

**ORIGINAL**

PUBLIC DOCUMENT

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**



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**In the Matter of** )

**ECM BioFilms, Inc.,** )  
**a corporation, also d/b/a** )  
**Enviroplastics International** )  
\_\_\_\_\_ )

**Docket No. 9358**

**COMPLAINT COUNSEL'S FIRST REQUEST  
FOR ADMISSIONS TO ECM BIOFILMS, INC**

Pursuant to Rule 3.32 of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings and Provision 11 of the Administration Law Judge's Scheduling Order in this matter, Complaint Counsel hereby requests that respondent ECM Biofilms, Inc. admit the truth of the following statements or opinions of fact within ten (10) days from the date of service of this Request.

**DEFINITIONS**

1. "Biodegradation" or any variation thereof, means decomposition into elements found in nature by the action of living organisms such as bacteria or fungi.
2. "Complete" means 100%.
3. "ECM" means ECM Biofilms, Inc., including without limitation, its agents, employees, officers, or anyone else acting on its behalf.
4. "ECM Additives" means plastic additives manufactured by ECM, including but not limited to "Masterbatch Pellets."
5. "ECM Plastics" means plastics that contain ECM Additives.

6. "FTC Access Letter" means the letter request sent to ECM BioFilms, Inc. dated August 30, 2011.
7. "Plastic" means conventional, commercial application polyolefins (any of the polyethylenes and polypropylenes), EVAs, PVCs, PETs, PSs, PUs and any combination of these resins.
8. "Landfill" means a landfill accepting household municipal solid waste that is available to all or virtually all consumers everywhere ECM Plastics are sold.

### INSTRUCTIONS

1. For the purposes of this Request for Admissions, each paragraph constitutes a separate statement and is to be admitted or denied separately.
2. Pursuant to Rule 3.32, you must specifically admit or deny the requested admission, or set forth in detail the reasons why you cannot admit or deny the matter. A denial must fairly meet the substance of the requested admission, and when good faith requires that you qualify your answer or deny only a part of the requested admission, you must specify what portion of it is true and qualify or deny the remainder. In addition, you may not give lack of information or knowledge as a reason for failure to admit or deny unless you state that you have made reasonable inquiry and that the information known or readily obtainable by you is insufficient to enable you to admit or deny.
3. Rule 3.32(b) requires that your responses be sworn to under oath.
4. It is not grounds for objection that the requested admission relates to opinions of fact or the application of law to fact. Your belief that the matter on which an admission is requested presents a genuine issue for trial does not, on that ground alone, provide a valid basis for objection.

**ADMISSION REQUESTS**

Complaint Counsel requests the following admissions:

1. The website URL known as www.ecmbiofilms.com ("ECM Website") has been controlled at all times by ECM.
2. Since its creation, the ECM Website has been publicly available on the Internet.
3. Plastic is not inherently Biodegradable.
4. Exhibit CX-00001, "Certificate of Biodegradability of Plastics" is representative of certificates ECM provided to at least some of its customers.
5. Exhibit CX-00002, ECM-FTC-000066, a biodegradable logo ("Logo"), is representative of the logos that ECM provided to at least some of its customers.
6. The documents that ECM submitted to Federal Trade Commission staff, with Bates numbers between ECM-FTC-000001 and ECM-FTC-000241, constitute all of the scientific tests and studies that ECM submitted in response to the FTC Access Letter requesting substantiation for its claims that ECM Plastics are Biodegradable ("ECM Substantiation Materials").
7. None of the ECM Substantiation Materials are based on testing protocols that state that they simulate conditions typically found in Landfills.
8. ECM does not possess or rely on any scientific test that showed, during the course of the test, complete Biodegradation of ECM Plastics.
9. ECM does not possess or rely on any scientific test that showed, during the course of the test, that 90% or more of the ECM Plastic Biodegraded.
10. ECM bases its claims that ECM Plastics will completely Biodegrade in some period greater than a year on extrapolations of test results obtained in tests conducted over periods less than a year in which the test sample did not completely Biodegrade.
11. ECM based its claim that ECM Plastics will completely Biodegrade in nine months to five years on extrapolations of results obtained in tests conducted over periods less than a year in which the test sample did not completely Biodegrade.
12. ECM does not possess or rely on any consumer perception evidence supporting how ECM's customers or end-use consumers interpret the term "biodegradable."
13. ECM does not possess or rely on any consumer perception evidence supporting how ECM's customers or end-use consumers interpret the term "biologically active landfill."

14. ECM does not possess or rely on any consumer perception evidence supporting how ECM's customers or end-use consumers interpret a "reasonable" period of time for complete biodegradation.
15. ECM does not possess or rely on any consumer perception evidence supporting how ECM's customers or end-use consumers interpret the phrase "some period greater than one year."
16. ASTM test protocols do not permit extrapolation of the results of ASTM tests to prove complete Biodegradation.

