

In the Matter of:

Fres-Co System USA

Respondent) Docket No. RCRA-07-2019-0207

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

The U.S. Environmental Protection Agency (EPA), Region 7 (“Complainant”) and Fres-Co System (“Respondent”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 Code of Federal Regulations (“C.F.R.”) §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (“RCRA”), and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.
2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated Section 3005 of RCRA, 42 U.S.C § 6927, and the standards applicable to generators of hazardous waste (40 C.F.R. § 262)

Parties

3. Complainant is the Director of the Enforcement and Compliance Assurance Division, Region 7, as duly delegated by the Administrator of EPA.
4. Respondent is Fres-Co System USA, Inc., a corporation registered in Delaware and authorized to operate in the State of Iowa.

Statutory and Regulatory Framework

5. RCRA was enacted to address the volumes of municipal and industrial solid waste generated nationwide in order to protect human health and the environment from potential hazards of waste disposal, conserve energy and natural resources, reduce the amount of waste generated, and ensure that wastes are managed in an environmentally sound manner.

6. RCRA provides guidelines for a waste management program and provides EPA with the authorities found in 3005 to develop and promulgate specific requirements in order to implement the waste management program. Pursuant to these authorities, EPA promulgated the waste management regulations found at 40 C.F.R. Part 239 through Part 282.

7. Section 3005 of RCRA, 42 U.S.C. § 6925, requires the Administrator of EPA to promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit.

8. Section 1004(15) of RCRA, 7 U.S.C. § 6903(15), defines “person” as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

9. The regulation at 40 C.F.R. § 260.10 defines “facility” to include all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage or disposal operational units (e.g. one or more landfills, surface impoundments, or combinations of them).

10. The regulation at 40 C.F.R. § 260.10 defines “storage” as the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

11. “Solid waste” is defined at 40 C.F.R. § 261.2.

12. “Hazardous waste” is defined at 40 C.F.R. § 261.3.

13. The regulation at 40 C.F.R. § 260.10 defines “generator” as any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

14. The regulation at 40 C.F.R. § 260.10 defines “large quantity generator” as a generator who generates greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste or greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 C.F.R. §§ 261.31 or 261.33(e).

15. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), whenever on the basis of any information the EPA determines that any person has violated or is in violation of

any requirement of RCRA, the EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period.

16. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$37,500 for violations that occurred before November 2, 2015, and to \$99,681 for violations that occur after November 2, 2015, and are assessed after January 15, 2019. Based upon the facts alleged in this Consent Agreement and Final Order, and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), the Complainant and Respondent agree to the payment of a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and to take the actions required by the Final Order, for the violations of RCRA alleged in this Consent Agreement and Final Order.

General Factual Background

17. Respondent is a corporation and authorized to conduct business within the State of Iowa. Respondent is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

18. Respondent owns and operates a facility that is located at 2026 Fernwood Avenue, Red Oak, Iowa 51566 (“facility”). Fres-co manufactures flexible packaging for the food industry. Respondent employs approximately ninety-five people at its Red Oak, Iowa facility.

19. On or about February 28, 2018, Respondent notified EPA, pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, as a Large Quantity Generator (LQG) of hazardous waste pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930.

20. On or about April 18-19, 2018, inspectors contracted to EPA conducted a RCRA Compliance Evaluation Inspection (hereinafter “the inspection”) of the hazardous waste management practices at Respondent’s facility. Based on a review of the inspection report and the information provided during the inspection by facility personnel, it was determined that Respondent was operating, at the time of the inspection, as a Large Quantity Generator of hazardous waste, a Small Quantity Handler of universal waste, and used oil generator.

21. At the time of the inspection, the following wastes, among others, were present. These are solid and hazardous wastes as defined at 40 C.F.R. § 261.2 and 261.3:

- a. Four 5-gallon satellite accumulation containers of waste flammable solids at or near 206 Station 11.
- b. Two 5-gallon satellite accumulation containers of waste flammable liquids at or near 206 Station 9.
- c. Three 5-gallon Satellite accumulation containers of waste flammable liquids at or near 208 Adhesive Mix Station.

