

1 **BEFORE THE ENVIRONMENTAL QUALITY COMMISSION**  
2 **OF THE STATE OF OREGON**

3  
4 IN THE MATTER OF:  
TOTAL RECLAIM INCORPORATED

5 Respondent.  
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ANSWER TO NOTICE OF CIVIL PENALTY  
ASSESSMENT AND ORDER

CASE NO. LQ/HW-NWR-2016-175

8 Respondent Total Reclaim, Inc. (“Total Reclaim”), by and through its undersigned  
9 attorneys of record, responds as follows to the allegations contained in the March 7, 2017 Notice  
10 of Civil Penalty Assessment and Order (the “Notice”) filed by the Oregon Department of  
11 Environmental Quality (“DEQ”):

12 **I. CONTESTED CASE HEARING REQUEST**

13 Total Reclaim requests a contested case hearing on the Notice. Disputes of findings of  
14 fact and affirmative defenses are detailed below.

15 **II. FINDINGS OF FACT**

16 1. Total Reclaim admits that it owns and operates a facility located at 6427 NE 59<sup>th</sup>  
17 Place, Portland, Oregon (the “Facility”).

18 2. Total Reclaim admits that, at all relevant times, it reported to DEQ that the  
19 Facility was a Conditionally Exempt Generator (“CEG”) of hazardous waste.

20 3. Total Reclaim admits that from approximately 2009 to approximately 2015 it  
21 offered for transport or transported used flat screen devices, including LCD, LED, and plasma  
22 televisions and/or computer monitors (collectively, “Flat Screen Devices”), to its Seattle,  
23 Washington facility, where some were ultimately sold to M-Stream. On information and belief,  
24 after M-Stream bought the used Flat Screen Devices from Total Reclaim, it sold and arranged for  
25 shipping them from Seattle to a facility or facilities in Hong Kong of its choosing. Total Reclaim  
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1 is without knowledge or information sufficient to form a belief regarding the truth of the  
2 remaining allegations set forth in Paragraph 3 and therefore denies the same.

3 4. Total Reclaim admits that it shipped more than 1,000 kilograms of Flat Screen  
4 Devices from the Facility to its Seattle facility for a number of months between 2009 and 2015;  
5 however, it lacks sufficient knowledge or information to determine whether it shipped more than  
6 1,000 kilograms of Flat Screen Devices to its Seattle facility in every month during that period  
7 and therefore denies the remaining allegations in Paragraph 4.

8 5. Total Reclaim is without knowledge or information sufficient to form a belief  
9 regarding the truth of the allegations set forth in Paragraph 5 and therefore denies the same.

10 6. Total Reclaim disputes that the Flat Screen Devices were waste under the relevant  
11 statutes and regulations and that it was under any obligation to characterize the Flat Screen  
12 Devices before shipping them to its Seattle facility. However, Total Reclaim admits it did not  
13 determine if the used Flat Screen Devices were hazardous waste.

14 7. Total Reclaim disputes that the Flat Screen Devices were waste under the relevant  
15 statutes and regulations and that it was under any obligation to comply with manifesting  
16 requirements when shipping those devices to its Seattle facility. However, Total Reclaim admits  
17 that from approximately 2009 to approximately 2015 it offered for transport and transported Flat  
18 Screen Devices on a bill of lading, without a uniform hazardous waste manifest.

19 8. Total Reclaim admits the allegations in Paragraph 8.

### 20 **III. CONCLUSIONS**

- 21 1. Total Reclaim denies the conclusions set forth in Paragraph 1.  
22 2. Total Reclaim denies the conclusions set forth in Paragraph 2.  
23 3. Total Reclaim denies the conclusions set forth in Paragraph 3.

### 24 **IV. AFFIRMATIVE DEFENSES**

- 25 1. DEQ's claims are barred by the applicable statute of limitations.  
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1           2.       Total Reclaim did not violate OAR 340-102-0011(2), CFR § 262.20(a)(1), 40  
2 CFR § 263.20, OAR 340-102-0041(2), or OAR 340-102-0065(1) because the used Flat Screen  
3 Devices sold to M-Stream were used products, not waste.

4           3.       Total Reclaim did not violate the above-referenced hazardous waste regulations  
5 because the material Total Reclaim sold to M-Stream was not a solid waste, which is a  
6 requirement for all of the alleged hazardous waste violations.

7           4.       Total Reclaim did not violate the above-referenced hazardous waste regulations  
8 because even if the used Flat Screen Devices were solid waste, they were not hazardous waste  
9 subject to regulation.

10          5.       Total Reclaim contends that the penalty is unreasonable.

11           DATED this 27<sup>th</sup> day of March, 2017.

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13    MARTEN LAW PLLC

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