

**IOWA DEPARTMENT OF NATURAL RESOURCES
EMERGENCY ORDER**

IN THE MATTER OF: C6-Zero Iowa, LLC; C6-Zero Holdings, LLC; and Mr. Howard Brand as the Responsible Corporate Officer for C6-Zero	EMERGENCY ORDER NO. 2022-HC-02 NO. 2022-AQ-25 NO. 2022-SW-20 NO. 2022-WW-32
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To: C6-Zero Iowa, LLC
Registered Agents Inc.
315 E. 5th Street
Waterloo, Iowa 50703

Tim Dore, General Counsel
C6-Zero Iowa, LLC
[via email]

Re: Determination of failure to comply with Iowa solid waste and recycling law and regulations; Determination of failure to comply with Iowa air quality laws and regulations; Determination of liability for remediation of hazardous conditions; Violation of Iowa water quality laws and regulations; and, order to cease operation and properly dispose of all solid waste remaining on the property.

I. SUMMARY

This Emergency Order is issued following the explosion and subsequent fire occurring at the C6-Zero facility located at 810 E South Street, Marengo, Iowa. The building is owned by Heartland Crush, LLC, and operated by C-6 Zero Iowa LLC, a foreign-registered company with multiple related and similarly-named entities (hereinafter, C6-Zero).

The explosion and fire injured nearly half of all employees working on-site, some quite severely; and required the evacuation of the surrounding community. The facility's current condition is a clear threat to public health and the environment. Another catastrophic event is possible due to the presence of unknown flammable chemicals and gases remaining inside a damaged building, exposed to the elements. Large areas of contaminated soil threaten Iowa's groundwater. Large run-off pools of contaminated water are flowing into or towards the Iowa River. Accordingly, the DNR issues this Emergency Order to compel the immediately stabilization of all hazardous conditions and the removal and proper

IOWA DEPARTMENT OF NATURAL RESOURCES
EMERGENCY ORDER
ISSUED TO: C6-ZERO Iowa LLC and MR. HOWARD BRAND

disposal of solid wastes on-site, as well as full remediation of the area. Consistent with Iowa law, this Emergency Order is effective immediately.

Despite repeated information requests from the DNR and meetings in which compliance matters were discussed, C6-Zero and Mr. Howard Brand have failed to comply with Iowa's air quality, hazardous condition, solid waste and legitimate recycling laws. The facility is not legitimately recycling materials and must cease operations. All solid waste remaining at the facility must be immediately and properly disposed of.

Additionally, the explosion and fire have resulted in violations of Iowa's hazardous condition and water quality regulations. Pursuant to those regulations, the DNR has determined that C6-Zero and Howard Brand are the Responsible Parties for any and all remediation costs resulting from the explosion and fire. Those regulations provide specific requirements as to the liability of a Responsible Party, including the immediate development and implementation of a remediation plan and specific activities to protect the public health and Iowa's air, soil, and water from contamination. The applicable requirements are enumerated in Section V, below.

II. JURISDICTION

This Emergency Order is issued pursuant to Iowa Code §§ 455B.388, 455B.139, and 455B.175(1)"b", which collectively authorize the Director to issue emergency orders when an emergency exists respecting matters affecting or likely affecting the public health; Iowa Code §§ 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that Division; Iowa Code § 455B.175(1)"a," which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I (water quality) and the rules promulgated pursuant thereto; Iowa Code § 455B.307(2) which authorizes the Director of the DNR to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste) and the rules promulgated or permits issued pursuant thereto; Iowa Code § 455B.382, which authorizes DNR to prevent, abate, and control exposure of citizens to hazardous conditions; Iowa Code § 455B.386, which authorizes penalties for the failure to properly notify DNR in the event of discharges of hazardous substances; Iowa Code § 455B.392, which establishes liability for the cleanup of hazardous substances, and the rules promulgated pursuant thereto; Iowa Code § 455D.4A, which regulates legitimate recycling in the state of Iowa and which allows the DNR to require the removal and proper disposal of material that is not legitimately recycled; and Iowa Code Chapter 455E, which authorizes the Director to initiate any enforcement actions necessary to prevent or remediate contamination of groundwater in the state of Iowa.

