

IN THE IOWA DISTRICT COURT FOR IOWA COUNTY

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STATE OF IOWA ex rel. IOWA	)	
DEPARTMENT OF NATURAL	)	NO. <u>EQCV024854</u>
RESOURCES,	)	
	)	
Plaintiff,	)	
	)	<b>PETITION IN EQUITY</b>
vs.	)	
	)	
C6-ZERO IOWA LLC, C6-ZERO	)	
HOLDINGS, LLC and	)	
HOWARD BRAND,	)	
	)	
Defendants.	)	

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Plaintiff State of Iowa ex rel. Iowa Department of Natural Resources (“DNR”) for its claims against Defendants states as follows:

**INTRODUCTION**

1. On December 8, 2022, the C6-Zero facility located at 810 E. South Street, Marengo, Iowa County, Iowa, (the “property”) experienced a devastating explosion and fire resulting in a hazardous condition. This hazardous condition poses an imminent threat to public health and the environment. The State of Iowa seeks the issuance of a temporary injunction and a permanent injunction ordering Defendants to (1) comply with DNR Emergency Order No. 2022-HC-02, 2022-AQ-25, 2022-SW-20, 2022-WW-32, (2) immediately cease violations of Iowa air quality, solid waste and water quality laws, (3) produce a list to the DNR identifying any chemical substance or mixture present at the C6-Zero facility at the time of the explosion and fire, (4) permit the DNR and its authorized representatives access to the property and (5) prohibit Defendants from interfering with the DNR’s activities related to the explosion and fire.

## **PARTIES**

2. The State of Iowa is a sovereign state of the United States of America and brings this action on behalf of the DNR, a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

3. Defendant C6-Zero Iowa LLC is a Wyoming foreign limited liability company doing business in the State of Iowa. C6-Zero Iowa LLC operates a facility located at 810 E. South Street, Marengo, Iowa County, Iowa.

4. Defendant C6-Zero Holdings, LLC is a Wyoming limited liability company with its principal office identified as 36 Shadow Brook Lane, Lander, Wyoming. C6-Zero Holdings, LLC is a member/manager of Defendant C6-Zero Iowa LLC.

5. Defendant Howard Brand is the responsible corporate officer for C6-Zero Iowa LLC and C6-Zero Holdings, LLC.

## **JURISDICTION**

6. The DNR is responsible for preventing, abating, and controlling the exposure of the citizens of the state to hazardous conditions. Iowa Code § 455B.382

7. A “hazardous condition” is defined 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.” Iowa Code § 455B.381(4); 567 IAC 131.1.

8. A “hazardous substance” is defined as “any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means.” Iowa Code § 455B.381(5); 567 IAC 131.1.

9. Iowa has developed statewide standards for groundwater, soil and surface water to address direct exposure to individual contaminants. Statewide standards represent concentrations of contaminants in these media at which normal exposure is considered unlikely to pose a threat to human health, safety or the environment. *See* 567 IAC 61.3(3), 137.2 and 137.5.

10. The following are examples of substances which, in sufficient quantity, may be a “hazardous substance” as that term is used in Iowa Code section 455B.381(5): acids; alkalis; explosives; fertilizers; heavy metals such as chromium, arsenic, mercury, lead and cadmium; industrial chemicals; paint thinners; paints; pesticides; petroleum products; poisons; radioactive materials; sludges; and organic solvents. 567 IAC 131.1.

11. “If it is determined by the [DNR] director that an emergency exists respecting any matter affecting or likely to affect the public health, the director may issue any order necessary to terminate the emergency without notice and without hearing. Any such order shall be binding and effective immediately and until such order is modified or vacated at a contested case hearing before the commission or by a court.” Iowa Code § 455B.388(1).

12. “A person shall not refuse entry or access to, or harass or obstruct an authorized representative of the [DNR] who seeks entry or access for the purpose of investigating or responding to a hazardous condition.” Iowa Code § 455B.394.

13. “The [DNR] director may request that the attorney general institute legal proceedings for a temporary or permanent injunction pursuant to section 455B.391 for purposes of enforcing an emergency order.” Iowa Code § 455B.388(2).

