

COURT FILE NUMBER	QB No 984 of 2014
COURT	COURT OF QUEEN'S BENCH OF SASKATCHEWAN
JUDICIAL CENTRE	SASKATOON
APPLICANT	BUSINESS DEVELOPMENT BANK OF CANADA
RESPONDENTS	ASSINIBOIA RUBBER RECYCLING INC.
DOCUMENT	<u>THIRD REPORT OF THE RECEIVER</u>

Clerk's Stamp

August 9, 2016

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

RECEIVER

ERNST & YOUNG INC.
2200, 215 – 2nd Street SW
Calgary, AB T2P 1M4
Neil Narfason / Cassie Riglin
Telephone: (403) 206-5067 / (403) 206-5106
Email: neil.narfason@ca.ey.com
cassie.riglin@ca.ey.com

COUNSEL

ROBERTSON STROMBERG LLP
600 – 105 21st Street E
Saskatoon, SK S7K 0B3
M. Lim Anderson, Q.C.
Phone: (306) 933-1344
Email: mk.anderson@rslaw.com

TABLE OF CONTENTS

TERMS OF REFERENCE	3
UPDATED ACTIVITIES OF THE RECEIVER	4
STATEMENT OF RECEIPTS AND DISBURSEMENTS.....	6
APPROVAL OF THE FEES OF THE RECEIVER AND ITS COUNSEL.....	6
RECEIVER'S DISCHARGE.....	6
RECOMMENDATIONS.....	6

APPENDICIES

ENVIRONMENTAL ORDER	APPENDIX A
NOTICE OF ABANDONMENT	APPENDIX B
JULY 20, 2016 LETTER.....	APPENDIX C

INTRODUCTION

1. Ernst & Young Inc. was appointed as Receiver (the “Receiver”) of the property, assets and undertakings (the “Property”) of Assiniboia Rubber Recycling Inc. (“ARR”, the “Company” or the “Debtor”) pursuant to an Order of this Honourable Court dated July 11, 2014 (the “Receivership Order”).
2. The Receivership Order authorized the Receiver, among other things, to carry on the business of ARR, to sell, convey, transfer, lease or assign the Properties out of the normal course of business, subject to approval of this Honourable Court for any transactions exceeding \$100,000, or the aggregate of multiple transactions exceeding \$200,000, and to make such arrangements or agreements as deemed necessary by the Receiver.
3. The purpose of this third report (the “Third Report”) of the Receiver is to provide this Honourable Court with the Receiver’s comments on:
 - a) The updated activities of the Receiver since the Second Report of the Receiver dated June 6, 2016 (the “Second Report”);
 - b) The need to adjust payment as between the Receiver and TD Bank;
 - c) The matter of possession and/or abandonment of the premises;
 - d) The discharge of Ernst & Young Inc. as Receiver; and
 - e) The Receiver’s recommendations.
4. This Third Report should be read in conjunction with the Second Report.

TERMS OF REFERENCE

5. Capitalized terms not defined in this Third Report are as defined in the Receivership Order, the First Report or the Second Report.
6. All references to dollars are in Canadian currency unless otherwise noted.

UPDATED ACTIVITIES OF THE RECEIVER

7. On April 11, 2016, the Receiver submitted a Notice of Application for Discharge to be heard on April 25, 2016. An amended Application was submitted on April 15, 2016 providing additional information to be heard on April 25, 2016.
8. On April 25, 2016 the Court adjourned the Receiver's Application for Discharge, with two adjournments since providing for the matter to return before the Court on August 11, 2016.

Possession and/or Abandonment of the Premises

9. From and after the time of appointment, the Receiver has refrained from taking possession of the main plant premises, due to the clear presence of contaminants on site, and the Receiver's inability to obtain insurance coverage to guard against any liability which might arise upon taking possession.
10. The Receiver has arranged for periodic inspection of the site, and to the extent requested by any party, granted its consent to site access. However, the Receiver has not exercised any exclusionary rights over the property.
11. On April 8, 2016, a letter from the fire chief for the Town of Assiniboia was send to the Receiver, setting out certain matters to be completed within 30 days from the date thereof (the "Environmental Order"). A copy is attached as Appendix A.
12. In response, the Receiver, through counsel, prepared and served a notice of abandonment (the "Notice of Abandonment"), which has previously been filed with proof of service in this matter. A copy, for convenience, is attached as Appendix B.
13. Since that time, there has been no enforcement process undertaken, and the Receiver understands from conversations between counsel that there is no further suggestion being made that the Receiver must comply with the order, nor any suggestion that the Receiver is not liable for any environmental issues on site, however, no formal confirmation has been received from the Town or from the Ministry of the Environment.
14. Out of abundant caution, the Receiver, in keeping with the Amended Notice of Application served and filed in April, seeks an order confirming that the Receiver has not taken possession of the premises, or alternatively, that the Notice of Abandonment is good and sufficient.

