UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

**NOTICE OF POTENTIAL LIABILITY**
**URGENT LEGAL MATTER: PROMPT REPLY REQUIRED**
**CERTIFIED MAIL: RETURN RECEIPT REQUESTED**

The Sherwin-Williams Company, Inc.
For M.A. Bruder and Sons, Inc.
John G. Morikis, President and COO
101 Prospect Avenue, N.W.
Cleveland, OH 44115-1075

**Re: Notice of Potential Liability**
**Lower Darby Creek Area Superfund Site,**
**Operable Unit 1 - Clearview Landfill**
**Darby Township, Delaware County and Philadelphia, Pennsylvania**

Dear Mr. Morikis:

This letter notifies you that The Sherwin-Williams Company, Inc. ("Sherwin-Williams" or "you"), as the successor to M.A. Bruder and Sons, Inc. ("MAB"), may incur, or may have incurred, liability under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a), with respect to the Clearview Landfill, Operable Unit 1 ("OU1") of the Lower Darby Creek Area Superfund Site ("Site") located in Philadelphia, Pennsylvania. This letter also notifies you of potential response activities at OU1 of the Site which you may be asked to perform or pay for at a later date if the United States Environmental Protection Agency ("EPA") performs them.

Under CERCLA, commonly known as the federal Superfund law, the EPA is responsible for responding to the release or threat of release of hazardous substances, pollutants or contaminants into the environment that is, for stopping further contamination from occurring and for cleaning up or otherwise addressing any contamination that has already occurred. EPA has documented that such a release has occurred at the Site. EPA has spent, or is considering spending, public funds to investigate and control releases of hazardous substances or potential releases of hazardous substances at the Site. Based on information presently available to EPA, EPA has determined that Sherwin Williams may be responsible under CERCLA for cleanup of OU1 of the Site or costs EPA has incurred in cleaning up OU1 of the Site.

## EXPLANATION OF POTENTIAL LIABILITY

Under CERCLA, specifically Sections 106(a) and 107(a), potentially responsible parties ("PRPs") may be required to perform cleanup actions to protect the public health, welfare, or the environment. PRPs may also be responsible for costs incurred by EPA in cleaning up OU1 of the Site, unless the PRP can show divisibility or any of the other statutory defenses. PRPs

include current and former owners and operators of a site, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the site, and persons who accepted hazardous substances for transport and selected the site to which the hazardous substances were delivered.

Based on the information collected, EPA believes that Sherwin-Williams may be liable under Section 107(a)(3) of CERCLA as a person who arranged for the disposal or treatment of hazardous substances at the Site. EPA believes that MAB contracted with Tri-County Hauling, Inc. between 1967 and 1976 to dispose of its waste, including hazardous waste, from its Philadelphia facility. Based on its investigation, EPA believes that Tri-County Hauling, Inc. disposed of MAB's waste at the Clearview Landfill, among other locations.

## SITE RESPONSE ACTIVITIES

To date, EPA has taken several response actions at OU1 of the Site under the authority of the Superfund Program. Below is a brief description of the actions taken at OU1 of the Site.

- A Site Inspection was conducted between January 7, 1998 and August 17, 1999 and an Expanded Site Inspection was completed between February 1, 2000 and April 10, 2000 in order to gain a basic understanding of any risks posed to human health and/or the environment by releases or threatened releases from the Site.

- The Site was listed on the National Priorities List ("NPL") on June 14, 2001.

- A Remedial Investigation ("RI") to identify the Site characteristics and to define the nature and extent of soil, air, surface water, and groundwater contamination at OU1 and the risks posed by the OU1 and a Feasibility Study ("FS") to evaluate different cleanup options for OU1 of the Site were initiated on March 20, 2001.

At present, EPA is planning to issue its Record of Decision detailing the specific remedy selected for OU1 of the Site on or about September 30, 2013.

EPA may expend additional funds for response activities at OU1 of the Site under the authority of CERCLA and other laws.

## SPECIAL NOTICE AND NEGOTIATION MORATORIUM

EPA anticipates that you may receive an additional notice from EPA in the future concerning OU1 of the Site. The following four paragraphs are a detailed description of that future notice. You do not need to take any specific action regarding this future notice at this time. The description is provided to you here so that you can anticipate and understand the process.

