

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

EMERGE ENERGY SERVICES LP, *et al.*,  
  
Debtors.<sup>1</sup>

SUPERIOR SILICA SANDS LLC, a Texas  
limited liability company,

Plaintiff,

vs.

IRON MOUNTAIN TRAP ROCK  
COMPANY, a Missouri corporation, and  
FRED WEBER, INC., a Delaware corporation.

Defendants.

Chapter 11

Case No. 19-11563 (KBO)

Jointly Administered

Adv. Proc. No. 20-51052 (TMH)

**REORGANIZED DEBTOR SUPERIOR SILICA SANDS LLC'S RESPONSIVE  
STATEMENT OF UNCONTROVERTED FACTS IN OPPOSITION TO DEFENDANTS'  
CROSS-MOTION FOR SUMMARY JUDGMENT**

**BAKER & HOSTETTLER LLP**

Jeffrey J. Lyons (#6437)  
1201 North Market Street, Suite 1407  
Wilmington, DE 19801-1147  
(302) 468-7088  
jjlyons@bakerlaw.com

David J. Richardson [*pro hac vice*]  
11601 Wilshire Boulevard, Suite 1400  
Los Angeles, CA 90025  
(310) 442-8858  
drichardson@bakerlaw.com

Jorian L. Rose [*pro hac vice*]  
45 Rockefeller Plaza  
New York, NY 10111  
(212) 589-4681  
jrose@bakerlaw.com

Dated: September 14, 2023  
Wilmington, Delaware

*Attorneys for Superior Silica Sands LLC*

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors' address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.



Plaintiff and reorganized debtor Superior Silica Sands LLC (“Superior”), by and through its undersigned counsel, files this Responsive Statement of Uncontroverted Facts in support of its Opposition to the Cross-Motion for Summary Judgment filed by Defendants Iron Mountain Trap Rock Co. and Fred Weber, Inc. (“Weber”) (collectively, “Defendants”). The Opposition is based upon uncontroverted facts already in evidence, and the following uncontroverted facts:

| NO.                                     | UNCONTROVERTED FACT   | PLAINTIFF’S EVIDENCE   | DEFENDANTS’ EVIDENCE  |
|---|---|--|---|
| <b>The Wet Sand Services Agreement:</b> |   |  |   |
| 163.                                    | Section 1.3(a) of the Wet Sand Services Agreement dated as of April 7, 2011, between Superior and Weber (the “ <u>Services Agreement</u> ”), provided that the Contractor may remove equipment installed by the Contractor “upon a termination of this Agreement pursuant to <u>Section 11.2</u> hereof.”   | <u>Exhibit A</u> to Declaration of Scott Waughtal [Dkt Nos. 63-64], at § 1.3(a). | <u>Exhibit 4</u> to Declaration of Robert Golterman, at § 1.3(a). |
| 164.                                    | Section 5.1(b) of the Services Agreement, entitled “ <u>Good Working Order</u> ,” provides that:<br><br>Contractor shall maintain the Plant and Equipment in a condition such that it is capable of operation to produce Product Sand and shall promptly inform SSS of any inability to operate in accordance with such contracted operating characteristics. | <u>Exhibit A</u> to Declaration of Scott Waughtal [Dkt Nos. 63-64], at § 5.1(b). | <u>Exhibit 4</u> to Declaration of Robert Golterman, at § 5.1(b). |
| 165.                                    | Section 5.3(a) of the Services Agreement obligated the Contractor “throughout the Operational Period, [to] maintain the Stock Pile Area and manage all Product Sand thereon.”   | <u>Exhibit A</u> to Declaration of Scott Waughtal [Dkt Nos. 63-64], at § 5.3(a). | <u>Exhibit 4</u> to Declaration of Robert Golterman, at § 5.3(a). |
| 166.                                    | Section 6.1 of the Services Agreement provides that:<br><br>In consideration for the stripping, drilling, shooting, mining, washing, and on-site loading of Product Sand, and as consideration for all of Contractor’s  | <u>Exhibit A</u> to Declaration of Scott Waughtal [Dkt Nos. 63-64], at § 6.1.    | <u>Exhibit 4</u> to Declaration of Robert Golterman, at § 6.1.    |