Adjustment to the TD Bank Claim

15. Payment was received from Grasswood Auctions just prior to the last hearing date in this matter, as a result of which the Receiver and TD Bank thought it appropriate to move quickly to provide for payment of the net receivable (after deduction of associated cost) to TD Bank.
16. The draft order for presentation to the court was drafted on the eve of the application, and it would appear that in the desire to deal with the matter in a timely fashion, the matter of GST remittance was neglected.
17. The GST collected on the receivable was \$3,150.00 which was inadvertently not deducted from the amount to be paid to TD Bank in the form of order submitted and granted.
18. The Receiver seeks an amendment to the order granted by this Honourable Court on June 9, 2016 (the "Cost Allocation and Distribution Order"), which would provide that paragraph 2(a)(ii) thereof would be amended to provide for GST to be retained by the Receiver for remittance purposes.

Town of Assiniboia and Ministry of the Environment

19. The Receiver understands that discussions have taken place between the Town of Assiniboia, and the Ministry of the Environment ("MOE"), pursuant to which the further involvement of the Receiver has been discussed.
20. On several occasions, including letters sent by Counsel for the Receiver dated July 4, 2016, July 15, 2016, and July 20, 2016, the Receiver has asked that it be informed of and included in such discussions relating to its further involvement. A copy of the letter dated July 20, 2016 may be found in Appendix C. The Receiver has not, however, been brought into the ongoing discussions.
21. The Receiver has been advised that the MOE has most recently questioned whether there is value in leaving the Receivership in place, however, the Receiver has been unable to obtain as at the date of this report, any definite indication.
22. In view of this, the Receiver accordingly recommends that the discharge order, in the form filed, be granted.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

23. The Receiver forecasts no material change from the information provided in the Second Report, other than the remittance of GST as referenced above.

APPROVAL OF THE FEES OF THE RECEIVER AND ITS COUNSEL

24. The Receiver has no information to add to that previously provided in the Second Report

RECEIVER'S DISCHARGE

25. Further to the Second Report, the Receiver proposes to proceed as follows:
- a) In the event that the Receiver shall be in possession of any net sum after the payment of all expenses, fees and disbursements, such net sum shall be paid over to BDC, after payment of unremitted pension contributions of \$7,492 payable to Financial Consumer Affairs Authority; and
 - b) After the completion of the payments and distribution, if applicable, the Receiver's administration of the estate will be substantially complete and the Receiver will file an affidavit with the Clerk of the Court confirming the same. The Receiver may have some miscellaneous administrative items to attend to post-discharge, but these items are immaterial and, in the Receiver's opinion, should not prevent this Honourable Court from granting an unconditional discharge.
26. The Receiver respectfully requests that this Honourable Court approve an Order discharging the Receiver from any and all obligations as Receiver of ARR.

RECOMMENDATIONS

27. The Receiver recommends that this Honourable Court declare that the Receiver is not compelled to comply with the Environmental Order as:
- (i) The Receiver has not taken possession of the property which is the subject of the Environmental Order and that the Receiver is accordingly not bound to comply therewith; and

- (ii) In any event, the Receiver has effectively abandoned renounced and divested any interest in the subject matter of the Environmental Order as at April 14, 2016.

28. The Receiver recommends that this Honourable Court approve:

- a) The amendment for GST to the Cost Allocation and Distribution Order;
- b) The accounts of the fees and disbursements of the Receiver and the Receiver's counsel; and
- c) The discharge of Ernst & Young Inc. as Receiver of ARR.

All of which is respectfully submitted this 9th day of August, 2016.

ERNST & YOUNG INC.
in its capacity as Court Appointed
Receiver of Assiniboia Rubber Recycling Inc.



