

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In Re:)	Chapter 11
)	
EMERGE ENERGY SERVICES LP, et al.,)	Case No. 19-11563 (KBO)
)	
)	Jointly Administered
Debtors.)	
_____)	
)	
SUPERIOR SILICA SANDS LLC, a Texas)	Adv. Proc. No. 20-51052-TMH
limited liability company,)	
)	
Plaintiff,)	
)	
vs.)	
)	
IRON MOUNTAIN TRAP ROCK COMPANY,)	Re: Adv. D.I. 89
a Missouri corporation, and FRED WEBER, INC.,)	
a Delaware corporation.)	
)	
Defendants.)	
_____)	

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

COME NOW Defendants Iron Mountain Trap Rock Company ("IMTR") and Fred Weber, Inc. ("FWI") (together, "Defendants"), by and through their undersigned counsel and pursuant to Fed. R. Civ. P. 56(c), submit their Response to Plaintiff Superior Silica Sands LLC's ("Superior") Responsive Statement of Uncontroverted Facts in Opposition to Defendants' Cross-Motion for Summary Judgment:

The Wet Sand Services Agreement

163. Section 1.3(a) of the Wet Sand Services Agreement dated as of April 7, 2011, between Superior and Weber (the "Services Agreement"), provided that the Contractor may remove equipment installed by the Contractor "upon a termination of this Agreement pursuant to Section 11.2 hereof." Exhibit A to Declaration of Scott Waughtal [Dkt Nos. 63–64], at § 1.3(a).



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RESPONSE: Disputed in part. Undisputed that Section 1.3(a) of the WSSA states in full:

The Parties acknowledge and agree that during the Term of this Agreement, the Plant and Equipment and all other materials, temporary buildings and other items placed or installed upon the Quarry Site by the Contractor (i) are, and will at all times remain, the property of Contractor, and, (ii) upon a termination of this Agreement pursuant to Section 11.2 hereof, may be removed from the Quarry Site by Contractor within one hundred twenty (120) days after the termination date (the “Demobilization Period”), subject to SSS’s right to acquire the Handover Assets under Section 1.4(a).

Disputed to the extent that Superior’s Statement of Fact suggests that Defendants could remove its own equipment *only* after termination of the WSSA due to a default by Defendants (as described in the referenced Section 11.2). Indeed, as Section 1.3(a) provides, throughout the Term of the WSSA such equipment remained “the property of [Defendants]” and could be disposed of or removed accordingly. (Superior’s SUMF Ex. A (WSSA) § 1.3(a).) Further, Section 1.4(g) provides for the removal of equipment and again reiterates that “Non-Permanent Contractor Equipment, shall remain the property of . . . Contractor [Defendants].” (*Id.* § 1.4(g).)

164. Section 5.1(b) of the Services Agreement, entitled “Good Working Order,” provides that:

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.

Exhibit A to Declaration of Scott Waughtal [Dkt Nos. 63–64], at § 5.1(b).

RESPONSE: Undisputed, but immaterial.

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.” Exhibit A to Declaration of Scott Waughtal [Dkt Nos. 63–64], at § 5.3(a).

RESPONSE: Undisputed that Section 5.3(a) of the WSSA states in full:

Contractor shall, commencing thirty (30) days after the start of the Operational Period and throughout the Operational Period, maintain the Stock Pile Area and manage all Product Sand thereon. Contractor shall maintain the Product Sand in the Stock Pile Area in a condition consistent with the Product Sand requirements set forth in Exhibit C.

166. Section 6.1 of the Services Agreement provides that:

In consideration for the stripping, drilling, shooting, mining, washing, and on-site loading of Product Sand, and as consideration for all of Contractor's obligations under this Agreement, SSS shall pay Contractor an amount per ton of Product Sand as determined in accordance with Exhibit E.

Exhibit A to Declaration of Scott Waughtal [Dkt Nos. 63–64], at § 6.1.

RESPONSE: Undisputed.

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 ...” Exhibit A to Declaration of Scott Waughtal [Dkt Nos. 63–64], at § 8.2.

RESPONSE: Disputed in part, as Superior omitted that any obligation to “have available adequate personnel” was modified by the phrase “Except to the extent which the Agreement provides otherwise” (Superior’s SUMF Ex. A (WSSA) § 8.2.) Among other things, the WSSA further describes Defendants’ obligation to provide “adequate personnel” as tied to the personnel “necessary to produce Product Sand as required under this Agreement.” (*Id.* § 1.1(b).) As such, when Superior did not require the production of *any* Product Sand, like it did in 2019 when it represented to both Chippewa County and Defendants that there would be no mining for Calendar Year 2019 (Exhibit 88, SSS136786–94, at SSS136793; Superior’s SUMF Ex. RR at 5), Defendants’ personnel requirement was modified accordingly.

