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ORIGINAL

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

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

MAR - 4 2013

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. Steiner:

This letter notifies you that Waste Management of Delaware, Inc. ("WMDE" or "you"), as the successor-in-interest to Harway Corp. and Warren B. Harmon, Inc., 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 WMDE 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 WMDE may be liable under Section 107(a)(4) of CERCLA as a person who transported hazardous substances to the Site for disposal or treatment. EPA believes that WMDE is the corporate successor to Harway Corp. and Warren B. Harmon, Inc. which disposed of waste containing hazardous substances at the Clearview Landfill during the 1960s and 1970s.

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)
Joe O'Dea, Esq.