14. “The attorney general shall, at the request of the [DNR], institute any legal proceedings, including an action for an injunction or temporary injunction, necessary to obtain compliance with the provisions of [Iowa Code chapter 455B] part 4 of subchapter IV.” (Hazardous Conditions). Iowa Code § 455B.391(1) (referencing Iowa Code §§ 455B.381-455B.399).

## FACTS

15. In 2021-2022, Defendants C6-Zero Iowa LLC, C6-Zero Holdings, LLC and Howard Brand (collectively referred herein as “C6-Zero”), began operating a facility in Marengo, Iowa County, Iowa for the alleged purpose of processing used and off-spec asphalt shingles for reuse in other products.

16. C6-Zero’s operation expected to process 800 tons of asphalt shingles per day, with a storage capacity at the facility of 2,400 tons of shingles.

17. Asphalt shingles manufactured prior to a nationwide ban on the use of asbestos in 1989 are a known asbestos-containing material. Asbestos is known to cause disease and cancer in humans, and there is no known safe level of asbestos exposure. Microscopic fibers of asbestos are released into the air when asbestos-containing material is disturbed. If inhaled, asbestos fibers can become permanently lodged in lung tissue and cause lung disease and cancer such as asbestosis and mesothelioma, although symptoms may not appear for up to 20 or more years after exposure.

18. C6-Zero’s operation included the use of various flammable chemical solvents and diesel oil that are known to cause irritation, illness or death to humans when exposed.

19. Based on information and belief, other unknown hazardous substances were also stored and used at the C6-Zero facility.

20. On December 8, 2022, an explosion occurred at the C6-Zero facility, followed by a major facility fire, significantly damaging the entire facility and injuring several employees. Fifteen fire departments, two hazmat teams, the DNR and numerous other support teams responded to the incident.

21. Vast amounts of contaminated water pooled at the property and caused contaminated runoff to enter a ditch that flows into the Iowa River, a major water of the state and drinking water source for nearby municipalities, including Iowa City.

22. Runoff from the property is temporarily being held in a retention pond owned by the City of Marengo to prevent hazardous substances from reaching the Iowa River.

23. On December 14, 2022, DNR staff accessed the property 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 was missing a vast section of an exterior wall and part of its roof; the roof also contained many holes and areas significantly drooping inwards, suggesting a lack of structural integrity; inside the building were large quantities of unknown chemicals in buckets, barrels, and gas tanks, along with big piles of loose, crushed shingles, all of which were exposed to wind, rain, and changing temperatures; at least two very large chemical vats remained 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 the building. There was no security around the facility, and it appeared no precautions were taken to prevent such an event from happening again.

24. The DNR has received water sample analysis for samples taken around the facility between December 8-14, 2022. The samples were taken from areas where the normal stormwater flow would leave the property and enter nearby waters of the state, and from tanks holding recovered contaminated water from these areas. Multiple samples showed evidence of the discharge of hazardous substances resulting in contamination in excess of statewide water quality standards.

25. The substances in excess of statewide water quality standards included the following: Acenaphthene, Acenaphthylene, Anthracene, Arsenic, Barium, Benzene, Cadmium, Chromium, cis-1,2-Dichloroethene, Ethylbenzene, Fluorene, Isopropylbenzene, Lead, 2-Methylnaphthalene, Naphthalene, n-Butylbenzene, n-Propylbenzene, p-Isopropyltoluene,

Phenanthrene, Pyrene, Selenium, Silver, TEH Waste Oil, TEH Diesel, Tetrachloroethene, 1,2,4-Trimethylbenzene, 1,3,5-Trimethylbenzene, and Total Xylenes.

26. Until testing and analysis is completed, it is unknown whether or to what extent the stockpiled asphalt shingles at the facility contain asbestos that may have been released to the environment during the explosion and fire.

27. Furthermore, additional water and soil sampling is necessary to determine the nature, amount and extent of contamination caused by the explosion and fire.

28. The hazardous condition caused by the explosion and fire at the C6-Zero facility created an emergency situation threatening imminent harm to the environment and human health if not secured, contained, controlled and remediated expeditiously.

29. On December 15, 2022, DNR Director Kayla Lyon issued an emergency order to C6-Zero, effective immediately, to compel the immediate stabilization of all hazardous conditions and the removal and proper disposal of solid wastes on-site, as well as full remediation of the area, consistent with Iowa law. (Exhibit A).

