ecology recognize and exercise its own authority. *“When an application for a new proposal is submitted, the agency receiving the first application typically determines the lead SEPA agency. The lead agency defines the total proposal and identifies all necessary permits.”*¹

¹ <https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/Guide-for-lead-agencies/Lead-agency-determination-and-responsibilities>

“(1) For private projects which require licenses from more than one state agency, but require no license from a local agency, the lead agency shall be one of the state agencies requiring a license, based upon the following order of priority:

*(a) Department of ecology.”*²

Also, per Section 5 of the ISGP Application, all applicable SEPA requirements must be met under WAC 197-11. Under 197-11, if an agency is of the opinion that an action may have a probable significant adverse environmental impact, that agency should be the lead agency.

The requirement by Department of Ecology for ABC to obtain an ISGP suggests that this is the case.

Given the Port's role as the landlord at the Log Pond and its financial interest in maintaining ABC as a tenant, it has a perceived, if not actual conflict of interest in fulfilling the role as the lead SEPA agent.

C. ABC’s industrial use has caused, and will continue to cause, significant adverse environmental impacts that must be reviewed under SEPA prior to approval of permit coverage.

The Washington State Environmental Policy Act (“SEPA”), Chapter 43.21C RCW, is the legislative pronouncement of our state’s policy regarding the environmental impacts of development proposals. SEPA requires that for every decision on a major action significantly affecting the quality of the environment, the lead agency must prepare an environmental impact statement or “EIS”. The primary purpose of an EIS is to ensure that SEPA’s policies of protecting the environment are an integral part of the ongoing actions of government.

ABC Recycling's industrial use has been and continues to generate adverse environmental impacts, necessitating a SEPA review. Until the requirement of an ISG Permit, no government agency has engaged in SEPA review. This despite that significant impacts to the environment and the community have been recorded by the City (noise), Port (Air) and Department of Ecology (Water). This has allowed ABC’s activity to deeply impact the area’s water quality, air quality, resident’s repose, the economic viability of the developing region, endanger the Ecology cleanup areas, and endanger residents’ health as well as local salmon and eelgrass habitat, without authority, condition or mitigation.

The bulk storage of scrap metal has resulted in negative environmental and community impacts since June 2022. Although ABC was legally obligated to obtain a stormwater permit prior to activity beginning, ABC Recycling has been delivering, storing, moving, and shipping hundreds of thousands of metric tons of Canadian- and USA- sourced ferrous metals unlawfully since that time without a stormwater permit.

² <https://apps.leg.wa.gov/WAC/default.aspx?cite=197-11-936>

Environmental Concerns:

Water – Benchmark water quality violations occurring since the start of operations make clear that the ferrous metals are not ‘clean.’ Once automobiles and appliances, the scrap brings along lead, zinc and copper as well as other heavy metals, and are attached in ways that are impossible to remove prior to arrival at the Log Pond for storage. During the shipping and moving processes, as well as future shredder activities (residue), these heavy metals are known to separate from the ferrous metal. The 2008-2019 Waterfront District Plan EIS did not review this activity, which ABC began and continues without a stormwater permit and without SEPA review of any kind, for dangers of heavy metals.

Air – As the multiple storage piles are up to 3 stories tall, and hundreds of feet across, exposing an immense surface area, dust clouds blow downwind of the piles to the Northeast, the developing Waterfront, Workforce housing, a day care, outdoor restaurants, a playground, the Downtown core and into Bellingham Bay. This occurs even after days of pouring rain, showing that dust mitigation efforts through water application, begun after this problem became evident, is ineffective. During delivery and extensive movement of the metal by large industrial machinery, plumes of dust are released by the long arm excavator’s claws and the dumping of metal by trucks, and the cranes used for ship loading. As well, when a ship is in port, the barge that loads scrap from the water side of the ship exudes dust as it arrives from British Columbia and leaves. So much so that a thick trail of red dust may be seen over the water of Bellingham Bay.