IOWA DEPARTMENT OF NATURAL RESOURCES
EMERGENCY ORDER
ISSUED TO: C6-ZERO Iowa LLC and MR. HOWARD BRAND

III. STATEMENT OF FACTS

The following facts are relevant to this matter:

1. On December 3, 2020, the United States Environmental Protection Agency (EPA) sent a letter to C6-Zero in response to the facility's plan "...to take used and off-spec shingles and return them to their base ingredients for reuse." EPA directly administers the hazardous waste program in Iowa.

2. On January 6, 2021, the DNR received emails from EPA's Resource Conservation and Recovery Act Branch Chief and the Criminal Enforcement Counsel with Louisiana Department of Environmental Quality providing information about C6-Zero and their affiliated companies: Brand Technologies Corp, Brandlich Assets LLC, Brandlich Construction LLC, Brandlich Energy Solutions Dallas LLC, Brandlich Energy Solutions Houston LLC, Brandlich Energy Solutions San Antonio LLC, Brandlich Energy Solutions Casper LLC, Brandlich Energy Solutions Oregon, Brandlich Energy Solutions San Joaquin LLC, Brandlich Holdings LLC, and C6-ZERO, LLC in Colorado.

3. Based on the DNR's conversations with other parties in other states, the DNR's initial concern with the C6-Zero operation was the stockpiling of shingles as a solid waste disposal matter. Additional concerns developed as the DNR learned more about the alleged operation and the company's operations in other states.

4. On May 13, 2021, DNR staff visited with representatives of C6-Zero. At that time, Heartland Crush, LLC, still had soybean processing equipment in the facility. However, it did not appear active. DNR field office staff spoke to Howard Brand's son, Dillon, and toured the facility. During the tour, DNR staff observed metal framing being constructed. No shingles were observed onsite. During the visit, Callie Washburn, an employee of C6-Zero, and Howard Brand spoke with DNR staff by phone, stating that the company was planning to "reverse manufacture" shingles, that it was not subject to Iowa solid waste or other regulations, that it would decide when shingles were delivered to the site, and that the company has a "clean bill of health" in the other states where it had previously operated, including Texas, Louisiana, and Colorado. DNR staff stated it would be necessary to set up a meeting to discuss the company's permitting requirements prior to operations commencing.

5. On May 14, 2021, DNR field office staff again spoke with Callie Washburn. Miss Washburn again insisted that C6-Zero was already in compliance with all Iowa environmental regulations without providing any support or evidence for such a claim.

6. On May 27, 2021, DNR field office and central office staff held a conference call with representative of the Colorado Department of Public Health

IOWA DEPARTMENT OF NATURAL RESOURCES
EMERGENCY ORDER
ISSUED TO: C6-ZERO Iowa LLC and MR. HOWARD BRAND

and Environment, the Texas Department of Environmental Quality, and the Louisiana Department of Environmental Quality. Each representative explained their history with Mr. Brand and the various affiliated companies of C6-Zero.

7. Also, on May 27, 2021, DNR field office staff drove by the facility. No stockpiled asphalt shingles were observed around the perimeter of the building.

8. On June 22, 2021, DNR sent C6-Zero a certified letter directing the company to contact Tim Hall, DNR Business Liaison, to schedule a permitting meeting. The letter requested more details on the operation be provided to staff, and explained that the facility was, as described to date, a recycling facility under Iowa law. The letter was hand-delivered to Mr. Brand on June 23, 2021.

9. On August 25, 2021, DNR field office staff again drove past the facility. No stockpiled asphalt shingles were observed around the perimeter of the building.

10. On September 3, 2021, representatives of C6-Zero and DNR staff met in anticipation of the upcoming Business Assistance Meeting to discuss DNR permitting and applicable environmental laws.

11. On September 20, 2021, a Business Assistance Meeting between DNR staff and C-6 Zero was cancelled at the request of C-6 Zero. The company stated it needed more time to prepare.

12. On November 12, 2021, DNR field office staff again drove past C6-Zero's facility. No stockpiled asphalt shingles were observed around the perimeter of the building.

13. On December 9, 2021, DNR field office staff attempted to visit C6-Zero's facility. The doors were locked and no one was present. No stockpiled asphalt shingles were observed around the perimeter of the building.

14. On April 7, 2022, DNR staff attempted to visit the C6-Zero facility. C6-Zero staff refused to allow the DNR staff to enter and inspect the facility, stating at one point that the DNR had no right to be on the property. When informed of the DNR's reason for the visit, C6-Zero management again refused DNR staff access to the facility. No stockpiled asphalt shingles were observed around the perimeter of the building.