**ADDITIONAL REQUESTS FOR ADMISSION FOR THE PURPOSES OF  
AUTHENTICITY AND ADMISSIBILITY OF EXHIBITS**

Pursuant to the Court's Scheduling Order, the following *Requests for the Purposes of Authenticity and Admissibility of Exhibits* do not count against Complaint Counsel's numeric limit on Requests for Admissions. See Scheduling Order at 6.

1. Exhibit CX-00001 attached hereto is authentic, genuine, and a true and correct copy of the Certificate of Biodegradability of Plastic Products that ECM provided to SL Plastic Co. LTD, a customer of ECM. Exhibit CX-00001 is admissible into evidence in this matter under Rule 3.43(e).
2. Exhibit CX-00002 attached hereto is authentic, genuine, and a true and correct copy of a promotional logo that ECM produced in response to the FTC Access Letter with Bates number ECM-FTC-000066. Exhibit CX-00002 is admissible into evidence in this matter under Rule 3.43(e).
3. Exhibit CX-00003 attached hereto is authentic, genuine, and a true and correct copy of promotional materials that ECM made available on the ECM Website from at least August 2010 until October 2012. Exhibit CX-00003 is admissible into evidence in this matter under Rule 3.43(b).
4. Exhibit CX-00004 attached hereto is authentic, genuine, and a true and correct copy of promotional materials that ECM made available on the ECM website after October 2012. Exhibit CX-00003 is admissible into evidence in this matter under Rule 3.43(b).
5. Exhibit CX-00005 attached hereto is authentic, genuine, and a true and correct copy of a promotional flyer that ECM that disseminated. Exhibit CX-00005 is admissible into evidence in this matter under Rule 3.43(e).
6. Exhibit CX-00006 attached hereto is authentic, genuine, and a true and correct copy of a promotional brochure that ECM disseminated. Exhibit CX-00006 is admissible into evidence in this matter under Rule 3.43(e).
7. Exhibit CX-00007, attached hereto is authentic, genuine, and a true and correct copy of the report [REDACTED]

[REDACTED] produced by ECM in response to the FTC Access Letter with beginning Bates number ECM-FTC-000069. Exhibit CX-00007 is admissible into evidence in this matter under Rule 3.43(e).

8. Exhibit CX-00008, attached hereto is authentic, genuine, and a true and correct copy of the [REDACTED]

[REDACTED] produced by ECM in response to the FTC Access Letter with beginning Bates number ECM-FTC-000106. ECM also produced a copy of this document with beginning Bates number ECM-FTC-000283. Exhibit CX-00008 is admissible into evidence in this matter under Rule 3.43(e).

9. Exhibit CX-00009, attached hereto is authentic, genuine, and a true and correct copy of the [REDACTED]

[REDACTED] produced by ECM in response to the FTC Access Letter with beginning Bates number ECM-FTC-000124. ECM also produced a copy of this document with beginning Bates number ECM-FTC-000244. Exhibit CX-00009 is admissible into evidence in this matter under Rule 3.43(e).

10. Exhibit CX-00010, attached hereto is authentic, genuine, and a true and correct copy of [REDACTED]

[REDACTED] produced by ECM in response to the FTC Access Letter with beginning Bates number ECM-FTC-000163. Exhibit CX-00010 is admissible into evidence in this matter under Rule 3.43(e).

11. Exhibit CX-00011, attached hereto is authentic, genuine, and a true and correct copy of [REDACTED]

[REDACTED] produced by ECM in response to the FTC Access Letter with beginning Bates number ECM-FTC-000171. Exhibit CX-00011 is admissible into evidence in this matter under Rule 3.43(e).

12. Exhibit CX-00012, attached hereto is authentic, genuine, and a true and correct copy of [REDACTED]

[REDACTED] produced by ECM in response to the FTC Access Letter with beginning Bates number ECM-FTC-000186. Exhibit CX-00012 is admissible into evidence in this matter under Rule 3.43(e).

13. Exhibit CX-00013, attached hereto is authentic, genuine, and a true and correct copy of the [REDACTED]

[REDACTED] produced by ECM in response to the FTC Access Letter with beginning Bates number ECM-FTC-000198. Exhibit CX-00013 is admissible into evidence in this matter under Rule 3.43(e).

14. Exhibit CX-00014, attached hereto is authentic, genuine, and a true and correct copy of the [REDACTED]

[REDACTED] produced by ECM in response to the FTC Access Letter with beginning Bates number ECM-FTC-000206. ECM also produced a

copy of this document with beginning Bates number ECM-FTC-000301. Exhibit CX-00014 is admissible into evidence in this matter under Rule 3.43(e).