- d. One 55-gallon satellite accumulation container of waste flammable liquids located at or near 208 Press Area.
 - e. One 55-gallon satellite accumulation container of waste flammable liquids located at or near 206 Station 9 Adhesive.
 - f. One 55-gallon satellite accumulation container of waste flammable liquids located at 206 Station 11.
 - g. One 55-gallon container of waste flammable liquids located in the Make Ready Room Central Accumulation Area.
 - h. Eleven 5-gallon containers of waste flammable solids located in the Make Ready Room Central Accumulation Area.
22. Respondent has been assigned the following EPA ID Number: IAR000007013.

Violations

23. Complainant hereby states and alleges that Respondent has violated RCRA and the federal regulations promulgated thereunder, as follows:

Count 1

Operating as a Treatment, Storage or Disposal Facility Without a RCRA Permit or RCRA Interim Status

24. Complainant hereby incorporates the allegations contained in Paragraphs 17 through 23 above, as if fully set forth herein.

25. Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations at 40 C.F.R. Part 270 require each person owning or operating a facility for the treatment, storage, or disposal of hazardous wastes identified or listed under Subchapter C of RCRA to have a permit or interim status for such activities.

26. At the time of the inspection, Respondent did not have a permit or interim status.

Generator Requirements

27. The regulation at 40 C.F.R. § 262.17(a) states that a large quantity generator may accumulate hazardous waste on-site for no more than ninety (90) days without a permit or interim status, and without complying with the requirements of parts 124, 264 through 267, and 279, or the notification requirements of sections 3010 of RCRA provided all the conditions for exemption set forth at 40 C.F.R. § 262.17 are met. If a generator fails to comply with any of these conditions, the generator is not allowed to accumulate hazardous waste at its facility for any length of time. Respondent failed to comply with the following conditions:

Labeling and marking of containers

28. The regulation at 40 C.F.R. § 262.17(a)(5)(i)(B) states that the LQG must mark or label its containers with an indication of the hazards of the contents; hazard communication consistent with Department of Transportation requirements; a hazard statement or pictogram

consistent with Occupational Safety and Health Administration Hazard Communication Standard; or a chemical hazard label consistent with the National Fire Protection Association.

29. At the time of the inspection, the following containers were not appropriately labeled or marked: One 55-gallon container of hazardous waste located in the Make Ready Room was not labeled with an indication of the nature of the hazard of its contents.

Emergency Procedures

30. The regulation at 40 C.F.R. § 262.17(a)(6) states that the LQG must comply with the standards in subpart M of this part, Preparedness, Prevention and Emergency Procedures for Large Quantity Generators. The following subpart M standards were not met:

Emergency Procedures: Content of contingency plan

31. Pursuant to 40 C.F.R. § 262.261(b) requires that if the contingency plan has already been prepared, the generator need only amend the plan to comply with the standards of the subpart.

32. Pursuant to 40 C.F.R. § 262.262(b), whenever the LQG becomes subject to these provisions, or when the LQG is otherwise amending its contingency plan, it must at that time submit a quick reference guide of the contingency plan to the local emergency responders identified in the immediately preceding paragraph. The quick guide must meet the standards set forth at 40 C.F.R. § 262.262(b)(1)-(8).

33. Pursuant to 40 C.F.R. § 262.261(d), the contingency plan must list names and emergency telephone numbers of all persons qualified to act as emergency coordinator and this list must be kept up to date.

34. At the time of the inspection, Respondent failed list the name and emergency telephone number in the contingency plan.

35. At the time of the inspection, Respondent had not updated its contingency plan to include a quick guide.

Personnel Training: Program of instruction

36. Pursuant to 40 C.F.R. § 262.17(a)(7)(i)(A), facility personal must successfully complete a program of instruction that teaches the personnel to perform their duties in a way that ensures compliance with this part.

37. The program of instruction must be directed by a person trained in hazardous waste management procedures and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed. 40 C.F.R. § 262.17(a)(7)(i)(B).

38. The program of instruction must be designed to ensure that facility personnel are able to respond effectively to emergency by familiarizing them with emergency procedures, emergency equipment, and emergency System. 40 C.F.R. § 262.17(a)(7)(i)(C).

39. Facility personnel must successfully complete the program of instruction within six months after the date of their employment or assignment to the facility, or to a new position at the facility, whichever is later. 40 C.F.R. § 262.17(a)(7)(ii).