15. On April 12, 2022, DNR staff spoke with Tim Dore, legal counsel for C6-Zero. At that time, Mr. Dore assured the DNR that there were no stockpiled asphalt shingles at the facility.

IOWA DEPARTMENT OF NATURAL RESOURCES
EMERGENCY ORDER
ISSUED TO: C6-ZERO Iowa LLC and MR. HOWARD BRAND

16. On May 24, 2022, DNR received an email from Mr. Jeffrey Boeyink informing the DNR that the LS2 Group had been retained by C6-Zero to help the company navigate the regulatory environment in Iowa.

17. On May 26, 2022, DNR held a business assistance meeting with C6-Zero representatives to discuss environmental requirements. Multiple concerns were addressed during this meeting.

DNR staff inquired as to when it should expect a response from the company about its compliance with the legitimate recycling requirements in Iowa Code chapter 455D. Mr. Dore argued that C6-Zero was not a recycler, but instead argued that the company was a “re-manufacturer,” and, therefore, solid waste and recycling regulations did not apply. DNR staff disagreed with this argument and explained that the company must provide the requested information. Additionally, the DNR’s air quality staff raised questions as to whether the company had established that the shingles did not contain asbestos. The company did not, and subsequently has not, provided any evidence as to whether there is asbestos in the shingles. Finally, when asked why the company would prohibit DNR staff from inspecting the property, Mr. Dore stated that was what they were instructed to do.

18. On July 1, 2022, the DNR received a response from Mr. Dore again stating that the facility was subject to neither solid waste, recycling, or air permitting regulation. Regardless, he stated that the company would provide the requested information. Mr. Dore stated that attached to the response was a redacted purchase agreement as an example of an end user agreement. However, no redacted purchase agreement was actually attached to the letter, nor was one ever subsequently received by the DNR. Additionally, Mr. Dore stated that the company expected to process 800 tons of shingles per day with a storage capacity of 2,400 tons of shingles.

19. On August 15, 2022, DNR’s air quality construction permit section sent an email to Mr. Dore requesting additional information based on the facility’s July 1, 2022 letter. The letter specifically requested the basis for C6-Zero’s self-determination that it was exempt from air quality construction permitting regulations.

20. On August 17, 2022, Mr. Dore sent an email response that stated C6-Zero was gathering information to answer air quality staff’s questions.

21. On October 13, 2022, Mr. Dore submitted information to the air quality construction permit section regarding C6-Zero’s self-determination that it is exempt from air quality construction permitting regulations. The information was insufficient for staff to make a determination.

22. On October 25, 2022, a small fire occurred at the facility.

IOWA DEPARTMENT OF NATURAL RESOURCES
EMERGENCY ORDER
ISSUED TO: C6-ZERO Iowa LLC and MR. HOWARD BRAND

23. On November 1, 2022, DNR's air quality construction permit section had a conference call with representatives of C6-Zero to discuss the facility's self-determination that it was exempt from the air quality construction permitting regulations. DNR notified C6-Zero staff that the documents C6-Zero submitted on October 13, 2022 did not include the necessary information for DNR staff to make a determination as to whether the facility was, indeed, exempt. As such, the facility could not claim exempt status until complete information was provided and a determination was made. The facility could not operate under Iowa law until this determination was made by the DNR, or, in the alternative, the facility obtained a construction permit.

C6-Zero representatives stated that additional discussions as to the exemption would continue at the facility tour scheduled for November 9, 2022. Additionally, during this call, C6-Zero staff stated that they had emission stack testing results which they would provide at the subsequent in-person meeting. This data was never provided.

24. On November 9, 2022, DNR air, solid waste and field office staff visited the C6-Zero facility for a scheduled meeting and tour. The visit consisted of a brief presentation where company representatives explained their operation, followed by a partial tour of the facility. The tour was halted part-way through the tour at the direction of C6-Zero staff. DNR staff stated that they wanted to see the rest of the facility but were denied access. Mr. Brand stated that they would have to set up a subsequent tour to see the rest of the facility. No subsequent tour was scheduled.

During the initial meeting, C6-Zero staff provided what they stated were complete exemption justification documents to air quality staff. They claimed that the original documentation was incomplete due to a fax machine error.