The future notice will either inform you that EPA is using the CERCLA Section 122(e) special notice procedure to formally negotiate terms of a consent order or consent decree to

conduct or to finance Site response activities, or it will inform you that EPA is electing not to utilize that procedure. If EPA does not use the Section 122(e) special notice procedure, the notice will specify why special notice was not considered appropriate in this case.

Under Section 122(e), EPA has discretionary authority to use the special notice procedure if EPA determines that such procedure would facilitate an agreement between EPA and the PRPs for taking response action and would expedite remedial action at OU1 of the Site. Use of this special notice procedure triggers a moratorium on certain government activities at OU1 of the Site. The purpose of the moratorium is to provide a period of time when PRPs and EPA may enter into formal negotiations for an agreement under which the response activities will be financed and performed by the PRPs.

If special notice is provided with respect to the Remedial Investigation and Feasibility Study ("RI/FS") at the Site, the moratorium period, during which EPA will not initiate implementation of the RI/FS, lasts for 60 days after receipt of special notice. If EPA determines that a good faith offer to perform or to finance the RI/FS is submitted by the PRPs within those 60 days, the statute provides a 30-day extension for further negotiations. Following completion of the RI/FS, the second moratorium period during which EPA may not initiate response activities occurs with regard to the Remedial Design/Remedial Action ("RD/RA"). The RD/RA moratorium also lasts for 60 days after the RD/RA special notice has been issued. If EPA determines that a good faith offer is submitted by the PRPs within those 60 days, the statute provides a 60-day extension for further negotiations.

If EPA determines that a good faith offer has not been submitted within the first 60 days of any moratorium period, EPA may terminate the negotiation moratorium pursuant to Section 122(e)(4) of CERCLA. EPA then may commence response activities or enforcement actions as it deems appropriate. In the absence of an agreement with the parties to perform or to finance the necessary response activities, EPA may undertake these activities and pursue civil litigation against the parties for reimbursement of Site expenditures. Alternatively, EPA may issue a unilateral administrative order pursuant to Section 106(a) of CERCLA to require PRPs to conduct response activities, and/or may commence civil litigation pursuant to Section 106(a) of CERCLA to obtain similar relief. Failure to comply with an administrative order issued pursuant to Section 106(a) of CERCLA may result in a fine of up to $32,500 per day, pursuant to Section 106(b) of CERCLA and 40 C.F.R. Part 19, and/or imposition of treble damages, pursuant to Section 107(c)(3) of CERCLA.

The preceding explanation of special notice and the negotiation moratorium procedure is for your general information about the Superfund process. It does not require any specific action on your part at this time.

## PRP RESPONSE AND EPA CONTACT

You are encouraged to contact EPA in writing within **fourteen (14) days** of the receipt of this letter to express your willingness or unwillingness to participate in future negotiations concerning OU1 of this Site. You may respond individually or through a steering committee if

such a committee has been formed. Your response will be considered by EPA in determining whether the special notice procedure should be used for OU1 of this Site.

If you are already involved in discussions with State or local authorities, engaged in voluntary action or involved in a lawsuit regarding this Site, you should not interpret this letter as advising or directing you to restrict or to discontinue any such activities. You should, however, report the status of those discussions or activities in your letter to EPA. Please provide EPA with a copy of your letter to any other party involved in those discussions.

Your response to this letter should be addressed to:

Joshua Barber, Remedial Project Manager
Eastern PA Remedial Branch
U.S. Environmental Protection Agency
1650 Arch Street (3HS22)
Philadelphia, PA 19103

The following information may be useful in your consideration of this matter.

## INFORMATION TO ASSIST POTENTIALLY RESPONSIBLE PARTIES

EPA encourages good faith negotiations between the PRPs and EPA, as well as among the PRPs. Therefore, EPA is providing a list of the names and addresses of PRPs to whom this notification is being sent to assist you in your efforts to communicate. This list represents EPA's preliminary findings on the identities of the PRPs for OU1 of the Site. Inclusion on, or exclusion from, the list does not constitute a final determination by EPA concerning the liability of any party for the release or threat of release of hazardous substances at or from the Site.

### *PRP Steering Committee*

EPA recommends that all PRPs meet to select a steering committee that will be responsible for representing the group's interests. Establishing a manageable group is critical to successful negotiations with EPA.

