

From: [Rebecca Messinger](#)
To: [Gary Medvigy](#); [Glen Yung](#); [Michelle Belkot](#); [Karen Bowerman](#); [Sue Marshall](#)
Cc: [Oliver Orjiako](#); [Jose Alvarez](#); [Sonja Wiser](#)
Subject: FW: Letter to Ms. Otto,
Date: Tuesday, April 2, 2024 12:14:19 PM
Attachments: [Otto-Ltr-240401-Final.pdf](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Please see the attached comments from the Friends of Clark County. Thank you.



Rebecca Messinger
Clerk to the Council
COUNTY MANAGER'S OFFICE

564-397-4305



From: Ann Foster <annfoster5093@gmail.com>
Sent: Monday, April 1, 2024 4:52 PM
To: Kathleen Otto <Kathleen.Otto@clark.wa.gov>
Cc: Rebecca Messinger <Rebecca.Messinger@clark.wa.gov>
Subject: Letter to Ms. Otto,

EXTERNAL: This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please receive our letter from Friends of Clark County, attached below, and place in the public record.

Best,
Ann Foster,
Friends of Clark County



Friends of Clark County

PLANTING THE SEEDS OF RESPONSIBLE GROWTH

April 1, 2024

Ms. Kathleen Otto
Clark County Manager
1300 Franklin Street
6th Floor
Vancouver, Washington 98660

Via pdf and e-mail to Kathleen.Otto@clark.wa.gov

Dear County Manager Otto:

My name is Ann Foster and I am the President of Friends of Clark County (FOCC). FOCC once again is requesting the County to engage in the proper process which will lead to the termination of the lease agreement with PVJR.

You, and members of the Council, especially the Chair, have asserted on several occasions that your actions with regards to PVJR (and Mr. Temple, owner) are dependent upon the provisions of the lease agreement executed between the county and PVJR in December 2022. However, as stated on several occasions, and included on the County's FAQ page:

Additionally, **once the County has been notified of any final adjudication by the regulatory agencies**, the County will proceed in the same manner, adhering to the terms of the Agreement. In part, Section 3.12 states:

3.12.1 County's Termination Rights. The County reserves the right to immediately cancel and termination this Agreement in the event of:

- **3.12.1.1** *A material breach of any of the terms and conditions of this Agreement, including but not limited to substantive noncompliance with all applicable federal, state, local, and police requirements, regulations, ordinances, and laws, related to PVJR's operation, condition, inspection and safety of trains, locomotives, cars and equipment, which PVJR has not cured or taken reasonable steps to cure within 30 days of the completion of the dispute resolution process in Section 14 of this Agreement*

On January 12, 2024, the County sent a letter to PVJR notifying them of the following:

As stated above, the county's intent is to ensure compliance with the lease agreement. Pursuant to sections 3.12, 5.1, and 10, ***you are required to comply with all applicable federal, state and local laws and regulations. Failure to do so constitutes a material breach of the terms and***

conditions of the lease agreement.

In sum, the county expects PVJR to fully cooperate with each of the aforementioned regulatory agencies. Moreover, *if any of these agencies establish an affirmative finding of a violation, or if any penalties are imposed against PVJR, then the county will consider this a material breach of the lease and will invoke sections 3.12 and 14 of the agreement.*

Mr. Tyler, after inquiry by Mr. Temple, sent a follow-up email to Mr. Temple that states “the final paragraph of the letter states *that the county will invoke section 14 if any of the regulatory agencies establish an affirmative finding of a violation*, or any penalties are imposed”.

On March 25, 2024, the Department of Ecology filed an “Administrative Order Against the Portland Vancouver Junction Railroad. LLC and Eric Temple”. The County has posted notice of the Administrative Order on its PVJR FAQ page and so we assume that the County has a copy of, and reviewed, this regulatory agency’s final adjudication.

The Administrative Order included the following section

“1. Determination of Violations and Order To Comply— Ecology’s determination that violations have occurred is based upon the violations listed below”. Below that line the Department lists two specific violations: “A. Unlawful Discharge of Polluting Matter into the Waters of the State, RCW 90.48.080 and B. Discharging Pollutants Without a Permit Authorized under RCQ 90.48.160, 90.48.180, or 90.48.260 through 90.48.262.”

The Administrative Order clearly states that Mr. Temple had failed to cooperate with DOE. On November 11, 2023, PVJR filed an incomplete CSWGP (Construction Stormwater General Permit) Notice of Intent. It goes on to state that “On November 21, 2023, Ecology notified PVJR that the submitted Notice of Intent was incomplete. To date, PVJR has failed to file a complete application for coverage under the CSWGP.” So the only conclusion that can be drawn is that, despite DOE notifying PVJR of the incomplete application, PVJR took no steps toward filing a complete document and, thus, did not cooperate, much less “fully” cooperate, with DOE.