Neil Narfason, CA, CIRP, CBV
Senior Vice-President



Cassie Riglin, CA
Senior Manager

APPENDIX A

(Environmental Order)

Town of Assiniboia
131 – 3rd Ave. W
P.O. Box 670
Assiniboia, SK S0H 0B0



Ph: 306.642.3382
Fax: 306.642.5622
Em: townoffice@assiniboia.net

April 8, 2016

Ernst & Young Inc.
1000, 440 2nd Avenue SW,
Calgary, AB
T2P 5E9

Attention: Neil Narfason – Senior Vice President

RE: Assiniboia Rubber Recycling – Surface Parcel No. 111021792

In accordance with Court File number QB No 984 of 2014 dated July 11, 2014, Ernst & Young was appointed Receiver of all of the assets, undertakings and properties of the Assiniboia Rubber Recycling Inc acquired for, or used in relation to the business carried on by Assiniboia Rubber Recycling Inc, including, inter alia, all the right title and interest of the Debtor's lands located in the Town of Assiniboia, Saskatchewan. Paragraph 9 of the Receivership Order states that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended, however it further states that **nothing in the paragraph shall "(ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment".**

On February 24th, 2016, Cassie Riglin, Senior Manager of Ernst & Young Inc., granted permission for access to the above noted site to allow officials to conduct a fire safety inspection.

Subsequently, upon receipt of observations of the officials and their recommendations, in the interest of the safety of the Town of Assiniboia, the surrounding area and the environment, we require the following listed items to be accomplished at the site within thirty (30) days from the date of this letter. Failure to comply with this letter may subject organizations to fines in accordance with National Fire Code.

1. There are several access points to the interior of the building that are required to be secured.
2. All loose and baled combustible fiber located in the building and on the property must be moved to one location on the west side of the property to provide better access to our water source should an incident occur.
3. All barrels/containers of oil/substances stored at the site be removed from the property.
4. All wood, wooden pallets and other combustible materials stored at the site are to be moved and located on the west side of the property to provide better access to our water source should an incident occur and must be separate from the combustible fiber pile.
5. Propane tanks must be removed from inside the building.
6. All mobile equipment within or around the building must be moved to one location outside of the building.
7. Access routes for fire department response must be maintained to meet the NFC requirements (6 m clearance from the nearest side of the access road).
8. A 15 m clear space is required around each individual rubber pile (this space must be maintained to prevent fire spread and access between piles).

Code references for the above are:

- Fire Hazards – 2.4.1 Combustible Materials
- Vacant Buildings – 2.4.6.1 Security
- Fire Department Access to Buildings – 2.5.1.5 Maintenance of Fire Department Access
- Outdoor Storage – 3.3.2.3 Individual Storage Areas and Clearances
- Outdoor Storage – 3.3.2.5 Fire Department Access
- Outdoor Storage – 3.3.2.7 Maintenance
- General Outdoor Storage – 3.3.3.2 Individual Storage Areas and Clearance
- General Outdoor Storage – 3.3.3.3. Rubber Tires.

To assist in your understanding of these above requirements, we have enclosed pictures showing some specific areas of concern circled in red with the appropriate instructions of how they are to be handled. We have also enclosed a list of contractors licensed to do business in the Town that may be able to assist in the achievement of the requirements.

The completion of the above items are necessary to mitigate the risk of fire and enable the fire department personnel to better control any incidents that may occur. Due to the recent fire at Shercom Industries this further emphasizes the necessity of executing these requirements.

We thank you for your anticipated cooperation in assisting with the safety of our community.