40. Facility personnel must take part in an annual review of the initial training required in 40 C.F.R. § 262.17(a)(7)(i).

41. At the time of the inspection the training provided did not provide site-specific emergency procedures and contingency plan implementation.

Personnel Training: Documentation and records

42. Pursuant to 40 C.F.R. § 262.17(a)(7)(iv), the LQG must maintain the following documents and records at the facility:

- a. The job title for each position at the facility related to hazardous waste management and the name of the employee filling each job.
- b. A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph 40 C.F.R. § 262.17(a)(7)(iv)(C).
- c. A written job description for each position listed under paragraph 40 C.F.R. § 262.17(a)(7)(iv)(A). This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position.

Satellite Accumulation

43. The regulations at 40 C.F.R. § 262.15 allows a generator to accumulate as much as fifty-five (55) gallons of hazardous waste or one quart of acutely hazardous waste listed in 40 C.F.R. § 261.33(e) in containers at or near any point of generation where waste initially accumulates, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with 40 C.F.R. § 262.34(a), *provided* the generator complies with various handling requirements. This type of accumulation is known as “satellite accumulation”.

At the time of the inspection, Respondent failed to comply with the following satellite accumulation requirements:

Failure to label satellite accumulation containers

44. The regulations at 40 C.F.R. § 262.15(a)(5) require that satellite accumulation containers must be marked or labeled with the following:

(i) The words “Hazardous Waste” and

(ii) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 C.F.R. Part 172 Subpart E (labeling) or Subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704).

45. At the time of the inspection, the following satellite accumulation containers containing hazardous waste were not labeled with the words, “Hazardous Waste” or other words to identify the contents of the container:

- a. Eleven 5-gallon satellite accumulation containers containing flammable, listed (D001, F003) waste that were not labeled with the words "hazardous waste.

46. At the time of the inspection, the following satellite accumulation containers containing hazardous waste were not labeled with an indication of the hazards of the contents:

- a. Five 5-gallon satellite accumulation containers
- b. One 55-gallon container with flammable, listed (D001, F003) waste.

Failure to close satellite accumulation containers

47. The regulations at 40 C.F.R. § 262.15(a)(4) require that satellite accumulation containers must be closed at all times during accumulation except when adding, removing, or consolidating waste or when its necessary to temporarily vent a container. At the time of the inspection, the following satellite accumulation container containing hazardous waste was not properly closed:

- a. Five 5-gallon containers with flammable, listed (D001, F003) waste located at the 208 Adhesive Mix Station.

48. Because Respondent failed to comply with the generator requirements as set forth in Paragraphs 24 through 47 above, Respondent was not authorized to accumulate hazardous waste at its facility for any length of time, and therefore was operating a hazardous waste storage facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

CONSENT AGREEMENT

49. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits the jurisdictional allegations set forth herein;
- (b) neither admits nor denies the specific factual allegations stated herein;

- (c) consents to the assessment of a civil penalty, as stated herein;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to any conditions specified herein;
- (f) consents to any stated Permit Action;
- (g) waives any right to contest the allegations set forth herein; and
- (h) waives its rights to appeal the Final Order accompanying this Consent Agreement.

50. Respondent consents to the issuance of this Consent Agreement and Final Order and consents for the purposes of settlement to the payment of the civil penalty specified herein and performance of the compliance actions described below.

51. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms specified herein.

52. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

Penalty Payment

53. Respondent agrees that, in settlement of the claims alleged herein, Respondent shall pay a civil penalty of twenty-five thousand dollars (\$25,000).

54. Respondent shall pay the penalty within thirty (30) days of the effective date of the Final Order. Such payment shall identify Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

55. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219; and

Demetra O. Salisbury, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

56. Respondent understands that its failure to timely pay any portion of the civil penalty may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall begin to accrue on a civil or stipulated penalty from the date of delinquency until such civil or stipulated penalty and any accrued interest are paid in full. 31 C.F.R. § 901.9. Interest will be assessed at a rate of the United States Treasury Tax and loan rates in accordance with 31 U.S.C. § 3717. Additionally, a charge will be assessed to cover the costs of debt collection including processing and handling costs, and a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. 31 U.S.C. § 3717(e)(2).

