



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

**NOTICE OF POTENTIAL LIABILITY
URGENT LEGAL MATTER: PROMPT REPLY REQUIRED
VIA EMAIL (bkish@jjcinvest.com) and
CERTIFIED MAIL RETURN RECEIPT REQUESTED**

West Virginia Land Management Ltd.
Edward Ahlswede, Manager
c/o Brian P. Kish, Esquire
JJC Investment Trust, LLC
6874 Strimbu Drive
Brookfield, Ohio 44403

Re: West Virginia Tire Disposal, Inc. Site, Summersville, Nicholas County, West Virginia – Notice of Potential Liability

Dear Mr. Ahlswede:

This letter notifies you that West Virginia Land Management Ltd (“WV Land” or “you”) is potentially liable under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA” or “Superfund”),¹ with respect to the West Virginia Tire Disposal, Inc. Site (“Site”), which is located at or around 26 Bryant Branch Road, Summersville, WV.

Under Section 104 of CERCLA,² EPA is authorized to respond to the release or threat of release of hazardous substances, pollutants, or contaminants into the environment by stopping further contamination from occurring and by cleaning up or otherwise addressing any contamination that has already occurred. EPA has documented that a release or threat of release has occurred in a stormwater pond (“Pond”) at the Site. EPA has already begun to spend public funds to investigate and control these releases or threatened releases. Based on available information, EPA has determined that WV Land may be responsible under CERCLA for any costs EPA has incurred, or will incur, to investigate and respond to the releases and threatened releases at the Site.

WV Land’s response to this Notice of Potential Liability is due no later than **ten (10) calendar days** after your receipt of this letter.

¹ 42 U.S.C. § 9607(a).

² 42 U.S.C. § 9604.

Explanation of Potential Liability

Under Sections 104(a), 106(a), and 107(a) of CERCLA,³ potentially responsible parties (“PRPs”) may be required to perform cleanup actions to protect the public health or welfare or the environment. PRPs may also be responsible for costs EPA incurs for the cleanup of a site, unless a PRP can demonstrate divisibility or avail itself of one of CERCLA’s statutory defenses.⁴ PRPs include current and former owners and operators of a site, as well as persons who arranged for treatment 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 information known to EPA, the Agency believes that WV Land may be liable under Section 107(a)(1) of CERCLA⁵ as the current owner of the Site. WV Land may also be liable under Section 107(a)(2) of CERCLA⁶ as the owner of the Site at the time hazardous substances were disposed of at the Site. EPA believes WV Land has owned the Site continuously since 2010.

Site Response Activities

On or around December 25, 2021, the West Virginia Department of Environmental Protection (“WV DEP”) responded to a tire fire at the Site and conducted emergency response activities until February 20, 2022, when EPA assumed responsibility for the emergency response activities under a Special Bulletin issued on February 17, 2022, in accordance with Section 104(a) of CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”).⁷ Under the Special Bulletin, EPA is conducting a removal action in response to the release of hazardous substances to and from the Pond, which discharges to a local stream, Bryant Branch, which is a tributary of Peters Creek, a stream that empties into the Gauley River.

EPA will continue to expend public funds for the removal action and other response actions related to the Site under CERCLA or other laws to abate, prevent, minimize, stabilize, mitigate, or eliminate the releases and threats of release.

Decision Not to Use Special Notice

Under Section 122(e) of CERCLA,⁸ EPA has the discretion to invoke special notice procedures for the formal negotiation of an agreement between EPA and a PRP to conduct or finance a response action. Use of these special notice procedures would trigger a moratorium on certain EPA response activities at a site while formal negotiations between EPA and the PRP are conducted.

³ 42 U.S.C. §§ 9604(a), 9606(a), and 9607(a).

⁴ *See, e.g.*, 42 U.S.C. § 9607(b).

⁵ 42 U.S.C. § 9607(a)(1).

⁶ 42 U.S.C. § 9607(a)(2).

⁷ 40 C.F.R. Part 300; *see* 40 C.F.R. § 300.415.

⁸ 42 U.S.C. § 9622(e).