Additionally, DNR staff asked Mr. Dore about outstanding items requested in both the June 22, 2021 letter and during the May 26, 2022 Business Assistance Meeting. These items included: 1) evidence that the material was potentially recyclable and had a feasible means of being recycled into a valuable product; 2) details as to how the material (shingles) would be managed as a valuable commodity while under the facility's control; and, 3) how record-keeping would be implemented to track incoming and out-going material—necessary to satisfy the annual 75% material processing requirement of the legitimate recycling regulations. DNR staff also stated that the DNR was still waiting for evidence of a purchase contract, letter of understanding, or formal agreement with at least one end user. Mr. Dore stated that the company did not have one at that time, notwithstanding his claim from July 1, 2022.

25. On December 5, 2022, DNR staff contacted Mr. Jeff Boeyink of the LS2 Group via email seeking his assistance in answering outstanding questions and getting access to the facility. Specifically, DNR staff requested that C6-Zero

IOWA DEPARTMENT OF NATURAL RESOURCES
EMERGENCY ORDER
ISSUED TO: C6-ZERO Iowa LLC and MR. HOWARD BRAND

submit Tier 2 reports, as required by the Emergency Planning and Community Right to Know Act of 1986, and, second, that DNR be provided complete access to the facility during its next site visit. Such access had intentionally been denied during the November 9, 2022 site visit when DNR staff were not allowed to see the “back end” of the operation (where the dissolved shingle components would be located) and during the April 7, 2022 attempted site inspection when C6-Zero stated that DNR had no right to enter the facility. Mr. Boeyink responded that he would forward these concerns to Mr. Dore. Again, no such access or response was provided.

26. On December 8, 2022, an explosion occurred at the facility, followed by a major facility fire. Fifteen fire departments and two hazmat teams responded, along with numerous other support teams. DNR staff were onsite throughout much of the day, working with incident command, with a primary focus on fire-fighting runoff carrying solvent/hydrocarbons offsite.

27. The explosion and subsequent fire were devastating. According to reporting by the Des Moines Register, nearly half of all employees in the building were treated at the hospital for a range of injuries, including severe burns and other traumas. At least two individuals remain in the University of Iowa’s burn unit, one of whom is intubated and on a ventilator. Additionally, all homes east of Eastern Avenue in Marengo were evacuated and residents were told to head to Williamsburg, the next town south. City officials urged all residents to avoid being outside because of the dense smoke.

28. On December 9, 2022, DNR sent three field staff to the facility to continue assessing run-off concerns. The contaminated stormwater run-off was in a ditch that flows into the Iowa River, a major water of the state and drinking water source for nearby municipalities, including Iowa City.

29. DNR staff accessed the property on December 14, 2022 and observed the following conditions: multiple large ankle-deep pools of unknown free product and/or contaminated water with a dark color and oily sheen; the building is missing a vast section of an exterior wall and part of its roof; other areas of the roof contain holes and is significantly dropping inwards, suggesting a lack of structural integrity; inside the building are large quantities of unknown chemicals in buckets, barrels, and gas tanks, along with big piles of loose, crushed shingles, all of which are exposed to wind, rain, and changing temperatures; at least two very large chemical vats remain on site, exposed to the elements, containing unknown flammable products; large patches of black stained soil and grass; multiple stormwater run-off flows, dark and oily in color and texture, going into ditches connected to the Iowa River; and piles of debris and building rubble both inside and outside of the building. There is no security around the facility, and there appears to be nothing at the facility to prevent such an event from happening again.

IOWA DEPARTMENT OF NATURAL RESOURCES
EMERGENCY ORDER
ISSUED TO: C6-ZERO Iowa LLC and MR. HOWARD BRAND

30. On December 15, 2022, DNR received water sample analysis for the samples taken around the facility on December 8 and 9. The samples were taken from areas where the normal stormwater flow would leave the property and enter nearby waters of the state. Multiple samples showed evidence of the discharge of pollutants resulting in contamination in excess of statewide water quality standards.

31. During the past year, the company has failed and refused repeatedly to provide access to the facility, to provide the documentation and information requested by the Department.

IV. CONCLUSIONS OF LAW

1. Iowa Code § 455B.134 prohibits the operation of air contaminant sources without first obtaining an air construction permit. The facility had failed to provide sufficient information to prove it was exempt from this requirement. The facts outlined above establish a violation of this section of the Iowa Code.