Compliance Actions

57. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below.

58. Respondent shall submit a Compliance Report to EPA for the period of one year, in accordance with the following schedule: The first submission is due within thirty (30) days of the Effective Date of this Consent Agreement and Final Order and biweekly thereafter for a total of four months. The subsequent submissions shall be submitted within sixty (60) days of the previous submission and every 60 days thereafter. The Compliance Report shall include the following:

- a. A narrative description with supporting documentation, including photographs, to show all hazardous waste accumulation containers and satellite accumulation containers are properly managed pursuant to 40 C.F.R. §§ 262.15 and 262.17.
- b. Once the annual hazardous waste training for 2019 is completed, Respondent shall submit copies of the training documents, including any handouts and the sign-in sheets within thirty (30) days of the training completion.

59. Respondent shall submit all documentation generated to comply with the requirements as set forth in the immediately preceding paragraph to the following address:

Elizabeth Blackburn, LCARD/ROAG
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

Effect of Settlement and Reservation of Rights

60. Full payment of the penalty proposed in this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

61. The effect of settlement described in the immediately preceding paragraph is conditioned upon the accuracy of Respondent's representations to the EPA, as memorialized in paragraph directly below.

62. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, it is presently in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.*, its implementing regulations, and any permit issued pursuant to RCRA.

63. Full payment of the penalty proposed in this Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement and Final Order does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

64. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms and conditions of this Consent Agreement and Final Order by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Fifty-Seven Thousand Three Hundred Ninety-One Dollars (\$57,391) per day, per violation, pursuant to Section 3008(c) of RCRA, for each day of non-compliance with the terms of this Consent Agreement and Final Order, or to seek any other remedy allowed by law.

65. Except as expressly provided herein, nothing in this Consent Agreement and Final Order shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

66. Notwithstanding any other provisions of the Consent Agreement and Final Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

67. Nothing contained in the Final Order portion of this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

General Provisions

68. By signing this Consent Agreement, the undersigned representative of Respondent certifies that he or she is fully authorized to execute and enter into the terms and conditions of this Consent Agreement and has the legal capacity to bind the party he or she represents to this Consent Agreement.

69. This Consent Agreement shall not dispose of the proceeding without a final order from the Regional Judicial Officer or Regional Administrator ratifying the terms of this Consent Agreement. This Consent Agreement and Final Order shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

70. The penalty specified herein shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal, State and local taxes.

71. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

72. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

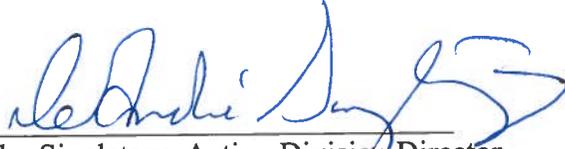
73. The provisions of this Consent Agreement and Final Order shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

8-1-19

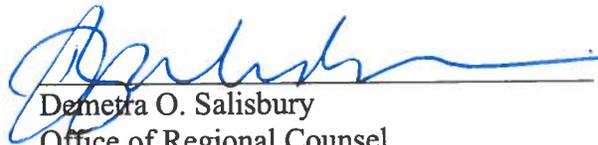
Date



DeAndre Singletary, Acting Division Director
Enforcement and Compliance Assurance Division

7/19/19

Date



Demetra O. Salisbury
Office of Regional Counsel

RESPONDENT:

Fres-Co System USA, Inc.

7/11/2019
Date


Signature

GREGORY J. ARMSTRONG
Printed Name

Plant Manager
Title

FINAL ORDER

Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer

August 5, 2019
Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Complainant:

Demetra O. Salisbury

Copy via Email to Respondent:

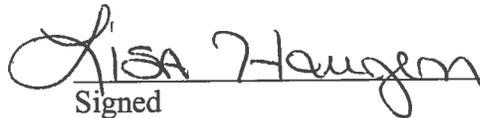
Gregory Armstrong, Plant Manager
Fres-Co System USA

Timothy J. Bergere, Attorney
Montgomery McCracken Walker & Rhoads LLP

Copy via Email to the State of Iowa:

Amie Davidson, Chief (e-copy)
Contaminated Sites Section
Iowa Department of Natural Resources

Dated this 5th day of August, 2019.


Signed _____