30. The Emergency Order directed the following to C6-Zero:

1. 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. 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.

31. Based on information and belief, C6-Zero has not made adequate attempts to secure the facility or property. For example, the property is only partially guarded against trespassers, and the facility remains unheated with containers of chemicals exposed to freezing temperatures and the outside elements. Furthermore, a water main at the facility broke on January 2, 2023, and was only discovered by happenstance when a Marengo city employee noticed a large flow of runoff from the facility in a nearby stormwater ditch.

32. Based on information and belief, C6-Zero has not made adequate attempts to implement protective barriers or other measures to prevent stormwater from releasing into any waters of the state. In the immediate aftermath of the explosion and fire, C6-Zero implemented sand berms to contain the runoff, and containerized approximately 31,000 gallons of free-standing liquid at the site. Since December 16, 2022, no known additional efforts have been made to construct more secure berms or to remove contaminated water from the site.

33. C6-Zero did not submit an environmental Site Assessment Plan within 15 days of the DNR's Emergency Order. While C6-Zero's agent, EcoSource, LLC, did eventually submit an untimely, tentative Site Assessment Plan ("plan") proposal, the plan's schedule anticipates violating the deadlines set forth in the Emergency Order. Per Section 11 of the plan, the environmental site assessment ordered to be completed within 45 days of the Emergency Order

(January 29, 2023), will not actually commence until February 2023, and will not be completed until sometime in March of 2023.

34. Based on information and belief, C6-Zero has made no efforts to test the asphalt shingles, or other solid waste, at the site to determine if asbestos or any other hazardous chemicals are present. Furthermore, the DNR is not aware of any efforts by C6-Zero to properly dispose of shingles, remaining shingle components, and related solid waste.

35. DNR is not aware of any activities by representatives or agents of C6-Zero at the facility since December 16, 2022, directed at analyzing, securing or removing solid waste, contaminated water or contaminated soil from the facility property.

36. Due to a clear and immediate threat to the environment and public health caused by the explosion and fire at the facility, combined with the inaction and inadequate actions of C6-Zero in response to the DNR's Emergency Order, on December 15, 2022, DNR Director Kayla Lyon requested the Iowa Attorney General "take all legal action necessary to ensure compliance with the emergency order and Iowa law." (Exhibit B).

### **VIOLATIONS**

37. The various chemicals remaining on the ground, in the water and in containers at the C6-Zero facility constitute "hazardous substances" as defined in Iowa Code section 455B.381(5) and 567 IAC 131.1.

38. The actual, imminent and probable spillage, leakage and release of hazardous substances from the C6-Zero facility into the land and waters of the state constitutes a "hazardous condition" as defined in Iowa Code section 455B.381(4) and 567 IAC 131.1.

39. Defendants have violated the DNR Director's December 15, 2022 Emergency Order, and have demonstrated through inaction and inadequate actions that continued violations of the order will persist into the foreseeable future.

**REQUEST FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

40. Pursuant to Iowa R. Civ. P. 1.207, no bond is required of the State of Iowa in seeking injunctive relief. *See* Iowa R. Civ. P. 1.1508 (bond required for temporary injunction).

41. The State of Iowa has not previously presented a petition against the Defendants for the same relief, or part thereof, that was refused by any court or justice of the State of Iowa. *See* Iowa R. Civ. P. 1.1504.

42. Temporary and permanent injunctive relief is specifically authorized against Defendants by Iowa Code sections 455B.388(2) and 455B.391(1). *See* Iowa R. Civ. P. 1.1502(3) (temporary injunction allowed in any case specifically authorized by statute).

43. It is in the vital interest of public health and safety that immediate injunctive relief be entered to enforce the DNR Director's December 15, 2022 Emergency Order, to prevent further violations of Iowa environmental protection laws, to allow the DNR and its representatives to enter the C6-Zero facility property to conduct necessary monitoring, sampling and inspection, and to prevent great and irreparable injuries to the environment and public health. *See* Iowa R. Civ. P. 1.1502(1)-(2) (identifying circumstances allowing temporary injunctions).

44. The affidavit of DNR employee Kurt Levetzow is attached in support of Plaintiff's request for temporary and permanent injunctive relief and is by this reference incorporated herein. (Exhibit C).