Heavy metals are being released into the air and water in the vicinity. This is known not only from the stormwater sampling here, but also from pollution problems at other ferrous metal storage locations. Heavy metals contamination will increase with the addition of possible future shredded metal in even higher volumes and its attached residue.

A full and complete Environmental Impact Statement is needed to ensure the safety of the environment and residents, and to allow the Department to appropriately respond to the application. A single and complete project EIS would include identification and analysis and potential mitigation of impacts from 1) scrap metal transfer from Canada and regionally by truck, rail and barge to the Log Pond, 2) shredding of metal on Marine Drive, 3) months long storage of the scrap at the Waterfront, 4) as well as the review of storm water release into the Bay by the ship either at Port or upon sail.

Noise – All Waterfront District Plan EIS reviews from 2008 to 2019 expected noise at the Log Pond to be light industrial or marine industrial, temporary construction or noise from traffic and buildings. The conclusion from the 2008 EIS (3.6.4) on Noise states “No significant noise impacts from either construction or operation under the EIS Alternatives would result.” No later EIS altered this statement.

The Log Pond is bordered by, or is in close proximity to, dense established neighborhoods on three sides. Day time noise is bothersome to residents and due to the noise’s character of frequency and duration, a considerable disturbance. Nighttime noise, when a ship is being loaded (8-10 days), the noise becomes a health issue for thousands, as the frequency, character of noise and decibel level

permeates dwellings due to dump truck loads of crashing metal and huge ship claws dropping metal into the hull. The noise for the entire duration is random and disturbing, impeding the healthful sleep of thousands until 3 am.

The storage and movement is Heavy Industrial:

All industrial land use under the Waterfront Sub-area Plan and subsequent EIS is identified as light industrial. Any uses that risk being heavy industrial are required to be Conditional to the point that they once again fall under the LI category.

The bulk storage and movement of scrap, per BMC 20.36.020, is heavy industrial in nature. *“The heavy industrial (HI) designation is intended to accommodate uses which may create a higher degree of hazard or annoyance than those permitted in any other land use classification.”* The hazard is the possibility of air and water pollutants, dangers of heavy industrial machinery, as well as the known risks of noise as a hazard and considerable annoyance to a large population.

FEIS (2-10) - During early development phases, it is expected that the Log Pond Area would continue to be used for light industrial activities].... [As redevelopment occurs in those areas, the Log Pond Area would eventually be considered for a transition from light industrial to mixed use.

Economic Impacts and Community Concerns:

The environmental impacts of the Scrap Metal Storage and its associated activities may also be economically detrimental to the region. The Bellingham Waterfront Sub-area plan calls for light industrial and marine industrial jobs, as well as new extensive residential neighborhoods, workforce housing, offices, restaurants and hotels. As the Log Pond is centrally located within the Waterfront, and only feet from a planned residential complex and conference center, the heavy industrial use of the Log Pond area and its noise, dust and water impacts makes it unlikely that adjacent parcels will be built out to their full potential, nor will economic benefit be as high. The impacts, both physical and economic, far exceed the storage location's footprint. As well, the air pollution, toxic or not, increases the danger to those in the area. As the Waterfront EIS and Sub-area Plan anticipated hundreds if not thousands of employees in the area, just the footprint of the scrap storage (limited employment), the site and noise disturbance considerably hinders economic development and discourages investment. As well, related impacts expand past the Log Pond location, where roads will possibly be damaged by the extensive traffic of up to 50 trucks a day carrying thousands of tons of metal.

The Bellingham Waterfront is not just another industrial zone. It is a place of promise for the entire community. Thousands of hours and hundreds of volunteers, along with the dedication of the City and the Port created an area to be cleaned up after decades of pollution. An area that was to sustain a healthy environment, create economic opportunities for the entire community through business, industry, recreation and tourism; and neighborhoods of density to help offset the housing crisis that Bellingham and Whatcom County faces. Instead, the cumulative effects of the scrap storage

will skew the overall development of the waterfront district to favor one use, one Port tenant that causes detrimental impacts for the waterfront district as well as surrounding neighborhoods.

