

SANDRA KURT

2021 IN THE SUPERIOR COURT OF THE STATE OF DELAWARE



EMERALD TRANSFORMER WESTERN STATES LLC, Plaintiff,) C.A. No. N20C-06-084 MMJ CCLD MS 2021-00-0056
v.)
CLEAN HARBORS, INC. AND CLEAN HARBORS DISPOSAL SERVICES, INC.) SUBPOENA DUCES TECUM AND AD TESTIFICANDUM (pursuant to the Uniform Interstate Deposition and Discovery Act and Ohio Rev. Code § 2319.09) Originating State: Delaware Originating Court: Superior Court Originating Case No:
Defendants.) C.A. No. N20C-06-084 MMJ CCLD

**SUBPOENA DUCES TECUM DIRECTED
TO SUMMIT ENVIRONMENTAL TECHNOLOGIES, INC.**

TO: Summit Environmental Technologies, Inc.
c/o Mohammed Osman
3310 Win Street
Cuyahoga Falls, OH 44223

This subpoena is issued pursuant to Superior Court Civil Rules 26, 34 and 45, and will be separately issued pursuant to Ohio's Uniform Interstate Depositions and Discovery Act. *See R.C. § 2319.09.* Superior Court Rules 45(c) and (d), attached hereto, set forth your protections and duties with respect to this subpoena.

YOU ARE HEREBY COMMANDED to respond in writing to this subpoena and to produce and permit inspection and copying of the books, documents, electronically-stored information, or tangible things in your possession,

custody or control identified in Schedule A hereto at the offices of Abrams & Bayliss LLP, 20 Montchanin Road, Suite 200, Wilmington, Delaware 19807, within thirty (30) days from service hereof, or at such other location or date as may be agreed upon by the parties or ordered by the Court.

/s/ Eric A. Veres

OF COUNSEL:

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*Attorneys for Plaintiff Emerald
Transformer Western States LLC*

Dated: August 23, 2021

SUPERIOR COURT RULE 45. SUBPOENA

(c) Protection of persons subject to subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the Court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the Court shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iii) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the Court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the Court may order appearance or production only upon specified conditions.

(d) Duties in responding to subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) Contempt.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of court.



SCHEDULE A

I. INSTRUCTIONS

(a) Summit Environmental Technologies, Inc. ("Summit") shall serve a written response to the Requests, within thirty (30) days after the service of this Subpoena for Production of Documents (hereinafter, individually, a "Request" and, collectively, the "Requests").

(b) Summit is requested to produce the documents and tangible things identified within thirty (30) days after service of the Subpoena to Emerald Transformer Western States LLC's counsel of record at the above identified addresses or at whatever other time and place is mutually agreeable to the parties.

(c) For purposes of interpreting or construing the scope of these Requests, the terms used shall be defined in their most expansive and inclusive interpretation, unless specifically limited in the Request, including: "and" and "or" shall be both conjunctive and disjunctive; the words "all" and "any" shall mean "any and all"; the singular shall include the plural and the plural the singular; and the masculine form of any noun or pronoun shall include the feminine and the neuter form and the feminine or neuter form shall include the masculine form.

(d) Summit is required to produce all documents in its possession, custody, or control.

(e) Except as otherwise indicated, Summit may attach copies of the requested documents to the written response.

(f) If a document is no longer in Summit's possession, custody, or control, state its disposition, including, the identity of the person(s) to whom the document was forwarded including that person's last known address. If a document has been destroyed, state the date and manner of destruction, by whom and who authorized the destruction.

(g) Documents shall be produced as they are kept in the regular course of business or organized to correspond to the categories in these Requests.

(h) This is a continuing request and if responsive documents are discovered after document production herein, such documents shall be produced.

(i) The titles to any sub-headings within the section on requested documents are included for purposes of the convenience of counsel and are not intended to and do not otherwise limit the temporal scope of any specific requests.