168. Section 11.3 of the Services Agreement provides:

Upon the occurrence of any default by SSS or Contractor as described in Section 11.1 or Section 11.2, 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.

Exhibit A to Declaration of Scott Waughtal [Dkt Nos. 63–64], at § 11.3.

RESPONSE: Undisputed that this is an accurate recital of the full text of Section 11.3(a) of the WSSA, but immaterial.

Defendants’ Historical “Final Reclamation”

169. 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:

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.

2017 reclamation activities consisted of reconstructing Jerry Glaser's driveway along the pre-mining alignment and top soiling and seeding approximately 12 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.

Omnibus Declaration of Scott Waughtal filed herewith, Exhibit QQ.

RESPONSE: Undisputed, but immaterial.

170. 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:

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.

2018 reclamation activities consisted of regrading, top soiling and seeding 9 acres. This area is directly south of Jerry Glaser'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.

Omnibus Declaration of Scott Waughtal filed herewith, Exhibit RR.

RESPONSE: Undisputed, but immaterial.

The Debtors' Plan of Reorganization

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." Exhibit 59 to Declaration of Robert Golterman, p. 42, Article VII.B.

RESPONSE: Undisputed, but immaterial as there are no claims for postpetition interest.

172. On July 12, 2019, Weber gave Superior written notice (the "Higginbotham Notice") that:

[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.

Exhibit 53 to Declaration of Robert Golterman.

RESPONSE: Disputed in part. Undisputed that on July 12, 2019, FWI notified Superior that it planned to remove its equipment from the Quarry. Disputed that such notification constituted “notice” that Defendants were repudiating the WSSA or that the removal otherwise constituted a breach of the WSSA given that such notification came more than seven months *after* Superior materially breached the WSSA by failing to pay the \$1,204,506.80 invoice for work FWI performed in 2018, which amount Superior never disputed but, in fact, explicitly agreed to pay in full “in the near future.” (Exhibit 44 to SAMF, SSS015246–49; Exhibit 46 to SAMF, FWI_IMTR_00107290–91.) When FWI provided Superior with notice of its intent to remove its equipment from the Quarry on July 12, 2019, Superior *still had not paid the October 2018 invoice* or otherwise provided assurances that it was financially solvent and planned to make the payment in the near future, even though Defendants had made repeated requests for payment. (Exhibit 46 to SAMF, FWI_IMTR_00107290–91; Exhibit 89, FWI_IMTR_00061894.) Further answering, when FWI provided Superior with notice of its intent to remove its equipment from the Quarry on July 12, 2019, more than seven months had passed since Superior sent Defendants a proposal for “*Discontinuance of Mining Services Agreement, Auburn Mine, Bloomer WI*” which was aimed at getting Superior “out of a difficult, high cost problem in WI.” (Exhibit 90, SSS133859–61; Exhibit 91, SSS003024–25.) Further, disputed that Defendants, in the cited correspondence or contemporaneous oral conversations between the parties, ever stated that they were not willing and able to perform under the WSSA if Superior cured its prior material breach of non-payment. (See Exhibit 53 to SAMF, SSS002981; Exhibit 92, SSS168402.)

173. Weber further stated in the Higginbotham Notice that it would be removing from the quarry site:

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.

Exhibit 53 to Declaration of Robert Golterman.

RESPONSE: Disputed in part. Undisputed that on July 12, 2019, FWI notified Superior that it planned to remove its equipment from the Quarry. Disputed that such notification constituted “notice” that Defendants were repudiating the WSSA or that the removal otherwise constituted a breach of the WSSA given that such notification came more than seven months *after* Superior materially breached the WSSA by failing to pay the \$1,204,506.80 invoice for work FWI performed in 2018, which amount Superior never disputed but, in fact, explicitly agreed to pay in full “in

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174. Weber further stated in the Higginbotham Notice that:

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.

Exhibit 53 to Declaration of Robert Golterman.