2. Iowa Code § 455B.133 provides for the Environmental Protection Commission (EPC) to establish rules governing the quality of air and emission standards. Accordingly, the EPC adopted 567 IAC 23.1(3), which adopts by reference the federal regulations regarding asbestos as a hazardous air pollutant. Asphalt shingles may contain asbestos and must be handled pursuant to federal NESHAP regulations. The burden is on the operator to establish that asbestos is not released as part of the recycling process and that any resulting solid waste disposed of in Iowa does not contain hazardous materials.

3. Iowa Code § 455B.139 states that when the director “has evidence that a person is causing air pollution and that such pollution creates an emergency requiring immediate action to protect public health and safety,” the director may issue an emergency order. The facts outlined above justify the issuance of this Emergency Order.

4. Iowa Code § 455B.175(1)“b” states that when the director has determined “an emergency exists respecting any [water quality] matter affecting or likely to affect public health,” the director may issue an emergency order. The facts outlined above justify the issuance of this Emergency Order.

5. Iowa Code § 455B.186 prohibits the depositing or discharging of any pollutant into any water of the state. Due to pollutants reaching and entering waters of the State, the facts outlined above establish a violation of this section of the Iowa Code.

6. Iowa Code § 455B.301(29) defines solid waste as “garbage, refuse, rubbish, and other similar discarded solid or semi-solid materials, including but not

IOWA DEPARTMENT OF NATURAL RESOURCES
EMERGENCY ORDER
ISSUED TO: C6-ZERO Iowa LLC and MR. HOWARD BRAND

limited to such materials resulting from industrial [and] commercial activities” such as construction and demolition debris.

7. Iowa Code § 455B.307(1) prohibits a person from dumping or depositing, or permitting the dumping or depositing, of any solid waste at any place other than a sanitary disposal project approved by the Director of the DNR. The facts above, as well as the DNR’s determination that the facility is not legitimately recycling the material, establish violations of this statutory requirement.

8. Iowa Code § 455B.381(5) defines a “hazardous substance” as “any substance or mixture of substances that presents a danger to the public health or safety and includes . . . a substance that is toxic, corrosive, or flammable, or that is an irritant . . .” Additionally, Iowa Code § 455B.381(4) defines a “hazardous condition” as “any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment. The explosion and subsequent fire at the facility released chemicals into the air, onto land, and into water resulting in a hazardous condition.

9. Iowa Code § 455B.386 requires any person manufacturing, storing, handling, transporting, or disposing of a hazardous substance to notify the DNR of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition. The facts above establish a violation of this requirement.

10. Iowa Code § 455B.388 states that when the director has determined “an emergency exists respecting any [hazardous condition] affecting or likely to affect the public health,” the director may issue an emergency order. The facts outlined above justify the issuance of this Emergency Order.

11. Iowa Code § 455B.392 states that a person having control over a hazardous substance is strictly liable to the state or a political subdivision for, among other things, reasonable cleanup costs for the hazardous condition caused by that person. The Iowa Supreme Court noted in *Blue Chip Enterprises v. DNR*, 528 N.W.2d 619, 623-24 (1995), that this provision allows the state or subdivision to compel a party to incur those cleanup costs and that the state may issue an order to the party requiring implementation of a remedial action plan to abate and eliminate any threatened or actual soil or groundwater contamination. See also, *Williams Pipeline Co. v. Bayer Corp.*, 964 F.Supp. 1300, 1333 (S.D. IA 1997) (stating that the Iowa Supreme Court in *Blue Chip* “held that under section 455B.392, a state can compel initial payment of cleanup costs rather than seek recoupment of costs already incurred.”) Remediation must be conducted in a manner that complies with state and federal law.

IOWA DEPARTMENT OF NATURAL RESOURCES
EMERGENCY ORDER
ISSUED TO: C6-ZERO Iowa LLC and MR. HOWARD BRAND

12. 567 IAC 133 applies specifically to the “cleanup actions required to abate, prevent or remediate a hazardous condition, the presence of a hazardous substance, or waste, the release of a regulated substance, or the discharge of a pollutant.” 567 IAC 133.1(2). Additionally, 567 IAC 133.3(2) establishes that “when the DNR receives or obtains evidence of groundwater contamination or the release or presence of contamination in the environment associated with groundwater, where contamination of the groundwater may reasonably be expected,” the DNR “shall require responsible persons to take appropriate preventative, investigatory and remedial actions.”