Sincerely,



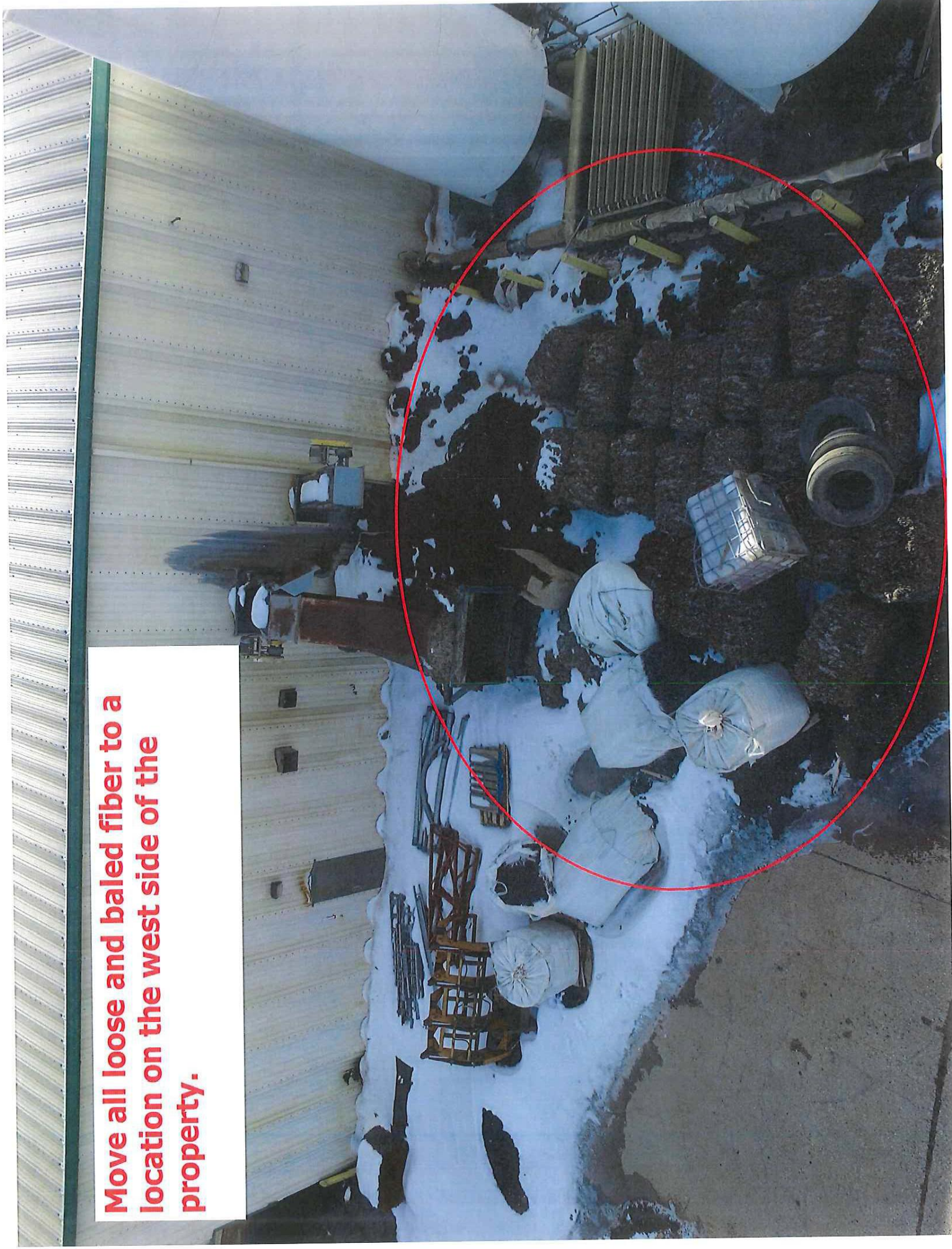
Chuck Rust
Town of Assiniboia Fire Chief

Cc: Honourable Herb Cox, Minister of Environment
Erika Ritchie, P.Eng., Assistant Deputy Minister, Ministry of Environment
C.W.Chung, Manager, Waste Stewardship and Recycling
Wes Kotyk, Environmental Protection Branch, Government of Saskatchewan
Greg Reeves, Emergency Services Officer, Emergency Mgmt and Fire Safety
Dave Marit, MLA Wood River
Theresa McQuoid, Saskatchewan Scrap Tire Corporation
M. Kim Anderson, Q.C., Robertson Stromberg
Travis Gu, Business Development Bank
Ian A. Sutherland, McDougall Gauley
Carol White, CAO, Town of Assiniboia
Rick Van Beselaere, Q.C., Miller Thomson