RESPONSE: Disputed in part. Undisputed that on July 12, 2019, FWI notified Superior that it would not maintain personnel on site at the Quarry or take responsibility for managing the Quarry. Disputed that such notification constituted “notice” that Defendants were repudiating the WSSA or that the removal otherwise constituted a breach of the WSSA given that such notification came more than seven months *after* Superior materially breached the WSSA by failing to pay the \$1,204,506.80 invoice for work FWI performed in 2018, which amount Superior never disputed but, in fact, explicitly agreed to pay in full “in the near future.” (Exhibit 44 to SAMF, SSS015246–49; Exhibit 46 to SAMF, FWI_IMTR_00107290–91.) When FWI provided Superior with notice of its intent to remove its equipment from the Quarry on July 12, 2019, Superior *still had not paid the October 2018 invoice* or otherwise provided assurances that it was financially solvent and planned to make the payment in the near future, even though Defendants had made repeated requests for payment. (Exhibit 46 to SAMF, FWI_IMTR_00107290–91; Exhibit 89, FWI_IMTR_00061894.) Further answering, when FWI provided Superior with notice of its intent to remove its equipment from the Quarry on July 12, 2019, more than seven months had passed since Superior sent Defendants a proposal for “*Discontinuance of Mining Services Agreement, Auburn Mine, Bloomer WI*” which was aimed at getting Superior “out of a difficult, high cost problem in WI.” (Exhibit 90, SSS133859–61; Exhibit 91, SSS003024–25.) Further, disputed that Defendants, in the cited correspondence or contemporaneous oral conversations between the parties, ever stated that they were not willing and able to perform under the WSSA if Superior

cured its prior material breach of non-payment. (See Exhibit 52 to SAMF, SSS145268–69; Exhibit 53 to SAMF, SSS002981; Exhibit 92, SSS168402.)

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, Exhibit UU.

RESPONSE: Undisputed that, consistent with its prior notice, Defendants removed *FWI-owned* equipment from the Quarry, in accordance with the terms of the WSSA. (Superior’s SUMF Ex. A (WSSA) §§ 1.3(a), 1.4(g).)

The Draft Oklahoma Agreements

176. On January 16, 2019, Paul Robinson emailed to Superior a draft Wet Sand Services Agreement (the “Oklahoma Draft Agreement”) for a proposed Oklahoma quarry in which Section 5.1’s reclamation language was changed from the existing 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.” Omnibus Declaration of Scott Waughtal, filed herewith, Exhibit SS, at p. 6, § 5.1(d) (SSS03112).

RESPONSE: Disputed in part, but immaterial as the Oklahoma Draft Agreement is not at issue in this litigation. Undisputed that Section 5.1(d) of the Oklahoma Draft Agreement proposed by FWI stated in full: “Contractor will conduct contemporaneous reclamation activities consisting only of backfilling pits with waste mud from the Wash Plant. SSS shall be responsible for all reclamation required in connection with the final closure of the Quarry Site, and Contractor shall have no responsibility therefor.” Disputed that the proposed language “was changed from the existing Services Agreement” as the parties were negotiating a separate deal, not an amendment to the WSSA, and Superior’s Director of Operations expressly stated that he “looked over” the January 16, 2019 draft Mr. Robinson circulated and “nothing stands out that we haven’t already agreed to and discussed.” (Exhibit 93, SSS133828–29, at SSS133828.)

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, Exhibit TT, at § 5.1(d), SSS314209.

RESPONSE: Disputed in part, but immaterial as the Oklahoma Draft Agreement is not at issue in this litigation. Undisputed that Superior’s proposed version of the Oklahoma Draft Agreement would have Section 5.1(d) state in full: “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." Disputed that such proposed language somehow "restored" FWI's liability for final reclamation as this language was not contained in either the prior version of the Oklahoma Draft Agreement or the WSSA. (Superior's SUMF Ex. SS § 5.1(d); Superior's SUMF Ex. A (WSSA) § 5.1(e).)

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, Exhibit TT, at § 5.1(d), SSS314234.

RESPONSE: Disputed, but immaterial as the Oklahoma Draft Agreement is not at issue in this litigation. Superior materially misstates the content of the draft Termination Agreement. Even under Superior's proposed Termination Agreement, Superior only proposed that Defendants would perform reclamation in the "open areas as of January 1, 2019, approximately as shown on the site plan attached hereto as Exhibit A." (Superior's SUMF Ex. TT at SSS314280.) Exhibit A shows the "open areas as of January 1, 2019" outlined in orange (*id.*, at SSS314283), consistent with the "Exhibit D" Superior sent to Chippewa County. (Exhibit 49 to SAMF, SSS078577–87.) In other words, even under Superior's proposal, Defendants were not responsible for "all" final reclamation at the Quarry. (Superior's SUMF Ex. TT at SSS314280, SSS314283.)

