



October 29, 2021

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Sugar Camp Energy LLC
211 N. Broadway
Suite 2600
St. Louis, MO 63102

American Consolidated Natural Resources,
Inc.
46226 National Rd.
St. Clairsville, OH 43950

Illinois Corporation Service
Illinois Registered Agent, Sugar Camp
Energy, LLC
801 Adlai Stevenson Drive
Springfield, IL 62703

Corporation Trust Company
Registered Agent, American Consolidated
Natural Resources, Inc.
Corporation Trust Center
1209 Orange St.
Wilmington, DE 19801

Corporation Service Company
Registered Agent, Sugar Camp Energy, LLC
251 Little Falls Drive
Wilmington, DE 19808

Re: Notice of Intent to File a Citizen Suit Under the Clean Water Act and the Surface Mining Control and Reclamation Act, or in the alternative, under the Resource Conservation and Recovery Act

Dear Sugar Camp Energy and American Consolidated Natural Resources Officials:

The Sierra Club and Prairie Rivers Network (collectively, hereinafter, the “Complainants”), in accordance with section 505 of the Clean Water Act (“CWA”), 33 U.S.C. § 1365, and 40 C.F.R. Part 135, hereby give notice of the violations more particularly described below. If these violations are not permanently terminated and the environmental damage caused by the violations is not remedied within 60 days, the Complainants may commence civil action against Sugar Camp seeking abatement of the violations, penalties, mitigation of damages caused by the violations, attorneys fees and costs, pursuant to section 505 of the Act.

The Complainants further notify Sugar Camp, in accordance with section 520 of the Surface Mining Control and Reclamation Act (“SMCRA”), 30 U.S.C. § 1270 and 30 C.F.R. § 700.13,

that Sugar Camp Energy is in ongoing and continuing violation of certain federal and state regulations promulgated under SMCRA as described in more detail below. If, within sixty days, Sugar Camp Energy does not bring itself into full compliance with SMCRA, the regulations promulgated under SMCRA and its Illinois Department of Natural Resources permit, the Complainants may commence civil action against you seeking an injunction compelling Sugar Camp Energy to come into compliance with the applicable statutes, regulations, and permits.

In the alternative, the Complainants notify Sugar Camp, in accordance with section 7002(a)(1)(B) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972(a)(1)(B) and 40 C.F.R. § 254, that Sugar Camp Energy is causing an imminent and substantial endangerment to health and the environment as described in more detail below. If, within ninety days, Sugar Camp Energy does not itself act to remedy fully the imminent hazard it has caused to the environment and the health of individuals living and recreating nearby, the Complainants may commence civil action against the company in accordance with 42 U.S.C. § 6972(a)(1) seeking all available injunctive relief, future costs, damages and attorneys’ fees for Sugar Camp Energy’s creation of an imminent and substantial endangerment in violation of RCRA.

Background

Sugar Camp Energy owns and operates the Sugar Camp Energy mining complex located at 11351 Thompsonville Road in Macedonia, Franklin County, Illinois (the “Mine”). The company conducts underground mining operations at the Mine utilizing the longwall method. The Mine is operated subject to a mining permit issued by the Illinois Department of Natural Resources on August 21, 2008, permit number 382. Mining operations discharge pollutants to the Middle Fork of the Big Muddy River, Akin Creek, Sugar Camp Creek and unnamed tributaries of these waterways. These discharges are limited by an NPDES permit issued by the Illinois Environmental Protection Agency on May 24, 2016, permit number IL0078565. Sugar Camp’s NPDES permit only authorizes the discharge of pollutants from designated outfalls, and subject to effluent limitations and other requirements designed to protect water quality.

As shown by documents obtained by Complainants through the Illinois Freedom of Information act, in an attempt to extinguish a fire that had been smoldering at the Mine, Sugar Camp Energy pumped more than 46,000 gallons of firefighting foam into the Mine beginning in mid-August. In order to disperse the foam into the Mine, the Company drilled six wells into the Mine. Foam was mixed in two earthen pits, and pumped into two of the six wells. The foam injection site and earthen mixing pits are located on a 20-acre tract of land approximately 3/8 mile north of Akin on Summer Road (Location 6 on the map below). The Company also stored foam concentrate at its Mine Service Hoist site located at the northeast corner of the intersection of Akin and Thompson Roads (Location 4 on the map below).

On September 1 and 2, 2021, citizens and Akin Water District officials documented foam floating on the surface of an unnamed tributary of Akin Creek and in nearby farm field ditches.

Foam was also observed to be spread on nearby farm fields. Officials from IEPA conducted an investigation of the incident, collecting several water samples from the locations where foam had been observed. Samples were collected from Locations 1, 2, 3 and 5 as depicted on the map below in Figure 1.