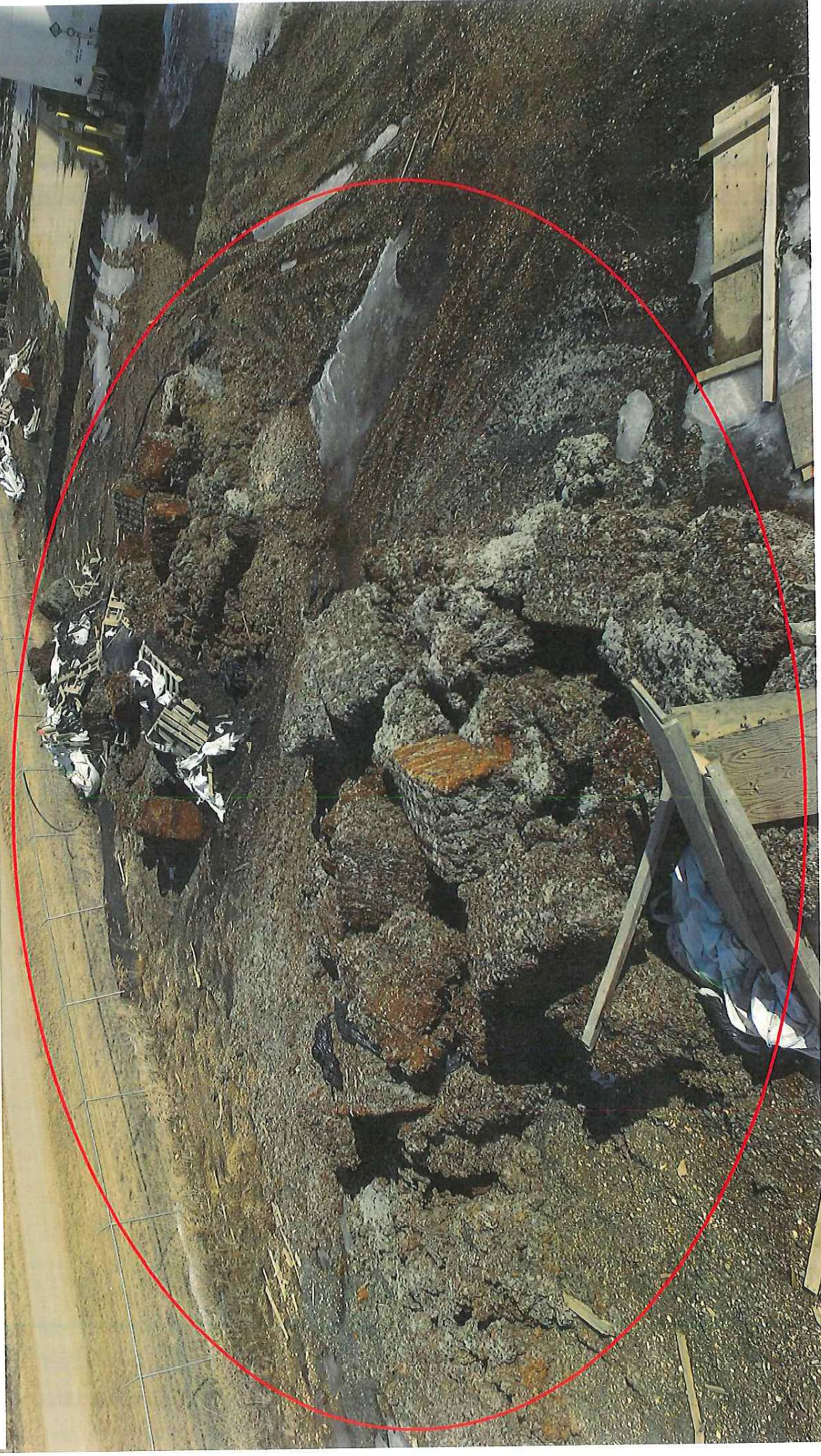
enclosures

CR/cw

Move all loose and baled fiber to a location on the west side of the property.



Move all loose and baled fiber to a location on west side of property. Move all wood, wooden pallets and other combustible materials to location on the west side of property separate from fiber.