Dated: September 21, 2023

/s/ Scott J. Leonhardt

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Company and Fred Weber, Inc.*

Message

From: Sharon Masek [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A349DA2271B34B999E90F37E8B33B3E0-SHARON MASE]
Sent: 1/14/2019 1:41:46 PM
To: Klein, Lina J. (ljklein@fredweberinc.com) [ljklein@fredweberinc.com]
Subject: report with notes
Attachments: 20190114135023680.pdf

Sharon J. Masek PG, PH | Manager of Mine Planning & Industrial Relations | Superior Silica Sands | 1512 East Division Avenue | Barron, WI 54812 | o. 715.575.3302 | c. 715.651.5972 | f. 715.357.4401 | smasek@sssand.com | www.sssand.com

Exhibit

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exhibitster.com

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Nonmetallic Mining Reclamation Permit Annual Report Calendar Year 2017

Superior Silica Sands, Glaser Mine

Permit Number: 2011-02

Due by January 30, 2018 to LCFM

Table of Contents

1.0	Introduction.....	1
2.0	Operator Certification Statement	1
3.0	Site Information.....	1
4.0	Extent of Current Mine Development.....	1
5.0	Groundwater Monitoring Wells	2
5.1	Groundwater Elevation Map	2
5.2	Groundwater Pumping Volumes	2
5.3	Prevention of Groundwater Contamination	2
5.4	Groundwater Sampling	3
6.0	Storm Water	3
6.1	Allowed Water Discharges and SWPPP.....	3
6.2	Storm Water Discharge Monitoring	4
6.3	Storm Water Facility Inspections	4
6.4	Storm Water Management Activities for 2017	5
7.0	Mining Materials	5
7.1	Materials Brought to Mine for Reclamation	5
7.2	Reject Material and Belt Press Material Test Results	5
7.3	Soil Stockpiles.....	5
8.0	Mine Development & Reclamation for 2018	5
8.1	Mine Development.....	5
8.2	Mine Reclamation	5
8.3	Vegetative Management Plan.....	6
8.4	Nutrient Management Plans	6

Appendix A Current Mine Development

Appendix B Material Sampling Results

Appendix C Soil Stockpile Map

Appendix D Reclaimed Areas Map

1.0 Introduction

This report serves as the Nonmetallic Mining Reclamation Permit Annual Report for the reporting year 2018 for the Superior Silica Sands Glaser Mine nonmetallic mining site located in Chippewa County, Wisconsin. The site operates in accordance with the most recent amendment to Permit No. 2011-02 issued on October 5, 2017 under the Chippewa County Nonmetallic Mining Reclamation Ordinance and Wisconsin Administrative Code NR135, Chippewa County. This report has been prepared in accordance with the Wisconsin Administrative Code NR 135.35.

2.0 Operator Certification Statement

I certify that this information is true and accurate, and that the nonmetallic mining site described herein complies with all conditions of the applicable nonmetallic mining permit and Chapter NR 135, Wisconsin Administrative Code.

Sharon J. Masek, P.G., P.H., Manager of Mine Planning and Industrial Relations,
Printed Name of Operator

Signature of Operator

Date

3.0 Site Information

Operator Name: Superior Silica Sands

Operator Mailing Address:

P.O. Box 103 1512 East Division Ave.
New Auburn, WI 54757 Barron, WI 54812

Site Location:

Glaser (Auburn) Mine
19952 County Hwy DD, Town of Auburn, WI 54724
NE ¼ of NE ¼ of S33, T31N, R10W

Permit Number:

2011-02, issued 10/5/2017

4.0 Extent of Current Mine Development

Site boundaries for the Glaser Mine are found in Appendix A. The drawing depicts the active mine boundary in 2018 and the allowed proposed boundary for 2019, in addition to the total permit boundary.

5.0 Groundwater Monitoring Wells

5.1 Groundwater Elevation Map

A groundwater flow map was prepared using April-2017 measurements (Elevations from MW 1 and MW 6 were not used). Groundwater flow direction is to the south-southwest, *as it has been.* The map is included in Appendix A. Please note, topsoil and subsoil piles shown on GW Flow map are future, proposed piles.

There have been questions regarding the groundwater elevations in wells MW 1 and MW 6 since the site was established. It was thought that the casing elevations were measured incorrectly or that the well numbers had been mixed up. Monitoring well top of casings (TOCs) were surveyed by Chippewa County LCFM during the summer 2017; new TOCs did not resolve unusual differences in elevation between MW 1 and MW 6 and the rest of the wells. The elevation readings appear to have been consistent over time. We assume these two wells are in perched water.

An evaluation of the value of data collected from those two wells *was* should be conducted to *and it was* determine if it is worth continuing to use them as part of the monitoring network for water quality purposes only. If not, it may be best to abandon both and install one well in the area between. *There are The remaining wells (2, 3, 4, 5, 7)* are sufficient to provide *adequate groundwater elevation data for the site* Groundwater elevations were recorded at each of the groundwater monitoring wells throughout the year. The table below summarizes those readings.