INSTRUCTIONS CONCERNING ELECTRONICALLY STORED INFORMATION (ESI)

1. The Requests also seek production of any data or information that exists in electronic or magnetic form, including any original and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations or highlighting of any kind), mechanical, facsimile, electronic, magnetic, digital or other programs

(whether private, commercial or work-in-progress), programming notes or instructions, activity listings of electronic mail receipts or transmittals, output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail or “e-mail,” Microsoft Word documents and Excel spreadsheets, instant messages, text messages, operating systems, source code of all types, programming languages, linkers and compilers, peripheral drives, PDF files, PRF files, JPEG files, batch files, ASCII files, crosswalks, code keys, pull-down tables, logs, file layouts or any miscellaneous files or file fragments, regardless of the media on which they reside and regardless of whether said electronic data consists of an active file, backup file, deleted file or file fragment (hereinafter “ESI”). ESI shall also include, without limitation, any items stored on computer memory or memories, hard drives, zip drives, CD-ROM discs, data servers, or in any other vehicle for electronic or digital data storage or transmittal, files, folder tabs or containers and labels appended to or associated with any physical storage device associated with each original and each copy.

2. ESI shall be produced in the following format: single-page, black and white, TIFF Group IV, 300 DPI TIFF images with the exception of spreadsheet type files, source code, audio and video files, which should be produced in native format. TIFFs should show any and all text and images which would be visible to

the reader using the native software that created the document. For example, TIFFs of e-mail messages should include the BCC line. PowerPoint documents shall be produced in native format as well as processed with hidden slides and all speaker notes unhidden and shall be processed to show both the slide and the speaker's notes on the TIFF image. If an original document contains color, such documents may initially be produced as black and white TIFF images as set forth above, however, Insight Defendants reserve the right to request such documents be produced as single-page, 300 DPI JPG images with JPG compression and a high-quality setting as to not degrade the original image. Parties are under no obligation to enhance an image beyond how it was kept in the usual course of business.

3. If a document is produced in native, a single-page Bates stamped image slip sheet stating the document has been produced in native format should also be provided. Each native file should be named according to the Bates number it has been assigned and should be linked directly to its corresponding record in the load file using the NATIVELINK field. To the extent that either requesting party or producing party believes that specific documents or classes of documents, not already identified within this protocol, should be produced in native format, the parties should meet and confer in good faith.

4. De-Duplication: Each producing party shall remove exact duplicate documents based on MD5 or SHA-1 hash values, at the family level. Attachments should not be eliminated as duplicates for purposes of production, unless the parent e-mail and all attachments are also duplicates. An e-mail that includes content in the BCC or other blind copy field shall not be treated as a duplicate of an e-mail that does not include content in those fields, even if all remaining content in the e-mail is identical. Removal of near-duplicate documents and e-mail thread suppression is not acceptable. De-duplication should be done across the entire collection (global de-duplication) and the CUSTODIAN field should list each custodian, separated by a semi-colon, who was a source of that document. Should the CUSTODIAN metadata field produced become outdated due to rolling productions, an overlay file providing all the custodians for the affected documents should be produced prior to substantial completion of the document production.

5. Technology Assisted Review: Predictive coding/technology-assisted-review shall not be used for the purpose of culling the documents to be reviewed or produced without notifying the requesting party prior to use and with ample time to meet and confer in good faith regarding a mutually agreeable protocol for the use of such technologies.

6. Metadata: All ESI shall be produced with a delimited, database load file that contains the metadata fields listed in Table 1, attached hereto. The metadata produced should have the correct encoding to enable preservation of the documents' original language.

7. Embedded Objects: The parties should meet and confer over the inclusion or exclusion of embedded files from the production.

8. Compressed Files Types: Compressed file types (i.e., .ZIP, .RAR, .CAB, .Z) should be decompressed so that the lowest level document or file is extracted.

9. Structured Data: To the extent a response to discovery requires production of electronic information stored in a database, the parties should discuss methods of production best providing all relevant information, including, but not limited to, duplication of databases or limited access for the purpose of generating reports. Parties shall consider whether all relevant information may be provided by querying the database for discoverable information and generating a report in a reasonably usable and exportable electronic file. A document reference sheet shall be provided to describe the purpose of the database and meaning of all tables and column headers produced.

10. Exception Report: The producing party shall compile an exception report enumerating any unprocessed or unprocessable documents, their file type and the file location.

11. Encryption: To maximize the security of information in transit, any media on which documents are produced may be encrypted. In such cases, the producing party shall transmit the encryption key or password to the receiving party, under separate cover, contemporaneously with sending the encrypted media.