Since the departure of Georgia Pacific, the Log Pond soil has been capped, the GP West and Whatcom Waterway cleanups have begun, and the Cornwall Avenue Landfill will become a park. Since the closure of GP, Bellingham has been planning for and promised to have an economically supportive, environmentally friendly Waterfront. Instead the scrap storage brings hazards, pollution, noise, decreased quality of life and a net loss of economic opportunity.

A SEPA review, mandated by law, and obligated to be required by the Department of Ecology, will simply allow for the facts to surface and any lawful mitigation to occur. No more, no less.

D. The impacts that will be caused by ABC Recycling’s industrial use were not adequately disclosed or addressed in the Waterfront District Sub-Area Plan FEIS.

The applicant asserts that a project level assessment of environmental impacts for ABC’s use is unnecessary because those impacts were reviewed already in the Waterfront District Sub-Area Plan FEIS. This is incorrect. The site- and use-specific impacts of ABC’s industrial use were not disclosed or assessed in any of the SEPA documents for the Waterfront Plan. A full SEPA environmental review of the specific impacts associated with ABC Recycling’s industrial use at the Log Pond is required before DOE can authorize coverage under the General Permit.

At the outset, it’s important to understand the legal parameters around an agency’s reliance on previously prepared programmatic SEPA documents for its environmental review of a site-specific project. While it is true that SEPA allows an agency to “phase” its environmental review when the sequence is from a non-project document to a document of narrower scope, such as a site-specific analysis, that does not eliminate SEPA review entirely for the site-specific project.³ With phased review, the coverage of general matters in broader environmental documents can be followed by environmental review in subsequent narrower documents concentrating solely on the issues specific to the later analysis.⁴ Thus, phased review requires two separate and distinct steps: (1) Phase 1 is environmental review of impacts on a broader scale in the programmatic EIS and (2) Phase 2 is environmental review of site-specific project level impacts in a site-specific EIS or DNS. While an agency is allowed to rely on existing environmental documents to evaluate the environmental impacts of a site-specific proposal, the agency is still required to engage in an independent analysis of impacts at the project level.⁵

To the extent that the analysis in the Waterfront District Sub-Area Plan FEIS is in fact relevant to an analysis of impacts of ABC Recycling’s proposed use (*and we argue that it is not*), SEPA provides guidance on how this phased review must be carried out:

³ WAC 197-11-060(5)(b) and (c).

⁴ WAC 197-11-774; WAC 197-11-776.

⁵ WAC 197-11-600(2); WAC 197-11-704(2).

A nonproject proposal may be approved based on an EIS assessing its broad impacts. When a project is then proposed that is consistent with the approved nonproject action, the EIS on such a **project shall focus on the impacts and alternatives including mitigation measures specific to the subsequent project** and not analyzed in the nonproject EIS. If it is not valid, the analysis shall be reanalyzed in the project EIS.⁶

This is precisely what must occur here. Either the Department must find that the use is consistent with the non-project action (the waterfront district planning) and then undertake a more site- and use-specific environmental impact review or determine that the project is not consistent with that previous analysis and undertake an entirely new, complete assessment of the impacts of the proposed project. In either event, a full EIS of the project-specific impacts are required. This process is exactly what the Waterfront District FEIS (July 2010) envisioned:

For projects that require other state and federal permits, the appropriate agencies will review such projects and make decisions on the permits according to their applicable processes. These agencies will also determine if this EIS adequately covered the impacts/mitigation related to those specific projects.