Date	MW-1	MW-2	MW-3	MW-4	MW-5	MW-6	MW-7
1/20/17	1093.65	1064.72	1065.59	1066.51	1067.79	1087.64	1059.54
4/7/17	1093.77	1063.99	1064.84	1065.91	1067.69	1088.45	1059.17
7/7/17	1093.29	1066.56	1066.86	1066.78	1068.25	1093.45	1061.27
10/11/17	1093.72	1065.89	1066.20	1065.91	1066.87	1096.44	1062.18

5.2 Groundwater Pumping Volumes

Groundwater pumping volumes have been tracked monthly. Recorded meter readings have been submitted to the LCFM following each monitoring event. In 2018, approximately 56.5 million gallons were pumped from the high-capacity well.

5.3 Prevention of Groundwater Contamination

Historically, infiltration to groundwater of water contained within ponds has been minimal or nonexistent at this site. Even newly constructed ponds excavated down to sandstone have shown very low infiltration rates. Given the lack of infiltration at the site, storm water ponds are sized to allow adequate settlement of fines and facilitate evaporation.

Since 2015, Superior Silica Sands has partnered with the United States Geological Survey (USGS) and the Wisconsin Geological & Natural History Survey (WGNHS) to conduct infiltration surveys at the mine site. Data obtained from these surveys can be used to better

understand post-reclamation site characteristics and improve upon reclamation specifications, to maintain high quality groundwater throughout the state.

The site also continues to utilize low concentration acrylamide polymers to remove dirt and other material from the sand during processing, to facilitate settling of the solids out of the mud afterwards and to reduce the groundwater load.

The plant utilized the following Hychem flocculants in 2017:

- CP737 Cationic – This liquid coagulant was used to handle the ultra-fine solids in the water entering the thickener tank. Approximately 2,000 gallons was used during the first part of 2017.
- CP738 Cationic – This liquid coagulant replaced the CP737 polymer during 2017 and is the polymer currently being used. 2017 usage was approximately 35,931 gallons.
- AF304 – This dry polymer is used in the belt press to dewater the mud and in the thickener tank to settle out large solids. Approximately 143,550 pounds was used during 2017.

Still same?

5.4 Groundwater Sampling

Groundwater monitoring continues to document that the lined ponds are effectively preventing the infiltration of acrylamide polymer-containing water to the water table. Semi-annual sampling occurred during 2017; results were submitted to the LCFM after each monitoring event. To date, acrylamide has not been detected.

Superior Silica Sands also conducted annual groundwater quality testing as required by the Town of Auburn. Results show chloride levels that exceed Wisconsin Administrative Code Chapter NR 140 Preventive Action Levels (PAL) and nitrate concentrations that exceed NR 140 Enforcement Standards (ES). Elevated chloride concentrations are typical in areas of ground disturbance and elevated nitrate concentrations tend to be present in wells located in areas of heavy agricultural use. One PAL exceedance of arsenic in MW-5 occurred during 2017, just above the PAL. Superior Silica Sands will continue to monitor for this constituent.

Results of the groundwater sampling are included in Appendix B.

are shown on the groundwater table
No other analyzed parameters were present at concentrations exceeding the PALs.

6.0 Storm Water

6.1 Allowed Water Discharges and SWPPP

Superior Silica Sands maintains a Non-Metallic Mining Operations for Industrial Sand Mining and Processing general water discharge permit (WPDES permit) from the Wisconsin Department of Natural Resources (WDNR). While the latest iteration of the WPDES permit was issued in August 2016, the mine site remained categorized as a no-discharge facility under the county land reclamation permit until the latter half of 2017. Therefore, until that time, the facility did not discharge storm water; discharge monitoring did not regularly take place.

With the most recent amendment of the LCFM-approved land reclamation permit, the mine site is now authorized to discharge storm water, contaminated storm water and wastewater in accordance with the WPDES permit and the Storm Water Pollution Prevention Plan (SWPPP) that has been developed for this mine. Discharge water is analyzed prior to its release as required in the WPDES permit and detailed in the SWPPP. Monitoring and reporting of all discharges is in accordance with the permit and the SWPPP.

As the SWPPP was developed in 2017 as a collaborative process between the WDNR, the LCFM, Superior Silica Sands and the operator, Fred Weber, Inc., during the land reclamation permit amendment process, there are no changes to the SWPPP to report during 2017. At this time, no changes to the SWPPP are expected for 2018.

6.2 Storm Water Discharge Monitoring

During 2017, storm water contained in the mine bottom and storm water ponds was discharged by field application to a field within the mine boundary (Chippewa County permit condition 5. j.). Records of the rate and volume of discharge are enclosed in Appendix B.

In accordance with Chippewa County permit conditions (9. v.), an annual sample of storm water and wastewater was taken and tested. A sample of Pond P1 (stormwater and process water combined) was obtained and analyzed. Results of the analysis are included in Appendix B.