In this case, EPA has decided not to invoke the Section 122(e) special notice procedures because use of these procedures would not be practicable or in the public interest. Generally, it is EPA's policy not to use the special notice procedures for removal actions, unless a planning period of at least six months exists before on-site activities must be initiated. Since EPA has already initiated the current emergency removal action, special notice procedures will not be used in this case.

Your Response and EPA Contact Information

You should contact EPA no later than **ten (10) calendar days** after your receipt of this letter to express WV Land's willingness or unwillingness to participate in future negotiations concerning its takeover of the removal action at the Site. As discussed above, EPA has already initiated the removal action. In accordance with the NCP, EPA On-Scene Coordinator ("OSC"), Christine Wagner, is authorized to direct and oversee all response efforts at the Site, including the removal action.⁹ In addition, under CERCLA and the NCP, EPA is authorized to allow WV Land or another PRP to perform the removal action, but only if EPA makes a determination that WV Land or such other PRP will perform the removal action properly and promptly.¹⁰ To date, EPA has not made this required determination, but we are willing to discuss this matter with you, including WV Land's ability to pay for the removal action.

WV Land's response to this letter should be emailed to OSC Christine Wagner, Wagner.Christine@epa.gov or by its legal counsel to EPA attorney Robert Hasson at hasson.robert@epa.gov. WV Land may also have its legal counsel contact Mr. Hasson at (215) 814-2672.

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

Information to Assist Potentially Responsible Parties

Future Financial Review, Insurance, and Other Financial Considerations

EPA is aware that the financial ability of some PRPs to pay for a cleanup under CERCLA or contribute toward the payment of EPA's response costs may be substantially limited. If you believe and can document that WV Land falls within this category, please contact Carlyn Winter Prisk at (215) 814-2625 or by email at prisk.carlyn@epa.gov, or have your legal counsel contact Robert Hasson, for information on "Ability-to-Pay Settlements." In response, WV Land will receive a package of information about Superfund ability-to-pay settlements and a questionnaire to complete with information about its finances. WV Land will also be asked to submit financial records. If EPA concludes that WV Land has a legitimate inability to pay for the Site cleanup or the full amount of EPA's estimated costs, EPA may offer WV Land a schedule for payment over time or a reduction in the total amount demanded from WV Land.

Some or all of EPA's response costs associated with the Site may be covered by current or past insurance policies issued to WV Land or another person. Most insurance policies will

⁹ See 40 C.F.R. §§ 300.120(a)

¹⁰ See 40 C.F.R. § 300.415(a)(2) and 42 U.S.C. § 9604(a).

require an insured to provide the carrier(s) with notice of any claims against the insured. To evaluate whether you should notify your insurance carrier(s) of this General Notice Letter, you or your attorney may wish to review current and past policies, beginning with the date of WV Land's first involvement with the Site, up to the present. Coverage will depend on many factors, such as the language of the particular policy and state law. EPA recommends that you notify any insurance carriers who have issued policies to WV Land about this General Notice Letter and EPA's potential claims at the Site.

As discussed in this letter, EPA has a potential claim against WV Land. Therefore, WV Land should include EPA as a creditor if WV Land files for bankruptcy.

Administrative Record

Under CERCLA Section 113(k),¹¹ EPA establishes an administrative record containing documents that form the basis for EPA's decision on the selection of each response action for a site. A copy of the administrative record for any response action selected for the Site will be available on the internet at <https://semspub.epa.gov/>.

Please give these matters your immediate attention and consideration. If you have any questions regarding the foregoing, please contact OSC Wagner at (804) 337-3049 or Wagner.Christine@epa.gov, or have your attorney contact Mr. Hasson at (215) 814-2672 or hasson.robert@epa.gov. Thank you for your prompt attention to this matter.

Sincerely,

for: Claudette Reed, Chief
Program Support & Cost Recovery Branch
Superfund & Emergency Management Division

cc: Christine Wagner (3SD32)
Robert Hasson (3RC10)
Carlyn Prisk (3SD41)
Rusty Joins (WVDEP)
Sondra Allen (3SD42)

¹¹ 42 U.S.C. § 9631(k).