Before coverage under the general stormwater permit can be approved, DOE must engage in an informed disclosure of [all] environmental impacts, alternatives, and mitigation measures specific to ABC Recycling's industrial use. The existence of prior analyses – especially information contained in non-project EISs - necessitates further refinement during project level SEPA analysis in order to address impacts that can only be ascertained at the level of individual projects. An extensive review of the Waterfront District Sub-Area Plan's multiple EIS documents confirms that in no way was an industrial activity such as the metal pile expected, reviewed, or assessed. A suggestion to the contrary is an attempt to bypass full implementation of this important law intended to protect the environment and local residents and fully inform regulatory agencies.

The terminology used throughout the Waterfront District SEPA documents is “light/marine industrial” or “light industrial.” The original EIS documents (2008-2010) anticipated the gradual conversion of the Log Pond area to one of mixed use, phasing out the industrial uses, as it was anticipated they would be incompatible with the expected buildout of the remainder of the waterfront planning area for residences, parks, retail, commercial and other mixed uses. The effect of the adoption of the 2012 waterfront plan in fact removed designation of part of the planning area as heavy industry, so that no part of the planning area is intended to be used for heavy industry. The Bellingham Comprehensive Plan refers to industrial uses this way:

Policy LU-21: The industrial category comprises a range of potential uses, including “light” industrial uses, (e.g. research and development and water-related industrial uses, and “heavy” industrial uses (e.g. intensive warehousing, manufacturing, fabrication, assembly and distribution of goods.

⁶ WAC-197-11-443 (emphasis supplied).

The Log Pond area being used by ABC for scrap metal collection and storage cannot be considered light industrial under this definition.

Even if the Department determines that the SEPA documents for the waterfront district planning effort are relevant to ABC's current application, the site- and use-specific impacts are far more than anticipated in the district planning documents. The FEIS from July of 2010, attached by ABC as part of its application, in fact still designated the Log Pond area to be developed into a new mixed-use area. In the earlier versions of the plans, the Log Pond was planned to be light industrial and then phased into mixed use in the early years of redevelopment. The FEIS addendum of 2012 was necessitated by changes to the proposed action, including an adjustment to the planned uses for the log pond to accommodate more light/marine industrial uses for a longer period, but the addendum indicated that the change would not result in any more impacts than the original plans would have had. The impacts already created by ABC's use of the Log Pond property make clear the error of those assumptions.

For example, the summary of impacts indicates for noise:

Noise-related impacts under the 2012 Updated Preferred Alternative are similar to or less than those identified in the EIS for the 2010 Preferred Alternative. It is anticipated that the reduction in the amount of redevelopment on the site (and associated reduction in noise from such redevelopment) would be offset by the increase in industrial uses on the site. In addition, as described previously, the 2008 DEIS identified potential noise impacts associated with industrial uses in proximity to mixed-uses; however, no significant impacts were anticipated. No additional noise-related impacts from redevelopment under the 2012 Updated Preferred Alternative are anticipated.

2012 EIS Addendum, at 1-4.

While the 2008 DEIS identified the potential for industrial noises to impact adjacent mixed uses, it did not anticipate any significant impacts, nor did it identify, analyze or propose mitigation for noise impacts to neighborhoods far beyond the boundaries of the Waterfront District. The noises it concentrated on were those generated by anticipated increases in traffic, not a new heavy industry use, in fact it referred to the area as a "primarily vacant and underutilized industrial area." 2008 DEIS at 3.7-37.

The noises associated with ABC's use of the log pond and the associated loading of materials stored there onto ships at the shipping terminal are indeed significant and have resulted in many, many noise complaints to the Port, to the City, to ABC and to the Department of Ecology. A full SEPA analysis for ABC's stormwater permit application will uncover significant noise impacts that need urgent mitigation. The Port's efforts to minimize the impacts on residents have been

singularly ineffective and its attempt to characterize the impacts with a sound study is not credible due to a flawed study design, atypical sampling locations and a mischaracterization of the City of Bellingham noise constraints.