An additional pond sample was collected in July and analyzed for additional parameters at the request of

In addition to the agricultural field discharge, the operator conducted a trial to assess the feasibility of discharging of water within other areas of the mine permit boundary to manage stored contaminated storm water. The LCFM was notified and rate of discharge and volume of discharge records were maintained. Monitoring of the discharge revealed that this method of restoring capacity of the storm water ponds was not sustainable. No further discharges of this type are planned moving forward. Records are found in Appendix B.

*for
McManama
WDNR*

Daily rain gauge data is collected as part of UWRF reclamation study and monitoring station.

6.3 Storm Water Facility Inspections

During 2017, site personnel conducted daily facility inspections. More formal inspections of the storm water ponds were conducted monthly and following rain events of one inch or more to determine if pond dewatering or sediment removal was needed. Additionally, an Annual Facility Site Compliance Inspections (AFSCI) was conducted on November 14, 2017 at which time no items of concern were noted. Records of all inspections are maintained on site.

6.4 Storm Water Management Activities for 2018

During 2017, a new storm water pond was built to the south of existing pit to capture storm water runoff as mining operations continue south. Also, the ponds along the western side of the property were expanded to handle additional capacity from runoff associated with the installation of Mr. Glaser's driveway. The final dirt work to establish this drainage is expected to be completed in spring of 2018.

7.0 Mining Materials

*20,432 dumped product
25,920 reject from plant*

7.1 Materials Brought to Mine for Reclamation

During 2018, 5,726 tons of coarse-fines were brought back to the mine from the Superior Silica Sands dry plant. All of the returned material was mixed in with overburden stripping material placed in the pit to be used for reclamation and backfill. ?

7.2 Reject Material and Belt Press Material Test Results

Samples of mud press material and reject material from the dry plant were collected and submitted for analysis to meet the once per year sampling/testing requirement. Results of this sampling are found in Appendix B.

7.3 Soil Stockpiles

The site maintains stockpiles of topsoil, subsoil, overburden and reject material on-site. As previously discussed, fines from the Superior Silica Sands dry plant are also returned to the site and disposed of with the overburden. Appendix C contains drawings depicting locations of these piles and estimated volumes.

8.0 Mine Development & Reclamation for 2018

8.1 Mine Development

Mine activities during 2018 are anticipated to occur in the area noted on the site map in Appendix A as "Active Mine Boundary 2018".

*No mining is planned for 2019 at the Anburn mine.
Reclamation ~~areas~~ will be completed for the areas
shown on the site map in App —*

8.2 Mine Reclamation

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.

2017 reclamation activities consisted of reconstructing Jerry Glaser's driveway along the pre-mining alignment and top soiling and seeding approximately 12 acres of mine property North

*2018-
re-
area S. of Jerry
driveway*

of this new driveway. Additionally, one of the Northeast storm water ponds was removed and water was diverted to other containment ponds.

UWRF research continued during 2017. *and ~~research~~ discussions are underway to extend the research period an additional 5 years.* A machine operator accidentally destroyed a part of the research area in the spring so the research area size was decreased and sample points were reduced and rearranged. The study has been ongoing since 2014 and includes background test plots. Sampling results are starting to show some preliminary conclusions. Prairie mixture is growing well and plant surveys indicate good diversity. Post mining reclamation areas have soil quality that is very similar to that of agricultural land. Continued research will evaluate potential amendments or practices to improve post mining soils.

An agronomist was contracted to sample soils on the area reclaimed in 2017. The results of the lab analysis are attached in Appendix B. A complete final report has not yet been received. *X*

Reclamation area inspections consist of the storm water management system inspections, as described in Section 6.3 of this report, along with constant vigilance within reclamation areas to assess where erosion has occurred that may require re-grading, reseeding, or other remedial measures. At the end of 2017, straw bales were placed on identified areas of erosion within the newly reclaimed area.

8.3 Vegetative Management Plan

has Superior Silica Sands will coordinate with the landowners and LCFM to develop a vegetative management plan for reclaimed areas.

8.4 Nutrient Management Plans

Nutrient management plans have been developed by Larry Boese and Paul Scheidecker. In the future, a plan may be needed for Denny Culver's farmed land. As activities requiring nutrient management plans are identified, the plans will be developed and submitted to the LCFM.

To: b miles@sssand.com[b miles@sssand.com]
From: Robinson, Paul E.
Sent: 2019-03-01T22:21:20Z
Importance: Normal
Subject: FW: Superior - Chippewa AR Balance
Received: 2019-03-01T22:21:20Z

Hi Bryan, we last spoke on February 19, 2019, you then thought you would be in a position on March 1 to start paying the \$1.2M from last October.