WHEREFORE, Plaintiff State of Iowa ex rel. Iowa Department of Natural Resources requests the Court enter an immediate temporary injunction and a permanent injunction ordering the Defendants, their employees, agents, successors, assigns, and all other persons, individually and in any business or corporate capacity, acting in concert with or participating with the Defendants, who have actual or constructive notice of the Court's injunction, by personal service or otherwise, to:

- a. immediately comply with the provisions of DNR Emergency Order No. 2022-HC-02, 2022-AQ-25, 2022-SW-20, 2022-WW-32 as directed by the DNR and subject to DNR approval, and continue to fully comply with the Emergency Order until all requirements are satisfied by Defendants as determined by the DNR;
- b. immediately cease and desist from further spillage, leakage, release or other activity causing violations of Iowa air quality, solid waste or water quality laws;
- c. within ten (10) days, produce to the DNR a comprehensive list identifying any chemical substance or mixture present at the Marengo C6-Zero facility at the time of the December 8, 2022, explosion and fire, including the chemical constituents of any claimed trade secret or proprietary chemical compound, and the known or estimated concentration and quantity of the chemicals in every chemical substance or mixture;
- d. immediately allow the DNR and its representatives access to the property located at 810 E. South Street, Marengo, Iowa County, Iowa, in order to take all lawful, necessary and reasonable actions to assess, investigate or abate the hazardous condition at the property; and
- e. not refuse entry or access to, or harass, obstruct, or otherwise interfere in any way with the activities of authorized representatives of the DNR who seek entry or access to the property located at 810 E. South Street, Marengo, Iowa County, Iowa for the purpose of conducting sampling and inspection of the property and all contents on the property, and to take all corrective action necessary to protect public health, safety and the environment consistent with Iowa Code chapter 455B, division IV, part 4 and DNR administrative rules.

Plaintiff further requests such other relief the Court may deem just and proper and that the Court tax the costs of this action to the Defendants.

Respectfully submitted,

BRENNA BIRD  
Attorney General of Iowa

/s/ David S. Steward  
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ATTORNEY FOR PLAINTIFF

**IOWA DEPARTMENT OF NATURAL RESOURCES  
EMERGENCY ORDER**

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



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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.

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**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

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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.

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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.

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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

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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.

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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

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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.

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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).

## 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.

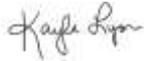
The DNR reserves the right to impose, or to ask the Attorney General to pursue, civil penalties for the violations referenced in this Emergency Order and for any other violations that have yet to be discovered. At this time, the DNR's

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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.



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Kayla Lyon, Director  
Iowa Department of Natural Resources



IOWA DEPARTMENT OF NATURAL RESOURCES

GOVERNOR KIM REYNOLDS  
LT. GOVERNOR ADAM GREGG

DIRECTOR KAYLA LYON

January 4, 2023

The Honorable Brenna Bird  
Attorney General of Iowa  
Hoover State Office Building  
VIA E-MAIL

RE: C6-Zero LLC  
Emergency Order No. 2022-HC-02, 2022-AQ-25, 2022-SW-20, 2022-WW-32

General Bird:

The Department of Natural Resources (DNR) issued the above-referenced emergency order on December 15, 2022 to C6-Zero LLC, C6-Zero Holdings LLC, and Mr. Howard Brand. It required, among other things, the submission of an environmental site assessment plan by Friday, December 30, 2022. The plan was not received by the deadline. A plan was submitted on January 3, 2023, but it does not comply with the requirements of the emergency order. Additionally, there is evidence that C6-Zero is not complying with other provisions of the emergency order, such as its obligation to secure the premises and to remove shingles and other solid waste on site.

As such, on behalf of the DNR and consistent with Iowa Code section 455B.391, I am referring this matter to the Attorney General's Office to take all legal action necessary to ensure compliance with the emergency order and Iowa law.

Regards,

A handwritten signature in black ink that reads "Kayla Lyon". The signature is written in a cursive, flowing style.