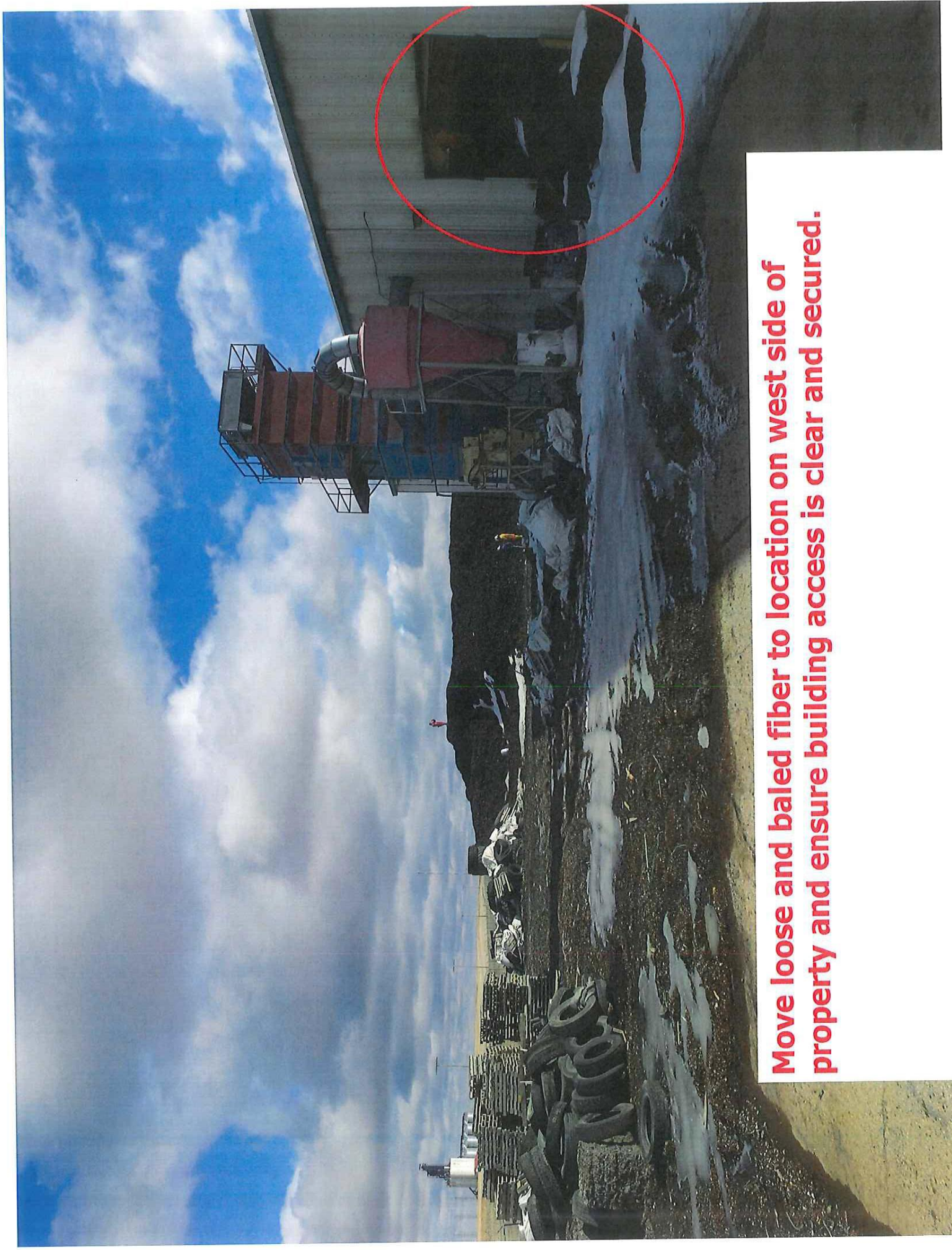


All mobile equipment, within and around the building is to be moved to one location on the property outside of the building. All wood, wooden pallets and other combustible materials to be moved to a location on the west side of the property separate from the fiber. All barrels/containers of oil/substances, including that which is within the building, are to be removed from the property.