Please let me know where you are with this payment.

Paul Robinson
Vice President of Operations
Fred Weber, Inc.
2320 Creve Coeur Mill Road
Maryland Heights, MO 63043

Office: 314-473-3649
Cell: 314-575-3874
Email: perobinson@fredweberinc.com



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From: Ferguson, Irene <kiferguson@fredweberinc.com>
Sent: Friday, March 1, 2019 3:36 PM
To: Robinson, Paul E. <perobinson@fredweberinc.com>
Subject: Superior - Chippewa AR Balance

Hi Paul:

I am looking at contract services open AR and was wondering if I could get an update on the Superior Chippewa 1.2 million open AR balance.

Thank you,
Irene Ferguson
Fred Weber Inc.
314-344-0070

Exhibit

89

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Message

From: Sharon Masek [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A349DA2271B34B999E90F37E8B33B3E0-SHARON MASE]
Sent: 12/5/2018 2:06:08 PM
To: Higginbotham, Justin S. [jshigginbotham@fredweberinc.com]; perobinson@fredweberinc.com
CC: Brian Mittlestadt [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Oda15182cc0a4c5999ff26577b738384-Brian Mittl]; Rick Shearer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ff97c0456d504f0cb265649d0f438011-Rick Sheare]
Subject: Auburn OK Best
Attachments: 20181205110501763.pdf

Our proposal is attached. Please review and let us know if you'd like to discuss.

Sharon J. Masek PG, PH | Manager of Mine Planning & Industrial Relations | Superior Silica Sands | 1512 East Division Avenue | Barron, WI 54812 | o. 715.575.3302 | c. 715.651.5972 | f. 715.357.4401 | smasek@sssand.com |
<https://na01.safelinks.protection.outlook.com/?url=www.sssand.com&data=02%7C01%7CBrian%40sssand.com%7C5692cbe5020d40db6c2908d65aed18d1%7Cfd990a7f8a9b4c6ba06f46e0e210dc8a%7C0%7C0%7C636796372446648443&sdata=G5Kt5pQv7oAbgjpaEEzinUWZlIdy77az07coQx56fKc%3D&reserved=0>

Exhibit

90

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PROPOSAL

Discontinuance of Mining Services Agreement, Auburn Mine, Bloomer WI
Development of Mining Services Agreement for OK Best Mine, Dover OK

Auburn Mine:

Move the primary closer to the active mine face
Reclaim area north of the primary, as shown on attached map (ponds included)
Replace missing/short topsoil and subsoil materials or provide payment in lieu
FWI will remove vehicles and equipment that is mobile and moveable
Wet plant, belt press, office trailer and other fixed items will remain on the mine site
Existing stockpile belongs to SSS

OK Best Mine:

SSS to provide complete wet plant
FWI to be responsible for all mining and wet plant operations
FWI to provide labor, parts, and supplies for necessary repairs and maintenance
FWI to supply mining equipment
FWI to supply flocculants, fuel, and electricity for mining and the wet plant
Planned production minimum is 2.5 million tons over contract term
Proposed per ton fee to FWI of \$6.50
Contract term is for five years of operation
FWI will provide cost estimate for mobilization and site work for wet plant
Mobe/site work costs to be included in per ton payment





Message

From: Rick Shearer [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FF97C0456D504F0CB265649D0F438011-RICK SHEARE]
Sent: 12/18/2018 9:39:19 PM
To: Brian Mittlestadt [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Oda15182cc0a4c5999ff26577b738384-Brian Mittl]; Michael Maloy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0e3de159f4504c0291e403373a65eb75-Michael Mal]; tgiordanitx@gmail.com; Bryan Miles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7296820ca40f4f2ebce7a49dc7342031-Bryan Miles]; Nate Nicklas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ae45f84c33ff402b92c7ca7a42cf9c4d-Nate Nickla]
CC: Sharon Masek [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a349da2271b34b999e90f37e8b33b3e0-Sharon Mase]; Paige Decker [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c5440328eb4642c887d5614d3b9001de-Paige Decke]; Ken Neu [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2438ab5eee184dd48de79f7f28c2f25f-Ken Neu]; Nicholas White [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3cd6565c1b314b358a9708fbecdebec8-Nicholas Wh]; Paul Shearer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ea05d1b16f1f4aec8ed46e327301e5b4-Paul Sheare]
Subject: FW: Weber WI/OK Best Summary2
Attachments: Weber Best Summary2.docx; image001.jpg; image002.jpg; image003.gif; image004.gif

All:
FYI, the attached term sheet summarizes our "mine swap" with Fred Weber. After remediating the Auburn Mine in WI this contractor will not return to this site. As agreed in this deal, Fred Weber will then begin the contract mining work at our OK Best mine. We should realize about a \$4.0MM/year savings from this negotiation. A good result which gets us out of a difficult, high cost problem in WI.