12. Redactions: If documents that the parties have agreed to produce in native format need to be redacted, the parties should meet and confer regarding how to implement redactions while ensuring that proper formatting and usability are maintained.

II. DEFINITIONS

1. “Action” means the above-captioned action.
2. “You,” “Your,” or “Summit” means Summit Environmental Technologies, Inc., and its past and present employees, general and limited partners, affiliates, parents, subsidiaries, agents, attorneys, representatives, and other persons acting on its behalf.
3. The terms “all” or “each” or “any and all” mean every item known to You and every such item which can be located or discovered by reasonably

diligent efforts within Your possession, custody or control or the possession, custody or control of Your attorneys, bailees, representatives, or others acting on Your behalf or in Your interest.

4. “Communication” means any Document containing or reflecting the video, oral or written transmittal and/or receipt of facts, information, thoughts, inquiries, or opinions. A document request for “Communications” shall therefore include a request for records of meetings, records of conversations in person, records of telephone conversations, records of conversations or messages, telegrams, facsimile transmissions, electronic mail transmissions, chat communications, telephonic text messages, WhatsApp messages, messages posted on or delivered via websites or social media outlets (including to blogs, chatrooms, Facebook or Twitter), letters, reports, memoranda, formal statements and press releases and newspaper stories. References to Communications with business entities shall be deemed to include communications with all officers, directors, employees, personnel, agents, attorneys, accountants, consultants, independent contractors, or other representatives of such entities.

5. The terms “concerning,” “relating to,” “referring to,” “arising out of,” and their cognates are to be understood in their broadest sense and each means concerning, constituting, identifying, evidencing, summarizing, commenting upon, referring to, relating to, arising out of, describing, digesting, reporting,

listing, analyzing, studying, discussing, stating, setting forth, reflecting, interpreting, concerning, recording, including, negating, manifesting, containing or comprising the subject matter identified.

6. “Plaintiff” means Emerald Transformer Western States, LLC, and its past and present employees, general and limited partners, affiliates, parents, subsidiaries, agents, attorneys, representatives, and other persons acting on its behalf.

7. “Defendants” means Defendants Clean Harbors, Inc. and Clean Harbors Disposal Services, Inc., their past and present employees, general and limited partners, affiliates, parents, subsidiaries, agents, attorneys, representatives, and other persons acting on its behalf.

8. “Document” is used in the broadest sense under the Superior Court Rules of Civil Procedure, and shall mean and include, without limitation, the original (or an identical duplicate if the original is not available), and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of writings of every kind and description that are fixed in any form of physical media, including records thereof. Physical media include, but are not limited to, paper media, phonographic media, photographic film media (including pictures, films slides and microfilm), magnetic media (including hard

disks, floppy disks, and magnetic tapes of any kind), computer memory, optical media, compact discs, digital video disks, magneto-optical media, and other physical media on which notations or marking of any kind can be affixed. Documents include, by way of example only, any memorandum, request envelope, correspondence, electronic mail, report, note, Post-It, message, telephone message, telephone log, diary, journal, appointment calendar, calendar, group scheduler calendar, drawing, painting, accounting paper, minutes, working paper, financial report, accounting report, work papers, drafts, facsimile, facsimile transmission, report, contract, invoice, record of purchase or sale, software (whether in disk form or any other form or manner in which software programs are embodied, including source code or object code), Teletype message, chart, graph, index, directory, computer directory, computer disk, computer tape, or any other written, printed, typed, punched, taped, filmed, computer disk, computer tape, or any other written, printed, typed, punched, taped, filmed, or graphic matter however produced or reproduced. Documents also include the file, folder tabs, and labels appended to or containing any Documents. A draft or non-identical copy is a separate Document within the meaning of this term.

9. “Draft(s)” shall mean any formulation, outline, sketch, conceptualization, or version of a Document created prior to the final version of that document.

10. The terms “include,” “includes” and “including” shall be construed as broadly as possible and mean “include(s) without limitation” or “including but not limited to,” as appropriate in context.

11. The “Facility” means the property located at 4105 Whitaker Avenue, Philadelphia, Pennsylvania 19124 that Plaintiff acquired from Defendants pursuant to a Membership Interest Purchase Agreement, including the adjacent areas outside the Facility’s fence line.