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|---|--|--|---|
|   | obligations under this Agreement, SSS shall pay Contractor an amount per ton of Product Sand as determined in accordance with <u>Exhibit E</u> .   |  |   |
| 167.  | Section 8.2 of the Services Agreement obligated the Contractor to “have available adequate personnel with the requisite skills and adequate equipment to perform its obligations under this Agreement ...”   | <u>Exhibit A</u> to Declaration of Scott Waughtal [Dkt Nos. 63-64], at § 8.2.  | <u>Exhibit 4</u> to Declaration of Robert Golterman, at § 8.2.  |
| 168.  | <p>Section 11.3 of the Services Agreement provides:</p> <p>Upon the occurrence of any default by SSS or Contractor as described in <u>Section 11.1</u> or <u>Section 11.2</u>, the non-defaulting Party, in addition to all other rights and remedies available to it at law or in equity, or otherwise under this Agreement, shall have the right to terminate this Agreement upon five (5) days written notice to the defaulting Party. Any such termination will be without prejudice to the rights and claims that the non-defaulting Party may have by reason of default by the defaulting Party.</p> | <u>Exhibit A</u> to Declaration of Scott Waughtal [Dkt Nos. 63-64], at § 11.3. | <u>Exhibit 4</u> to Declaration of Robert Golterman, at § 11.3. |
| <b>Defendants’ Historical “Final Reclamation”</b> |  |  |   |
| 169.  | <p>The 2017 Nonmetallic Mining Reclamation Permit Annual Report submitted by Superior to Chippewa County, dated January 29, 2018, states in Section 8.2, in relevant part, that:</p> <p>Current mine disturbance is 193.9 acres. There are 29.3 acres reclaimed and the 2018 proposed reclamation will consist of ongoing reclamation of 14.5 acres. These areas are shown under Appendix D.</p> <p>2017 reclamation activities consisted of reconstructing Jerry Glaser’s driveway along the pre-mining alignment and top soiling and seeding approximately 12</p>  | Omnibus Declaration of Scott Waughtal filed herewith, <u>Exhibit QQ</u> .      |   |

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|  | acres of mine property North of this new driveway. Additionally, one of the Northeast storm water ponds was removed and water was diverted to other containment ponds.  |   |   |
| 170.                                       | <p>The 2018 Nonmetallic Mining Reclamation Permit Annual Report submitted by Superior to Chippewa County, dated January 31, 2019, states in Section 8.2, in relevant part, that:</p> <p>Current mine disturbance is 193.9 acres. There are 33.6 acres partially reclaimed and the 2019 proposed reclamation will consist of final shaping, topsoil and seeding of 34.6 acres that was started in 2018. Closure of the North mud ponds that consist of 14.2 acres will also be completed in 2019. These areas are shown under Appendix D.</p> <p>2018 reclamation activities consisted of regrading, top soiling and seeding 9 acres. This area is directly south of Jerry Glazer's driveway and extending along the Western portion of the property. Additionally, rough grading was started on approximately 34.6 acres in 2018. These areas are shown in Exhibit D.</p> | Omnibus Declaration of Scott Waughtal filed herewith, <u>Exhibit RR</u> .   |   |
| <b>The Debtors' Plan of Reorganization</b> |   |   |   |
| 171.                                       | Article VII.B of the confirmed chapter 11 plan of Superior and its co-debtors, entitled "No Postpetition Interest on Claims," provides that "postpetition interest shall not accrue or be paid on any Claims and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim."   | <u>Exhibit 59</u> to Declaration of Robert Golterman, p. 42, Article VII.B. | <u>Exhibit 59</u> to Declaration of Robert Golterman, p. 42, Article VII.B. |