13. Iowa Code § 455D.1(5) and 567 IAC 100.2 define “recycling” as “any process by which waste, or materials that would otherwise become waste, are collected, separated, or processed and revised or returned to use in the form of raw materials or products...” The process of breaking shingles down into component raw materials for reuse is recycling under Iowa law and, as such, the process is subject to Iowa’s legitimate recycling law.

14. Iowa Code § 455D.4A establishes Iowa’s legitimate recycling program. It provides an exception to Iowa solid waste storage and disposal regulations, but only for “recycling facilities.” Such facilities must provide certain documentation to the DNR to qualify for the exception and must maintain accurate documentation of material use and storage. It is up to the DNR to determine if the process and material is legitimate. If not, the facility and material may be deemed solid waste. C6-Zero, despite multiple requests by the DNR, has failed to provide any of the information requested by the DNR that would establish it is a legitimate recycling facility. As recently as November 9, 2022, C6-Zero’s attorney confirmed that the company has no contract or agreement as required by the statute. As such, The DNR has determined that the shingles in question are not being legitimately recycled, so they are subject to solid waste regulations.

15. Iowa Code § 455D.4A(23) establishes that the Director may issue any order necessary to secure compliance with or prevent a violation of the provisions of the chapter or any rule adopted or permit or order issued pursuant to the chapter. Any order issued to enforce Iowa Code § 455D.4A may include a requirement to remove and properly dispose of materials being accumulated speculatively from a property and impose costs and penalties.

16. Finally, the State of Iowa has adopted the Responsible Corporate Officer Doctrine. See, e.g., *State ex rel Iowa Dept. of Nat. Res. v. Recycling Services et al.*, 04151EQCV025666 (Cass County District Court 2019).

IOWA DEPARTMENT OF NATURAL RESOURCES
EMERGENCY ORDER
ISSUED TO: C6-ZERO Iowa LLC and MR. HOWARD BRAND

V. ORDER

THEREFORE, the DNR orders the following:

- 1 The Parties must immediately secure the facility and the property around the facility to prevent inadvertent or accidental impacts to the public or additional explosions or fire.
- 2 Immediately implement protective barriers or other measures to prevent stormwater from releasing into any waters of the state.
- 3 Due to the nature of the releases and the unknown nature of some of the chemicals that have been released to the air, soil, and water, aggressive actions are necessary to limit the impact to human health and the environment. As such, within 15 days of the date of this Order, C6-Zero must submit a complete environmental Site Assessment Plan as defined in 567 IAC 133.2. The Plan must be in writing, and the requirements of the Plan must be completed within 45 days of the Emergency Order being issued. Following completion of the environmental assessment, the Parties will be required to submit and implement a Remedial Action Plan as directed by the DNR.
- 4 C-6 Zero must immediately cease all operations at the facility involving or related to the treating of shingles to break the shingles down into constituent parts. Pursuant to Iowa Code Chapter 455D, the DNR orders the company to properly dispose of all shingles, remaining shingle components, and all related solid waste. This includes the requirement to determine if the shingles, or any other waste, contains asbestos or any other hazardous material.
- 5 C6-Zero is prohibited from conducting any further operations in the state of Iowa until such times as it is in full compliance with all Iowa law, and the remediation plan for the Marengo facility has been fully implemented.

VI. CIVIL PENALTY

Iowa Code § 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations. Iowa Code 455B.146 provides for civil penalties of up to \$10,000.00 per day for air quality violations. Iowa Code § 455B.191 provides for civil penalties of up to \$5,000.00 per day for water quality violations. Iowa Code § 455B.386 authorizes the DNR to impose penalties of up to \$1,000.00 for each failure to properly notify the DNR and other parties when a hazardous condition has occurred.

The DNR reserves the right to impose, or to ask the Attorney General to pursue, civil penalties for the violations referenced in this Emergency Order and for any other violations that have yet to be discovered. At this time, the DNR's

IOWA DEPARTMENT OF NATURAL RESOURCES
EMERGENCY ORDER
ISSUED TO: C6-ZERO Iowa LLC and MR. HOWARD BRAND

primary focus is on protecting human health and the environment at and around the C6-Zero facility.

VII. APPEAL RIGHTS

This Emergency Order is effective upon issuance. It is subject to appeal, but remains in effect until it is either modified or vacated.



Digitally signed by Kayla Lyon
Date: 2022.12.15 17:05:27 -06'00'

Kayla Lyon, Director
Iowa Department of Natural Resources