12. “Report(s)” shall mean any laboratory report, prepared by You for any Defendant, Clean Harbors PPM, LLC, and/or any of their affiliates regarding the Facility and/or any samples taken from such areas including, but not limited to, sample summary results, report narratives, analysis requests, and/or chain of custody logs.

13. “PCB” means polychlorinated biphenyl.

14. The term “Release” means any release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment, surface water, groundwater, land, or subsurface strata.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1 All reports and materials, prepared, collected or received by You regarding any of the following subject matters:

- a) Report(s);
- b) the Facility;
- c) the environmental conditions at the Facility;
- d) environmental testing, sampling, monitoring, cleanup and/or remediation at the Facility;
- e) the Release or presence at any time of any PCBs, oils, petroleum products, hydrocarbons or hazardous substances at the Facility;
- f) investigation, assessment, remediation and/or cleanup activities performed by Defendants at the Facility;

REQUEST FOR PRODUCTION NO. 2 All Documents prepared or reviewed by You regarding any of the following subject matters:

- a) Report(s);
- b) the Facility;
- c) the environmental conditions at the Facility;
- d) environmental testing, sampling, monitoring, cleanup and/or remediation at the Facility;
- e) the Release or presence at any time of any PCBs, oils, petroleum products, hydrocarbons or hazardous substances at the Facility;
- f) investigation, assessment, remediation and/or cleanup activities performed by Defendants at the Facility;

REQUEST FOR PRODUCTION NO. 3 All Communications between or among Defendants, or any of their affiliates, on the one hand, and You, on the other hand, relating to any of the following subject matters:

- a) Report(s);
- b) the Facility;
- c) the environmental conditions at the Facility;
- d) environmental testing, sampling, monitoring, cleanup and/or remediation at the Facility;

- e) the Release or presence at any time of any PCBs, oils, petroleum products, hydrocarbons or hazardous substances at the Facility;
- f) investigation, assessment, remediation and/or cleanup activities performed by Defendants at the Facility;

REQUEST FOR PRODUCTION NO. 4 Documents evidencing all internal Communications regarding any of the following subject matters:

- a) Report(s);
- b) the Facility;
- c) the environmental conditions at the Facility;
- d) environmental testing, sampling, monitoring, cleanup and/or remediation at the Facility;
- e) the Release or presence at any time of any PCBs, oils, petroleum products, hydrocarbons or hazardous substances at the Facility;
- f) investigation, assessment, remediation and/or cleanup activities performed by Defendants at the Facility;

REQUEST FOR PRODUCTION NO. 5 All Communications between or among any federal, state or local governmental agency, including the Environmental Protection Agency, or any their affiliates, on the one hand, and You, on the other hand, relating to any of the following subject matters:

- a) Report(s);
- b) the Facility;
- c) the environmental conditions at the Facility;
- d) environmental testing, sampling, monitoring, cleanup and/or remediation at the Facility;
- e) the Release or presence at any time of any PCBs, oils, petroleum products, hydrocarbons or hazardous substances at the Facility;
- f) investigation, assessment, remediation and/or cleanup activities performed by Defendants at the Facility;

TABLE 1
ESI METADATA FIELDS

BegBates	Beginning Bates Number
EndBates	Ending Bates Number
BegAttach	Beginning Bates number of the first document in an attachment range
EndAttach	Ending Bates number of the last document in attachment range
Custodian	Name of the Custodian of the File(s) Produced – Last Name, First Name format
FileName	Filename of the original digital file name
NativeLink	Path and filename to produced Native file
EmailSubject	Subject line extracted from an email message
Title	Title field extracted from the metadata of a non-email document
Author	Author field extracted from the metadata of a non-email document
From	From field extracted from an email message
To	To or Recipient field extracted from an email message
Cc	CC or Carbon Copy field extracted from an email message
BCC	BCC or Blind Carbon Copy field extracted from an email message
DateRcvd	Received date of an email message (mm/dd/yyyy format)
DateSent	Sent date of an email message (mm/dd/yyyy format)
DateCreated	Date that a file was created (mm/dd/yyyy format)
DateModified	Modification date(s) of a non-email document
Fingerprint	MD5 or SHA-1 has value generated by creating a binary stream of the file
ProdVolume	Identifies production media deliverable
ExtractedText	File path to Extracted Text/OCR File
Redacted	“Yes,” for redacted documents; otherwise, blank