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|--|---|---|---|
| <b>Defendants' Repudiation of Obligations Under the Services Agreement</b> |   |   |   |
| 172.   | On July 12, 2019, Weber gave Superior written notice (the " <u>Higginbotham Notice</u> ") that:<br><br>[Weber] will be removing the last of our equipment from our Chippewa Sand site due to inactivity of contract discussions regarding this site and the proposed Oklahoma Best operation."  | <u>Exhibit 53</u> to Declaration of Robert Golterman.                           | <u>Exhibit 53</u> to Declaration of Robert Golterman. |
| 173.   | Weber further stated in the Higginbotham Notice that it would be removing from the quarry site:<br><br>all office materials and electronics; all hand tools, welders and equipment repair tools in shop; all diesel pumps and accessories used for site dewatering and pumping; shipping container with equipment spare parts; pit slurry system and feeder; miscellaneous remaining FWI equipment. | <u>Exhibit 53</u> to Declaration of Robert Golterman.                           | <u>Exhibit 53</u> to Declaration of Robert Golterman. |
| 174.   | Weber further stated in the Higginbotham Notice that:<br><br>Once all [Weber] equipment is removed from the site, [Weber] will no longer have any personnel onsite or maintain any responsibilities for management of the site until contract negotiations can be finalized.  | <u>Exhibit 53</u> to Declaration of Robert Golterman.                           | <u>Exhibit 53</u> to Declaration of Robert Golterman. |
| 175.   | After Superior had filed its chapter 11 petition, Defendants were observed at the quarry site removing equipment.   | Omnibus Declaration of Scott Waughtal filed herewith, <u>Exhibit UU</u> .       |   |
| <b>The Draft Oklahoma Agreements</b>                                       |   |   |   |
| 176.   | On January 16, 2019, Paul Robinson emailed to Superior a draft Wet Sand Services Agreement (the " <u>Oklahoma Draft Agreement</u> ") for a proposed Oklahoma quarry in which Section 5.1's reclamation language was changed from the existing   | Omnibus Declaration of Scott Waughtal filed herewith, <u>Exhibit SS</u> , at p. |   |

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|      | Services Agreement to provide that the Contractor would only have responsibility for extremely limited “contemporaneous reclamation activities consisting only of backfilling pits with waste mud from the Wash Plant,” while Superior would be responsible for “all reclamation required in connection with the final close of the Quarry Site, and Contractor shall have no responsibility therefor.”  | 6, § 5.1(d) (SSS003112).  |                      |
| 177. | On February 15, 2019, Superior emailed a responsive version and redline of the Oklahoma Draft Agreement to Mr. Robinson, in which Superior restored the Contractor’s liability in Section 5.1 to provide that the “Contractor will conduct contemporaneous reclamation activities in accordance with all laws and permits and Mine Plan and final reclamation and closure of the Quarry Site in accordance with all laws and permits shall be Contractor’s obligation and responsibility.” | Omnibus Declaration of Scott Waughtal filed herewith, <u>Exhibit TT</u> , at § 5.1(d), SSS314209. |                      |
| 178. | Superior’s revised Oklahoma Draft Agreement attaches a proposed Termination Agreement, which – although it uses the term “remediation” for reclamation – provides that Defendants would “remain fully obligated under” the Services Agreement for “all remediation” including “final remediation of open areas as of January 1, 2019.”   | Omnibus Declaration of Scott Waughtal filed herewith, <u>Exhibit TT</u> , at § 5.1(d), SSS314234. |                      |

Dated: September 14, 2023

BAKER & HOSTETLER LLP

/s/ Jeffrey J. Lyons

Jeffrey J. Lyons (#6437)  
1201 North Market Street, Suite 1407  
Wilmington, DE 19801-1147  
(302) 468-7088  
jjlyons@bakerlaw.com

David J. Richardson [*pro hac vice*]  
11601 Wilshire Boulevard, Suite 1400  
Los Angeles, CA 90025  
(310) 442-8858  
drichardson@bakerlaw.com

Jorian L. Rose [*pro hac vice*]  
45 Rockefeller Plaza  
New York, NY 10111  
(212) 589-4681  
jrose@bakerlaw.com

*Attorneys for Superior Silica Sands LLC*