

McCULLOUGH HILL, PLLC

September 20, 2023

Ms. Ha Tran
Solid Waste Management Division, Industrial Section
Department of Ecology, State of Washington
PO Box 47600
Olympia, Washington 98504 – 7600
HTRA461@ECY.WA.GOV

RE: Objection to PLP Notice Letter issued to The Gores Group, LLC
Cosmo Specialty Fibers Site, CSID #2375, FSID #32

Dear Ms. Tran:

We are in receipt of your letter dated August 1, 2023 which proposes that The Gores Group, LLC (“Gores Group”) is a “Potentially Liable Person” or “PLP” with regards to the Cosmo Specialty Fibers Site located in Cosmopolis, Washington (“Site”). This response letter represents our objection to the proposed designation of Gores Group as a PLP for the Site.

Your letter is generally accurate regarding Weyerhaeuser’s ownership and operation of the Site from 1957 until approximately 2010. However, your characterization of the ownership of the Site after 2010 is not accurate.

Cosmo Specialty Fibers, Inc., a Delaware corporation (“Cosmo Specialty”), acquired the Site from Weyerhaeuser in 2010 as part of an asset-only “as is” purchase. Cosmopolis Holdings, LLC, a Delaware limited liability company, owned Cosmo Specialty. Gores Capital Partners II, L.P., a Delaware limited partnership, was the majority owner of Cosmopolis Holdings, LLC.

Gores Group served as the Investment Manager of Gores Capital Partners II, L.P. Gores Group did **not** own Cosmo Specialty at the time of their acquisition of the Site in 2010, or at any time in the future.

From 2010 through 2022, Gores Capital Partners, II invested capital in the business operations at the Site through Cosmopolis Holdings, LLC. Cosmo Specialty utilized the capital and operated the mill, and employed an experienced staff and management team who managed and operated the Site during this timeframe. During this period, Cosmopolis Holdings, LLC retained ownership of Cosmo Specialty, and Cosmo Specialty served (and still serves) as the current owner and operator of the Site.

In December 2022, Cosmopolis Holdings, LLC sold all of the capital stock of Cosmo Specialty to Charlestown Investments. This transaction was a stock sale in which Charlestown Investments acquired the entire company, including the Site and all assets and liabilities of Cosmo Specialty. Cosmopolis Holdings, LLC and Gores Capital Partners II, LP no longer hold any ownership interest in Cosmo Specialty or the Site.

We are providing this background info to confirm that **Gores Group has never owned or operated the Site**. Gores Group never held any ownership interest in the property or operations of the mill – Gores Group only served as the investment manager for Gores Capital Partners II, LP, which was one of the owners of Cosmopolis Holdings, LLC. Gores Group never had any legal interest in the real property or control of the business operations at this Site.

Gores Group never operated at the Site either. Under MTCA, an “operator” must manage, direct, or conduct operations or affairs specifically related to alleged pollution or contamination conditions in order to trigger MTCA liability. *See Pope Resources, LP v. Dep’t. of Nat. Res.*, 190 Wn.2d 744, 761, 418 P.3d 90 (2018). Gores Group only served as the Investment Manager for Gores Capital Partners II, LP. Gores Group had no operational control or business management authority over any operations at the Site, such that Gores Group was not actively involved and did not exercise control or participate in any activities that could have caused or contributed to a release of contamination at the Site. Cosmo Specialty’s experienced staff and management team had full operational control and handled the day-to-day business management at the Site. And while Gores Group was not involved in operations at the Site, no one at Gores Group has ever been alerted to any “releases” or environmental issues that arose during this specific timeframe.

Simply put - Gores Group does not fit within any of the categories of a PLP under RCW 70A.305.040. Gores Group does not and did not own or operate the Site. RCW 70A.305.040(1)(a); .040(1)(b). Gores Group did not exercise any “participation in management” of the Site. RCW 70A.305.020(23). Gores Group did not (by contract, agreement or otherwise) arrange for any disposal or treatment of hazardous substances at the Site, or cause or contribute to any release of hazardous substances at the Site. RCW 70A.305.040(1)(c). Gores Group is not listed on any permits or permit applications for the Site. And as noted previously, Gores Group did not engage in any activities regarding compliance of environmental laws and regulations during the time period of 2010 – 2022.

Ecology’s issuance of the PLP notice letter to Gores Group appears to be based on the Foreign Registration Statement from August 2010, where several individuals are listed as directors and officers of Cosmo Specialty with “c/o Gores Group LLC” as their contact information. The 2010 Foreign Registration Statement (attached to this letter) does **not** establish that Gores Group was the owner of Cosmo Specialty – rather, the 2010 Foreign Registration Statement establishes that Gores Group served as the investment advisor for the indirect primary capital partner (Gores Capital Partners II, L.P.) and nothing more. The 2010 Foreign Registration Statement was filed when the original acquisition of the Site by Cosmo Specialty occurred in 2010, and references individuals who worked on that transaction but did not have any direct involvement or managerial control over operations at the Site. Notably, by 2011, the annual statements no longer reference Gores Group at all, and the 2015 Foreign Registration Statement (attached hereto) does not reference Gores Group in any way.

Listing Gores Group as the “c/o” at the time of the transaction in 2010 when the mill was not yet operational does not establish any ownership interest. Any alleged direct communications from Gores Group or Cosmo Specialty to Ecology indicating that Gores Group ever owned Cosmo Specialty or ever operated the Site at any time are incorrect.

We would be happy to answer any questions that you may have regarding this matter. But we trust that this information establishes that there is no credible evidence and no factual (or legal) basis for naming Gores Group as a PLP for the Site, and that no final liability determination will be issued to Gores Group.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Lederman", with a long horizontal flourish extending to the right.

Ken Lederman
Principal

Cc: Catherine Pollard
Joe Awad
Kathryn Wyatt, AGO

Enclosures