### *Administrative Record*

Pursuant to CERCLA Section 113(k), 42 U.S.C. § 9613(k), EPA establishes an administrative record that contains documents which form the basis for EPA's decision on the selection of each response action for a site. The administrative record will be available to the public for inspection and comment before any remedial action is selected by EPA. A copy of the record for each response action selected for OU1 of the Site will be available on the internet at www.epa.gov/arweb and may be available in hardcopy at specific locations.

***Future Financial Review***

EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at a site may be substantially limited. If you believe, and can document, that you fall within that category, please contact Carlyn Winter Prisk at (215) 814-2625 for information on "Ability to Pay Settlements." In response, you will receive a package of information about the potential for such settlements and a form to fill out with information about your finances, and you will be asked to submit financial records including Federal income tax returns. If EPA concludes that you have a legitimate inability to pay the full amount of EPA's costs, EPA may offer a schedule for payment over time or a reduction in the total amount demanded from you.

Also, please note that, because EPA has a potential claim against you, you must include EPA as a creditor if you file for bankruptcy.

Please give these matters your immediate attention and consideration. If you have any questions regarding the foregoing, please contact Carlyn Winter Prisk, at (215) 814-2625, or you may have your attorney contact Bonnie A. Pugh, at (215) 814-2680. Thank you for your prompt attention to this matter.

Sincerely,

Joan Armstrong

Joan Armstrong, Acting
Associate Division Director
Hazardous Site Cleanup Division
Office of Enforcement

Enclosure

cc: Bonnie A. Pugh (3RC43)
Joshua Barber (3HS21)
Carlyn Winter Prisk (3HS62)
Noreen Wagner (PADEP)
Andrew Levine, Esq.

**Lower Darby Creek Area Superfund Site**
**Operable Unit 1, Clearview Landfill**
**Parties receiving Notice of Potential Liability**
**February 2013**

ABB, INC.
501 Merritt 7
Norwalk, CT 06856

Legal Contact: David Onuscheck, General Counsel
ABB, INC.
501 Merritt 7
Norwalk, CT 06856

BFI Waste Systems of North America, LLC
c/o Repúblic Services, Inc.
Donald Slager, CEO
18500 N. Allied Way
Phoenix, AZ 85054

Legal Contact: Jeffrey N. Martin, Esq.
Hunton and Williams, LLP
1900 K Street, N.W.
Washington, DC 20006-1109

Cargill, Inc.
Gregory R. Page, CEO
P.O. Box 9300
Minneapolis, MN 55440

Legal Contact: Laura Witte, General Counsel
P.O. Box 9300
Minneapolis, MN 55440

CBS Corporation
Leslie Moonves, President and CEO
51 W. 52nd Street
New York, NY 10019-6188

Legal Contact: Louis J. Briskman, General Counsel
51 W. 52nd Street
New York, NY 10019-6188

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City of Philadelphia
The Honorable Michael A. Nutter, Mayor
215 City Hall
Philadelphia, PA 19107-3214

Legal Contact: Larry D. Silver, Esq.
Langsam, Stevens, Silver, and Holleander, LP
1616 Walnut Street, Suite 1700
Philadelphia, PA 19103
(215) 732-3255
lsilver@lssh-law.com

City of Philadelphia Redevelopment Authority
James J. Cuorato, Chairman
1234 Market Street, 16th Floor
Philadelphia, PA 19107

Legal Contact: Nicholas Scarfidi, General Counsel
1234 Market Street, 16th Floor
Philadelphia, PA 19107

Clearview Land Development Corporation
Richard Heller, President
4326 Acacia Circle
Coconut Creek, FL 33066-2051

Legal Contact: Michael Pierce, Esq.
Pierce & Hughes, P.C.
17 Veterans Square, P.O. Box 604
Media, PA 19063

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Delaware County Solid Waste Authority
Marianne Grace, Executive Director
Government Center, Room 202
201 W. Front Street
Media, PA 19063

Legal Contact: Benjamin Stonelake, Esq.
Blank Rome, LLP
One Logan Square
130 N. 18th Street
Philadelphia, PA 19103-6998
(215) 569-5689
(215) 832-5689 (fax)
stonelake@blankrome.com

E.I. duPont De Nemours and Company
John G. Weldon, Environmental Coordinator
DuPont Performance Coatings
Marshall Laboratory
3401 Grays Ferry Avenue
Philadelphia, PA 19146

Legal Contact: Pamela Meitner, Esq.
(302) 774-8720

FMC Corporation
Pierre Brondeau, President and CEO
1735 Market Street
Philadelphia, PA 19103