Based upon the violations found by DOE, and PVJR’s failure to cooperate with DOE, the County has the right under §3.12.1 and 3.12.1.1 to terminate the lease. The County should keep their word to the citizens of the county and take the necessary steps now to terminate the lease.

In addition, in order for the County to achieve transparency it keeps telling its citizens that they are entitled to regarding these issues, we again request that the county hyperlink to the following documents on its PVJR FAQ page¹:

¹ FOCC and others have previously made the request to post the actual documents to which the FAQ refers but the County has failed to give the citizens direct access to the documents to which the page refers. FOCC is not sure why the county is failing to provide the citizens with links to the actual documents.

1. The August 16, 2023 DOE letter to the PVJR;
2. The October 23, 2023 DOE letter to the PVJR;
3. The October 23, 2023 United States Army Corps of Engineers letter to the PVJR;
4. The November 17, 2023 DOE letter to the PVJR;
5. The December 18, 2023 USACE letter to the PVJR;
6. The December 2023 EPA letter to USACE accepting lead agency status for enforcement (sent via email on 12/26/23);
7. A picture of the “before” picture at Barberton property and 3 pictures of the “after” at the Barberton property;
8. The quote from Maddie Nolan from Washington State Department of Fish and Wildlife that is found in the Reflector article along with links to her emails regarding these issues;
9. The statements of the Vice Chair of the RRAB from the November 18, 2023 meeting;
10. The documents where the Department of Ecology reiterated to PVJR that they must apply for a permit, and shall perform no further work, including, moving dirt, until a permit with Ecology is in place. Also, a link to the documents where Ecology advised PVJR to fill out a SEPA application in order for Ecology to evaluate and determine any other potential permits or regulations that may be needed;
11. The Department of Natural Resources Notice to Comply to the landowner in Chelatchie for the construction of a road and installing water crossing features without an approved Forest Practices Application (FPA);
12. The January 12, 2024 letter from the County to PVJR regarding the county’s expectation that PVJR will fully cooperate with the agencies and Mr. Temple’s response²;
13. The EPA letter transmitted to PVJR on February 14, 2024, formally initiating a Clean Water Act enforcement action;

² Well the warm fuzzies from the culvert repair didn't last long acknowledge receipt of this email, but do not agree that properties owned by others, properties owned by PVJR which are not under the Lease, nor work performed by PVJR on these properties, nor work performed subcontractors on ANY property is covered by the breach clause. Only PVJR operations on the Leased property are subject to the breach clause, none of which at question under this letter from Army Corp.

14. The EPA letter transmitted to Michael Leboki of Taylor Transport Inc. and Green Works Enterprises Inc. on February 21, 2024, requesting information about the alleged discharges of pollutants into waters of the United States at two sites, the Chelatchie and Barberton properties;
15. The documents that show that the county notified PVJR in November that their actions on county property (trespass, erosion, damage to stormwater, etc.) was in violation of Section 5.1 and Section 10 of the Agreement. Pursuant to Section 3.12.1.1 and Section 14 of the Agreement and a link to any documents that were generated as a result of the county meeting with PVJR to discuss the breach on December 8 and any documents that show written notification to PVJR of the next steps; and
16. The Washington State Department of Ecology Administrative Order issued on March 25, 2024, requiring Portland Vancouver Junction Railroad to comply with RCW 90.48, the State of Washington Pollution Control Act.

We strongly encourage the county to finally admit that PVJR and Mr. Temple have no intention of complying with local, state and/or federal laws and will continue to thwart the legal and ethical requirements of a company engaged in doing county business. In the 15 months since the county signed new lease in December 2022 (which was signed after almost 4 years of litigation and 2 failed mediations), the county staff, state agencies, federal agencies *and* Clark County citizens have spent hundreds, if not thousands, of combined hours just trying to hold PVJR and Eric Temple accountable to simple provisions within the lease (i.e. comply with local, state and federal laws).

Not only has PVJR continued to ignore compliance, PVJR and Mr. Temple took extraordinary steps of trespassing on county property with intent to commit damage to county property, damaged county property and polluted and severely harmed a waterway that the county had spent millions of dollars to restore. If any other citizen had engaged in that contact, the county would have called the sheriff and initiated criminal charges of trespass and malicious mischief. Yet, the county continues to try to unilaterally maintain preserve a relationship with PVJR and Mr. Temple despite his criminal actions and bullying and dishonest behaviors. It is past time for the county to protect its citizens against this rogue operator and terminate the lease.

Sincerely,

Ann Foster

Ann Foster
On Behalf of Friends of Clark County