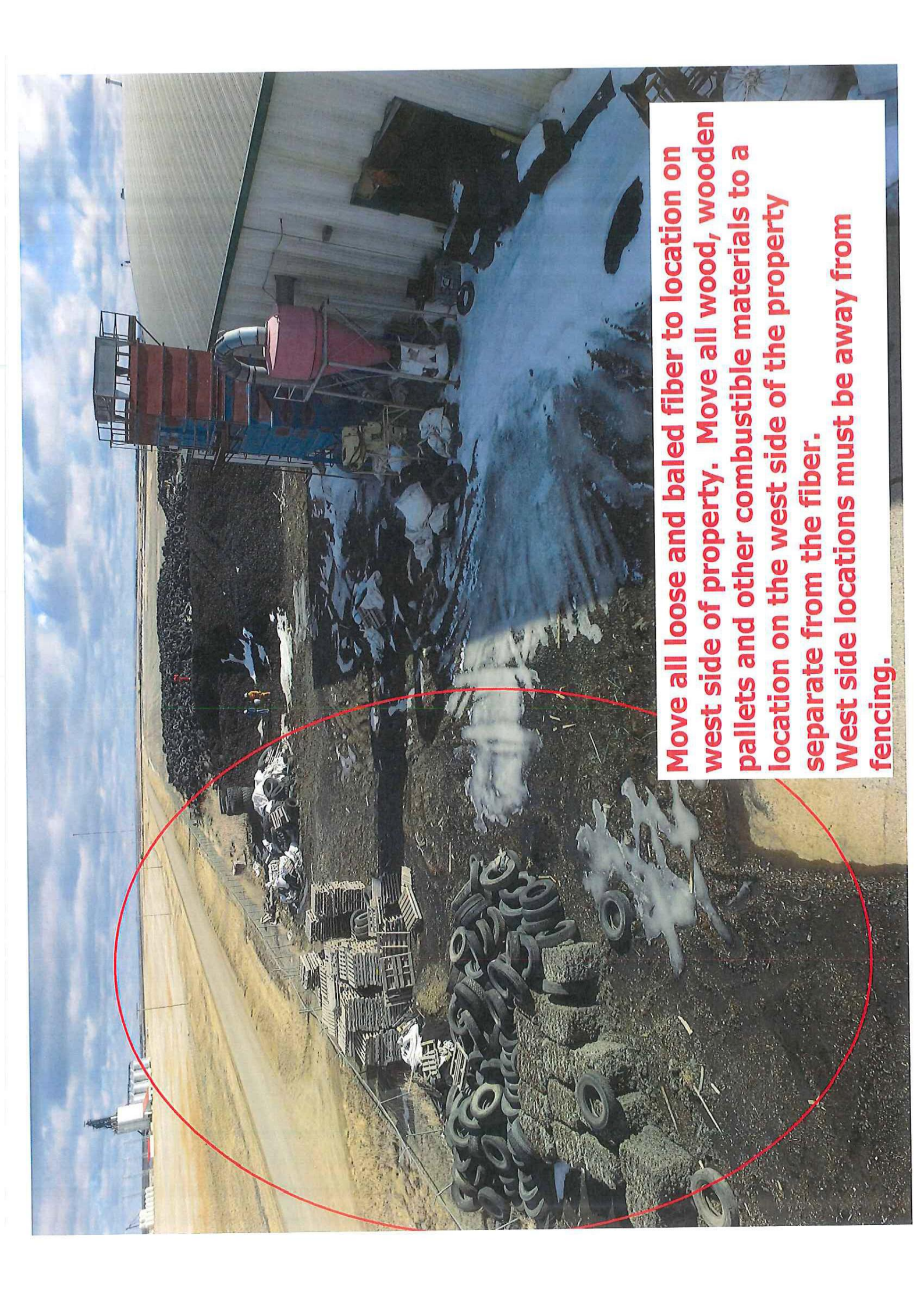


Ensure all accesses to building are clear and move combustibles to location on west side of property





Move loose and baled fiber to location on west side of property and ensure building access is clear and secured.

A photograph of an industrial site. In the background, there is a large, light-colored building. To the left of the building, there is a red and blue structure with a spiral staircase. In the foreground, there is a large pile of black tires and debris. A red circle is drawn around this pile. The sky is blue with some clouds.

Move all loose and baled fiber to location on west side of property. Move all wood, wooden pallets and other combustible materials to a location on the west side of the property separate from the fiber. West side locations must be away from fencing.

Move all loose and baled fiber to location on west side of property. Move all wood, wooden pallets and other combustible materials to location on west side of property separate from fiber. West side locations must be away from the fencing.



Business Name	Contact Name	Contact Number	Available Equipment (Place an X under the piece(s) of equipment your business can offer)													
			Rubber Tire Loader	w/ Blower	w/ Blade	Special Attachments (Specify)	Grader	w/ Wing	Skid Steer Loader	w/ Blower	End Dump Truck	Tandem	Triple	End Dump Semi	Dozer	Additional Equipment
Beaton Enterprises	Mark Beaton	642-8539														Backhoe
Dave Mihalcz Excavating	Trevor Peterson	640-7311	X (2)		X	Bucket Snow blade Dozer blade										
Nekurak Construction Ltd	Dave Nekurak	642-8999														
	Dave Ogle Matt Ogle Pam Green	642-8777 640-7611 640-9677	X			Bucket										
Ogle Construction Ltd																
	Richard Fafard Riley Fafard	640-7336 640-7998														
R & R Skidsteer Services																
	Bernie Fouillard Rosie MacDonald	640-7897 640-7128	X													
Swayze's Concrete Ltd.																
	Paul Tendler Martin Tendler	640-8238 640-6858	X	X		Bucket										
Tendler Trucking																

APPENDIX B
(Notice of Abandonment)

COURT FILE NUMBER **QB No 984 of 2014**
COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
JUDICIAL CENTRE OF **SASKATOON**
APPLICANT **BUSINESS DEVELOPMENT BANK OF CANADA**
RESPONDENTS **ASSINIBOIA RUBBER RECYCLING INC.**

NOTICE OF ABANDONMENT

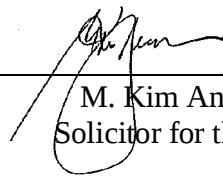
Ernst & Young Inc., in its capacity as receiver over the assets and undertaking of Assiniboia Rubber Recycling Inc. (the "Receiver") hereby gives notice as follows:

1. The Receiver has not, at any time, taken possession of the main plant and equipment belonging to Assiniboia Rubber Recycling Inc., including the site referenced as Surface Parcel #111021792 at Assiniboia, Saskatchewan (the "Property"), a course of action expressly authorized by paragraph 3 of the Order granted by the Honourable Madam Justice A.R. Rothery on July 11, 2014 (the "Receivership Order").
2. To ensure that the matter is clear, and against the possibility that there is any suggestion made that the Receiver is claiming or has claimed or otherwise is entitled to an interest in the Property:
 - (a) Any such interest has as of the Receiver's determination that it would not take possession, been abandoned, renounced or divested within the meaning of paragraph 15(c)(iii) of the Receivership Order; and in addition:
 - (b) To the extent that there is any further uncertainty or suggestion of any action since which is inconsistent with the foregoing, the Receiver hereby abandons, disposes of, or otherwise releases any interest it may have in any of the real or personal property located at the Property.

DATED at Saskatoon, Saskatchewan, this 14th day of April, 2016.

ROBERTSON STROMBERG LLP

Per: _____



M. Kim Anderson, Q.C.
Solicitor for the Applicant

To: The Court of Queen's Bench for Saskatchewan

The Town of Assiniboia

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm:	ROBERTSON STROMBERG LLP
Name of lawyer in charge of file:	M. Kim Anderson, Q.C.
Address of legal firm:	600-105 21 st St. East, Saskatoon, SK S7K 0B3
Telephone number:	306-933-1344
Fax number (<i>if any</i>):	306-652-2445
E-mail address (if any):	mk.anderson@rslaw.com

APPENDIX C

(July 20, 2016 Letter)

From: M. Kim Anderson, Q.C.
Direct: (306) 933-1344
Email: mk.anderson@rslaw.com
File No. 36967.3

**ROBERTSON
STROMBERG**

July 20, 2016

Miller Thomson LLP
Barristers and Solicitors
700-2103 11th Ave
Regina, SK S4P 4G1

VIA EMAIL: rvanbeselaere@millerthomson.com

Attention: Rick Van Beselaere, Q.C.

Dear Sir:

**RE: Assiniboia Rubber Recycling Inc. (in Receivership)
Receivership**

Thank you for taking time to discuss this matter earlier this week, and for providing a copy of the letter dated July 15, 2016, sent to the Town of Assiniboia (the "Town") by the Ministry of the Environment ("MOE").

You will recall that I verbally raised the Receiver's requirements for remaining involved. The purpose of this letter is to assist the parties by putting the requirements in writing and providing clarity before the new return date of August 11, 2016.

The first requirement is participation in developing solutions on a go-forward basis. The Receiver has not been a participant in any discussions about the intended course of action since the proposal originally solicited by MOE for dealing with BDC's interest was rejected by MOE. The letter provided suggests that MOE, the Ministry of Government Relations ("MGR"), and Saskatchewan Scrap Tire Corporation ("SSTC") are working on a proposed scope of work for further discussion. This is a positive development. The Receiver would respectfully ask that if MOE, MGR, SSTC and the Town see the Receiver as being part of the contemplated solution that, from this we forward, the Receiver would be copied on correspondence and emails, and would be invited to attend any scheduled meetings or conference calls.

The Receiver is very attuned already to the need to minimize costs, and would not consider it necessary in all but the most unusual circumstances, that the Receiver would need to attend any meeting in person. On the other hand, if the Receiver is to lend its name to the proposed reclamation and remediation process, the Receiver must have some degree of involvement and authority, which does give rise to some cost.

The second requirement relates to the matter of the Receiver's ongoing exposure. As we have stated in the past, the Receiver would find it necessary to receive from the Town, and from MOE, at a minimum, an acknowledgement that the Receiver has not been in possession of the main facility, and assurances that the Receiver will not be held liable for any liability associated with the environmental difficulties associated with that site. This is a matter which has been raised on

several occasions, and the Receiver respectfully suggests that it would not be inappropriate to ask that such acknowledgment and assurances be in place well prior to the return date on August 11.

The final matter is a formal retainer, or indemnity, including an undertaking to pay costs which amount would be based on an agreed annual budget by the parties involved.

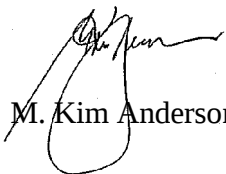
If satisfactory progress has been made by August 5, the Receiver will not proceed with the discharge application at that time, but may reserve the right to adjourn the application pending finalization of all matters.

Please share this letter with the others involved in these deliberations.

Yours truly,

Robertson Stromberg LLP
Barristers and Solicitors

Per:



M. Kim Anderson, Q.C.

MKA:drm

CC: Neil Narfason, Ernst & Young via: neil.narfason@ca.ey.com