



REGION 7

LENEXA, KS 66219

**URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED**

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Kyle E. Foote
Stinson, LLP
1201 Walnut Street, Suite 2900
Kansas City, Missouri 64106-2150
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Michelle Gale
Waste Management of Iowa, Inc.
800 Capitol Street
Houston, Texas 77002
Mgale1@wm.com

Re: Demand for Reimbursement of Costs Expended at Recycletronics – Akron Farm Facility site in Akron, Iowa

Dear Mr. Buermann, Mr. Foote, and Ms. Gale:

The U.S. Environmental Protection Agency previously contacted Dynamic Lifecycle Innovations Inc. and Waste Management of Iowa, Inc. regarding activities connected with the Recycletronics – Akron Farm Facility site located in Akron, Iowa. A copy of the EPA's past correspondence is attached for your reference. In our letters dated October 26, 2022, and August 16, 2022, the EPA informed you that Dynamic and Waste Management may be liable for money expended by the EPA for response action at this site under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA, commonly known as the federal "Superfund" law).

Explanation of Potential Liability

Under Section 107(a) of CERCLA, potentially responsible parties (PRPs) may be held liable for all costs incurred by the EPA (including interest) in responding to any release or threatened release of hazardous substances at the site, unless the PRP can demonstrate divisibility or assert one of the statutory defenses. The PRPs include current and former owners and operators of the 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, the EPA believes that Dynamic and Waste Management may be liable under Section 107(a) of CERCLA with respect to the site, as arrangers, who by contract or agreement, arranged for the disposal, treatment, or transportation of hazardous substances at the site. Specifically, the EPA has reason to believe that Dynamic and Waste Management arranged for the disposal, treatment, or transportation of lead to the site in the form of cathode ray tube (CRT) glass.

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

- In August 2021, the EPA conducted a Removal Site Evaluation, 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.
- In spring and summer of 2022, the EPA conducted a Removal Action to reduce any immediate threat to the environment or human health posed by the site. The Removal Action consisted of removal of approximately 1,431 gaylord boxes of CRT-containing glass, some of which were labeled with Dynamic's name and some of which were labeled with Waste Management's name. The agency concluded on-site response actions on July 27, 2022, and incurred approximately \$1.32 million in costs.

Demand for Reimbursement of Costs

In accordance with Section 104 of CERCLA, the EPA has already taken certain response actions, which are listed above, and incurred certain costs in response to conditions at the site. The EPA is seeking to recover from Dynamic and Waste Management response costs and all interest authorized to be recovered under Section 107(a) of CERCLA. Under Section 107(a) of CERCLA, the EPA hereby makes a demand for payment from Dynamic and Waste Management for \$1,320,352.04 plus all interest authorized to be recovered under Section 107(a). A summary of all response costs incurred at the site is enclosed as Attachment A.

Enclosed is a draft Administrative Settlement Agreement and Order on Consent (ASAOC) for the recovery of past response costs at the site. Dynamic and Waste Management are invited to

communicate in an effort to allocate the costs incurred at the site. Contact information can be found above.

While this letter demands that Dynamic and Waste Management reimburse the EPA for funds spent at the site, the 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 this category, please contact Cathie Chiccine at (913) 551-7917 or Chiccine.catherine@epa.gov for information on ability to pay settlements. In response, you will receive a package of information about such settlements and a form to fill out with information about your finances, and you will be asked to submit financial records including business federal tax returns. If the EPA concludes a legitimate inability to pay the full amount exists, the EPA may offer a schedule for payment over time or a reduction in the total amount demanded from you.

Some or all of the costs associated with this notice may be covered by current or past insurance policies issued to Dynamic and Waste Management. Most insurance policies will require that you timely notify your carrier(s) of a claim against you. To evaluate whether you should notify your insurance carrier(s) of this demand, you may wish to review current and past policies, beginning with the date of Dynamic and Waste Management's first contact with the site, up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

Please send a written response to this cost recovery demand, within **thirty (30) days**, to:

Cathie Chiccine
EPA Region 7 Office of Regional Counsel
11201 Renner Blvd.
Lenexa, Kansas 66219
Chiccine.catherine@epa.gov

If a response from you is not received within 30 days, the EPA will assume that you have declined to reimburse the Superfund for the site expenditures, and pursuant to CERCLA, the EPA may pursue civil litigation.

Also, please note that, because the EPA has a potential claim against you, you must include the EPA as a creditor if you file for bankruptcy. The EPA reserves the right to file a proof of claim or an application for reimbursement of administrative expenses.

Resources and Information for Small Businesses

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may download a copy of the law at <http://www.gpo.gov/fdsys/pkg/PLAW-107publ118/pdf/PLAW-107publ118.pdf> and review the EPA guidance regarding these exemptions at: <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/>.

In addition, if you are a “service station dealer” who accepts used oil for recycling, you may qualify for an exemption from liability under Section 114(c) of CERCLA. The EPA guidance regarding this exemption can be found on the Agency’s website at <http://www.epa.gov/enforcement/guidance-superfunds-service-station-dealers-exemption>. If you believe you may qualify for the exemption, please contact Cathie Chiccine at (913) 551-7917 or Chiccine.catherine@epa.gov to request an application/information request specifically designed for service station dealers.

The EPA has created a number of helpful resources for small businesses. The EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at <http://www.epa.gov/compliance/compliance-assistance-centers>. In addition, the EPA Small Business Ombudsman may be contacted at <http://www.epa.gov/resources-small-businesses/forms/contact-us-about-resources-small-businesses>. Finally, the EPA has developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act and information on resources for small businesses, which is enclosed with this letter and available on the Agency’s website at: <http://www.epa.gov/compliance/small-business-resources-information-sheet>.

Please give these matters your immediate attention and consider consulting with an attorney. If you have any questions regarding this letter, please contact Cathie Chiccine at (913) 551-7917 or Chiccine.catherine@epa.gov. Thank you for your prompt attention to this matter.

Sincerely,

Robert D. Jurgens
Director
Superfund & Emergency Management Division

Enclosures:

1. Site map
2. Draft of ASAOC

cc: Amie Davidson, Iowa Department of Natural Resources (via email only)
Catherine Chiccine, EPA Office of Regional Counsel (via email only)