The 2010 FEIS indicates that the 2008 EIS undertook:

..extensive analysis of the compatibility of proposed land uses with existing/proposed onsite uses (including the relationship between industrial uses and mixed uses on the site) and adjacent offsite uses was provided for Redevelopment Alternatives 1 through 3 and the Preferred Alternative. Both the DEIS and SDEIS concluded that the proposed redevelopment would be compatible with existing onsite and surrounding land uses (including downtown) and would not result in significant unavoidable adverse impacts. In DEIS and SDEIS Sections 3.6 (Noise), 3.2 (Air Quality), 3.10 (Aesthetics, Light and Glare) and 3.12 (Transportation), analysis of impacts on existing/proposed onsite uses and existing offsite uses in regards to noise, dust, light and traffic is provided. Each section also lists proposed mitigation measures to offset any potential impact (for example, the implementation of design and construction methods to mitigate noise impacts on sensitive uses such as residences from noise generated by existing or new industrial operations on the site). Each analysis concludes that with implementation of proposed mitigation measures, no significant unavoidable adverse impacts would result from the adjacency of residential or commercial uses to industrial uses. As stated in the EIS Addendum, the land use assumptions for the Updated Preferred Alternative would be consistent with the SDEIS Preferred Alternative.

2010 FEIS at 3-58. Reading this paragraph, one would almost believe that the analysis had been adequate. However, the impacts identified are typically related to the anticipated buildout of the waterfront area as a new mixed-use residential, commercial and retail neighborhood, not an area where an entirely new heavy industry would deposit itself, without the protections of a City permit or consistency review or finding, or the assumed (in the EIS) imposition of mitigation measures. These earlier review documents did not undertake the kind of detailed review called for by SEPA of this industrial use because the identified alternatives at that time did not anticipate this new industrial use for the Log Pond.

The use by ABC for storing huge piles of metal, creating dust clouds affecting nearby residents and the waters of Bellingham Bay, spawning many noise complaints about the collection and management of the pile, let alone the transport to the shipping terminal and loading, are far beyond any impacts that could have been anticipated for an area transitioning to mixed use, which is what the original documents reviewed. A new, robust and detailed SEPA review is required to identify and mitigate these effects.

E. ABC should be required to obtain coverage under an individual NPDES permit rather than the General Industrial Stormwater Permit.

In light of the unique characteristics of ABC Recycling's industrial use, ABC should be required to obtain coverage under an individual NPDES permit rather than the General Industrial Stormwater Permit. The three-story tall metal scrap pile possesses unique characteristics that differentiate it from others covered under the General Industrial Stormwater Permit. These distinctive features include the dangers the metal piles pose to the GP West Chlor-Alkali RAU, and the proximity of the Storage Area's boundaries with the developing Waterfront which includes parks, public spaces, and residences. Additionally, they encompass ABC Recycling's recurrent disregard for established Best Management Practices coupled with heavy metal exceedances leading to sampling violations and the risk that those violations will continue under the future ISGP.

An individual NPDES permit will allow for a more tailored and site-specific approach to managing stormwater runoff. This customization is essential for effective pollution prevention measures that align with the specific conditions and risks associated with this industrial use. An individual permit will facilitate more accurate and relevant monitoring and reporting activities. By aligning permit requirements with the specific characteristics of the operation, DOE can better control, prevent, and report on stormwater pollution. The ability to customize a stormwater management plan through an individual NPDES permit would allow DOE to address concerns raised by the local community.

In conclusion, the Department of Ecology has the obligation to recognize that the ARBSF has not been reviewed for environmental protections under SEPA. The activity is not only unreviewed for adverse environmental impacts under SEPA, but the scrap metal storage is also damaging that which SEPA was created to protect, the environment and community. Under State law, a full and complete SEPA review must be conducted at the ABC Recycling Bulk Storage Facility.

Sincerely,

Scott Jones and Rebecca Craven

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