Digitally signed by Kayla Lyon  
Date: 2023.01.04 16:31:12  
-06'00'

Kayla Lyon | Director

**EXHIBIT**

**B**

IN THE IOWA DISTRICT COURT FOR IOWA COUNTY

STATE OF IOWA ex rel. IOWA )  
 DEPARTMENT OF NATURAL )  
 RESOURCES, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 C6-ZERO IOWA LLC, C6-ZERO )  
 HOLDINGS, LLC and )  
 HOWARD BRAND, )  
 )  
 Defendants. )

NO. EQCV024854

**AFFIDAVIT OF KURT LEVETZOW**

STATE OF IOWA )  
 )  
 COUNTY OF WASHINGTON ) ss:

I, Kurt Levetzow, being first duly sworn, do hereby depose and state as follows:

1. I am the supervisor of the Iowa Department of Natural Resources' ("DNR") Field Office 6 located in Washington, Iowa.

2. In connection with my duties as the DNR Field Office 6 Supervisor, I have access to and am familiar with the files maintained at the DNR regarding the explosion, fire and subsequent activities concerning the C6-Zero facility located at 810 E. South Street, Marengo, Iowa County, Iowa (the "property"). I have also personally visited the C6-Zero facility before and after the explosion and fire and can attest at to the conditions at the property based on personal knowledge.

3. To my personal knowledge, and according to records maintained by the DNR, at the time of the explosion and fire at the C6-Zero facility on December 8, 2022, large quantities of asphalt shingles and hazardous substances, including solvents, diesel oil and other unknown chemicals were located at the facility.

4. To my personal knowledge, and according to records maintained by the DNR, hazardous substances were released during the explosion and fire to the land, air and surface water on and near the property.

5. Water samples taken at and near the C6-Zero facility after the explosion and fire demonstrated concentrations of several pollutants above acceptable statewide standards.

6. To my personal knowledge, and according to records maintained by the DNR, runoff containing a mixture of water and various chemicals pooled on the ground and entered into a ditch that flows into the Iowa River, a major water of the state and drinking water source for nearby municipalities, including Iowa City.

7. I am personally aware of the requirements contained in DNR Emergency Order 2022-HC-02, 2022-AQ-25, 2022-SW-20, 2022-WW-32 issued on December 15, 2022, to C6-Zero Iowa LLC, C6-Zero Holdings, LLC and Howard Brand (collectively referred to herein as C6-Zero).

8. To my personal knowledge, and according to records maintained by the DNR, I am aware C6-Zero does not continually guard the property against trespassers, the facility remains unheated with containers of chemicals exposed to freezing temperatures and the outside elements, and a water main at the facility broke on January 2, 2023, and a large flow of runoff from the facility was discovered in a nearby stormwater ditch by a Marengo city employee.

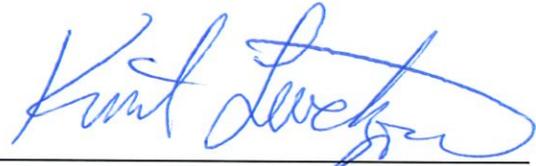
9. To my personal knowledge, and according to records maintained by the DNR, I am aware that prior to the DNR Emergency Order C6-Zero implemented sand berms to contain runoff from the property and containerized approximately 31,000 gallons of free-standing liquid at the site. Since December 16, 2022, I am not aware, and DNR records do not reflect, that any additional efforts have been made by C6-Zero to construct more secure berms or to remove contaminated water from the site.

10. To my personal knowledge, and according to records maintained by the DNR, I am aware C6-Zero did not submit an environmental Site Assessment Plan within 15 days of the Emergency Order. DNR records show the plan does not comply with the requirements of the Emergency Order.

11. DNR records reflect that C6-Zero has made no efforts to test the asphalt shingles, or other solid waste, at the site to determine if asbestos or any other hazardous chemicals are present. Furthermore, the DNR is not aware of any efforts by C6-Zero to properly dispose of shingles, remaining shingle components, and related solid waste.

12. DNR is not aware of any activities by representatives or agents of C6-Zero at the facility since December 16, 2022, directed at analyzing, securing or removing solid waste, contaminated water or contaminated soil from the facility property.

13. To my personal knowledge, and according to records maintained by the DNR, C6-Zero is in violation of the DNR Emergency Order.

  
KURT LEVETZOW

Subscribed and sworn to before me on this 10 day of January, 2023.

  
Notary Public in and for the State of Iowa