Legal Contact: John Stillman, Assistant General Counsel
1735 Market Street
Philadelphia, PA 19103

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General Electric Company
Jeffrey Immelt, CEO
3135 Easton Turnpike
Fairfield, CT 06828-0001

Legal Contact: Steven T. Miano, Esq.
Hangley, Aronchick, Segal Pudlin & Schiller
One Logan Square
18th and Chestnut Streets
Philadelphia, PA 19103

Gould Electronics, Inc.
Thomas Rich, Chief Administrative Officer
34929 Curtis Blvd., Suite 100
Eastlake, OH 44095

Legal Contact: David L. Blount, Esq.
Landye Bennet Blumstein, LLP
1300 SW Fifth Avenue, Suite 3500
Portland, OR 97201
503-224-4100

Kimberly-Clark Corporation
Thomas J. Falk, CEO
351 Phelps Drive
Irving, TX 75038

Legal Contact: Marcia K. Cowan, Esq.
1400 Holcomb Bridge Road
Roswell, GA 30076-2199

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PECO Energy Company
Craig Adams, President and CEO
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101

Legal Contact: Exelon Energy
Al Ryan, Esq.
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19101

Richard Heller
4326 Acacia Circle
Coconut Creek, FL 33066-2051

Legal Contact: Michael Pierce, Esq.
Pierce & Hughes, P.C.
17 Veterans Square, P.O. Box 604
Media, PA 19063

Rohm and Haas Company
Ellen S. Friedell, Associate General Counsel
100 Independence Mall West
Philadelphia, PA 19106

Legal Contact: Robert Fox, Esq.
Manko, Gold, Katcher and Fox
401 City Avenue
Suite 500
Bala Cynwyd, PA 19004

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The Sherwin-Williams Company, Inc.
For M.A. Bruder and Sons, Inc.
John G. Morikis, President and COO
101 Prospect Avenue, N.W.
Cleveland, OH 44115-1075

Legal Contact: Andrew Levine, Esq.
Stradley Ronen Stevens and Young
2300 One Commerce Square
Philadelphia, PA 19103

Steve Fitzgerald, LLP
Arthur Lerner, Director
520 Abbot Drive A
Broomall, PA 19008

Legal Contact: Michael P. Dignazio, Esq.
30 West Third Street
Media, PA 19063
610-565-8535

Sunoco, Inc.
Brian P. MacDonald, President and CEP
1818 Market Street
Suite 1500
Philadelphia, PA 19103

Legal Contact: Thomas J. Haines, Senior Counsel
(215) 977-6273

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Thyssenkrupp Budd Company
Marcus Boener, President
3155 W. Big Beaver Road
P.O. Box 2601
Troy, MI 48007-2601

Legal Contact: Thyssenkrupp Budd Company
Richard O. Lemke, Assistant General Counsel
3155 W. Big Beaver Road
P.O. Box 2601
Troy, MI 48007-2601

United States of America Department of the Navy
Ralph Lombardo, Esq.
Engineering Field Activity, Northeast
Naval Facilities Engineering Command
10 Industrial Highway, Mail Stop #83
Lester, PA 19113-2090

Legal Contact: David Grasso, Esq.
610-595-0567, ext 152

United States Mint
Richard Peterson, Deputy Director
801 9th Street, NW
Washington, DC 20220

Legal Contact: U.S. Mint
Daniel P. Shaver, Chief Counsel
801 9th Street, NW
Washington, DC 20220

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Waste Management Disposal Services of Pennsylvania, Inc.
David P. Steiner, President, CEO
1001 Fannin Street
Suite 4000
Houston, TX 77002

Legal Contact: Joseph O'Dea, Esq.
Saul Ewing LLP
1500 Market Street, 38th Floor
Philadelphia, PA 19102
(215) 972-7109

Waste Management of Delaware, Inc.
David P. Steiner, President, CEO
1001 Fannin Street
Suite 4000
Houston, TX 77002

Legal Contact: Joseph O'Dea, Esq.
Saul Ewing LLP
1500 Market Street, 38th Floor
Philadelphia, PA 19102
(215) 972-7109

Wyeth, LLC
Ian Reed, CEO
5 Giralda Farms
Madison, NJ 07940

Legal Contact: Ronald J. Scott, Jr. Esq
Wyeth, LLC
5 Giralda Farms
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