15. Exhibit CX-00015, attached hereto is authentic, genuine, and a true and correct copy of the [REDACTED] produced by ECM in response to the FTC Access Letter with beginning Bates number ECM-FTC-000226. Exhibit CX-00015 is admissible into evidence in this matter under Rule 3.43(e).
16. Exhibit CX-00016, attached hereto is authentic, genuine, and a true and correct copy of the [REDACTED] produced by ECM in response to the FTC Access Letter with beginning Bates number ECM-FTC-000230. Exhibit CX-00016 is admissible into evidence in this matter under Rule 3.43(e).
17. Exhibit CX-00017, attached hereto is authentic, genuine, and a true and correct copy of the Standard Test Method for Determining Anaerobic Biodegradation of Plastic Materials Under High-Solids Anaerobic-Digestion Conditions, ASTM D 5511 – 02.
18. Exhibit CX-00018, attached hereto is authentic, genuine, and a true and correct copy of the Standard Test Method for Determining Anaerobic Biodegradation of Plastic Materials Under High-Solids Anaerobic-Digestion Conditions, ASTM D 5511 – 11.
19. Exhibit CX-00019, attached hereto is authentic, genuine, and a true and correct copy of the Standard Test Method for Determining Anaerobic Biodegradation of Plastic Materials Under High-Solids Anaerobic-Digestion Conditions, ASTM D 5511 – 12.
20. Exhibit CX-00020, attached hereto is authentic, genuine, and a true and correct copy of the Standard Test Method for Determining Anaerobic Biodegradation of Plastic Materials Under High-Solids Anaerobic-Digestion Conditions, ASTM D 5526 – 94 (Reapproved 2002).

Complaint Counsel reserves the right to propound the remainder of its RFAs after Respondents produce all outstanding discovery.

Dated: November 27, 2013

Respectfully submitted,

/s/ Katherine Johnson

Katherine Johnson (202) 326-2185

Elisa K. Jillson (202) 326-3001

Division of Enforcement

Bureau of Consumer Protection

Federal Trade Commission

600 Pennsylvania Avenue, NW

Mailstop M-8102B

Washington, DC 20580

**CERTIFICATE OF SERVICE**

I hereby certify that on November 27, 2013, I caused a true and correct copy of the foregoing Complaint Counsel's First Request for Admissions to ECM BioFilms, Inc. to be served as follows:

**One electronic copy to Counsel for the Respondent:**

Jonathan W. Emord  
Emord & Associates, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Email: [jemord@emord.com](mailto:jemord@emord.com)

Peter Arhangelsky  
Emord & Associates, P.C.  
3210 S. Gilbert Road, Suite 4  
Chandler, AZ 85286  
Email: [parhangelsky@emord.com](mailto:parhangelsky@emord.com)

Lou Caputo  
Emord & Associates, P.C.  
3210 S. Gilbert Road, Suite 4  
Chandler, AZ 85286  
Email: [lcaputo@emord.com](mailto:lcaputo@emord.com)

I further certify that I possess a paper copy of the signed original of the foregoing document that is available for review by the parties and the adjudicator.

Date: November 27, 2013

/s/ Katherine Johnson  
Katherine Johnson  
Complaint Counsel

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of** )

**ECM BioFilms, Inc.,** )  
**a corporation, also d/b/a** )  
**Enviroplastics International** )

**Docket No. 9358**

**PUBLIC DOCUMENT**

**SUPPLEMENTAL CERTIFICATE OF SERVICE FOR COMPLAINT COUNSEL'S  
FIRST SET OF REQUEST FOR ADMISSIONS**

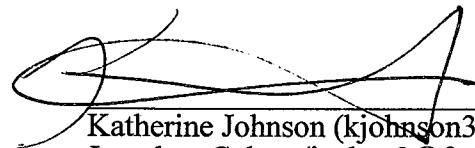
I hereby certify that on December 13, 2013, I also caused a true and correct copy of Complaint Counsel's First Request for Admissions to ECM BioFilms, Inc. to be served as follows:

One paper copy (PUBLIC), one paper copy (SUBJECT TO PROTECTIVE ORDER), and an electronic copy on compact disc to the **Office of the Secretary**:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Room H-113  
Washington, DC 20580  
Email: [secretary@ftc.gov](mailto:secretary@ftc.gov)

I further certify that I possess a paper copy of the signed original of the foregoing document that is available for review by the parties and the adjudicator.

Date: December 23, 2013

  
Katherine Johnson ([kjohnson3@ftc.gov](mailto:kjohnson3@ftc.gov))  
Jonathan Cohen ([jcohen2@ftc.gov](mailto:jcohen2@ftc.gov))  
Elisa Jillson ([ejillson@ftc.gov](mailto:ejillson@ftc.gov))  
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