Sincerely,

Rick Shearer | President & CEO | Superior Silica Sands | 5600 Clearfork Main Street; Suite 400 | Ft. Worth, TX 76109 | O. 817.841.8072 C.304.671.7700 | rick@sssand.com | www.sssand.com



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From: Sharon Masek <smasek@sssand.com>
Date: Tuesday, December 18, 2018 at 10:28 AM
To: Richard J Shearer <rick@sssand.com>
Subject: Weber Best Summary2

Exhibit

91

Did I get it all? Is agreement being terminated and then we develop a new one for OK?

Sharon J. Masek PG, PH | Manager of Mine Planning & Industrial Relations | Superior Silica Sands | 1512 East Division Avenue | Barron, WI 54812 | o. 715.575.3302 | c. 715.651.5972 | f. 715.357.4401 | smasek@sssand.com | www.sssand.com



Message

Sent: 5/13/2019 4:11:58 PM
To: Rick Shearer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ff97c0456d504f0cb265649d0f438011-Rick Sheare];
bmittlestadt@sssand.com
CC: Bryan Miles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7296820ca40f4f2ebce7a49dc7342031-Bryan Miles]
Subject: Auburn

I just got a call from Justin at Weber. They are going to start moving their equipment off the site because they can use it elsewhere and it's not making any money. He stated very clearly that they fully intend to do what they said they would as far as the reclamation but not until there is a signed agreement in place.

Sharon J. Masek PG, PH | Manager of Mine Planning & Industrial Relations | Superior Silica Sands | 1512 East Division Avenue | Barron, WI 54812 | o. 715.575.3302 | c. 715.651.5972 | f. 715.357.4401 | smasek@sssand.com | www.sssand.com



Exhibit

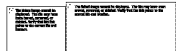
92

Message

From: Brian Mittlestadt [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0DA15182CC0A4C5999FF26577B738384-BRIAN MITTL]
Sent: 1/18/2019 3:50:58 PM
To: Rick Shearer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ff97c0456d504f0cb265649d0f438011-Rick Sheare]
CC: Sharon Masek [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a349da2271b34b999e90f37e8b33b3e0-Sharon Mase]; Bryan Miles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7296820ca40f4f2ebce7a49dc7342031-Bryan Miles]; Tom Giordani [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d41ab274514b48f0be848380e3751799-Tom Giordan]; Nate Nicklas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ae45f84c33ff402b92c7ca7a42cf9c4d-Nate Nickla]
Subject: Re: FWI - SSS OK Best Mine - Agreement

I have looked over the contract and nothing stands out that we haven't already agreed to and discussed.

Brian Mittlestadt | Director of Operations | Superior Silica Sands | 1512 East Division Ave | Barron, WI 54812 | o. 715.575.3451 | c. 715.505.7474 | brian@sssand.com | www.sssand.com



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On Jan 17, 2019, at 8:18 AM, Rick Shearer <Rick@sssand.com> wrote:

All:

Please see the draft contract regarding our "mine swap" program with Weber. Please give Nate any comments. Thanks.

Sincerely,

Rick Shearer | President & CEO | Superior Silica Sands | 5600 Clearfork Main Street, Suite 400 | Ft. Worth, TX 76109 | O. 817.841.8072 | c. 304.671.7700 | f. 888.446.5677 | rick@sssand.com | www.sssand.com

<image002.png>

<image003.gif> <image004.gif> <image005.gif>

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From: Robinson, Paul E. <perobinson@fredweberinc.com>
Sent: Wednesday, January 16, 2019 6:32 PM
To: Rick Shearer <Rick@sssand.com>; Nate Nicklas <nnicklas@sssand.com>
Cc: Higginbotham, Justin S. <jshigginbotham@fredweberinc.com>; Robinson, Paul E. <perobinson@fredweberinc.com>
Subject: FWI - SSS OK Best Mine - Agreement

Rick,

Please find the initial FWI-SSS – Wet Sand Services Agreement for the Best Mine in Oklahoma. I was delayed in sending this agreement trying to complete the “Termination Agreement”. We have a few items to complete however we will get this sent in the next couple of days.

Sincerely,

Paul Robinson
Vice President of Operations
Fred Weber, Inc.
2320 Creve Coeur Mill Road
Maryland Heights, MO 63043

Office: 314-473-3649
Cell: 314-575-3874
Email: perobinson@fredweberinc.com

<image001.jpg>
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<SLDOCS01-#2308307-v7-FWI__IMTRC__SSS__OK__Wet_Sand_Services_Contract.DOC>