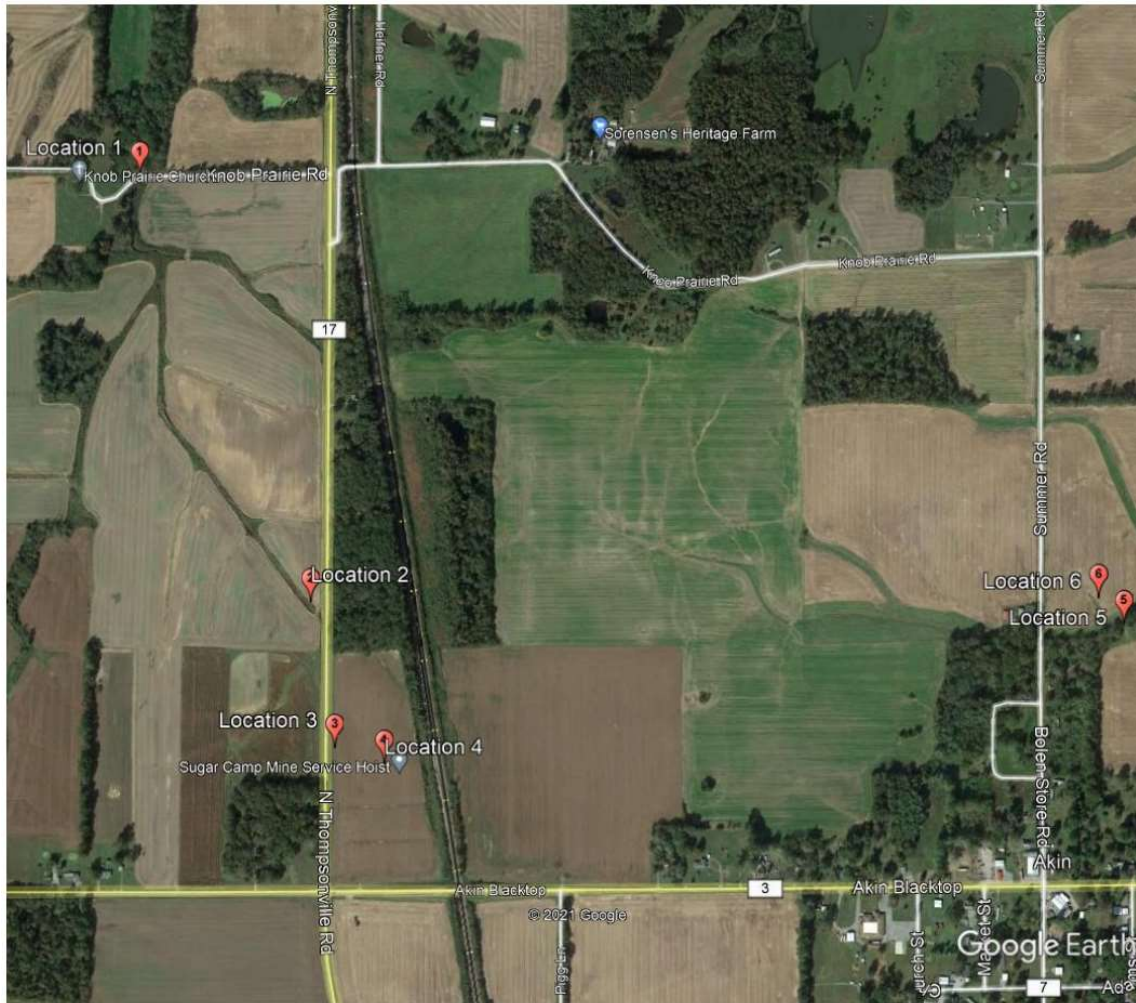


Figure 1 - Map of Sugar Camp PFAS Sampling Locations

Although representatives of Sugar Camp Energy asserted to IEPA that the foam used by the company is “biodegradable, will not harm fish or wildlife, and will not destroy or retard new forest growth”, most of the products Sugar Camp used to fight the fire are toxic and have not been shown to be actually biodegradable, as noted in the MSDS files for the products themselves. In fact, two foam products used contain highly persistent per- and polyfluoroalkyl substances (collectively, “PFAS” chemicals). Samples collected by IEPA from nearby surface water locations were found to contain PFAS in concentrations higher than EPA health advisory levels, Illinois drinking water health advisory levels and Illinois draft groundwater standards.

Notably, Sugar Camp's NPDES permit does not authorize any discharges into the unnamed tributary to Akin Creek, nor does it authorize the discharge of any of the PFAS or other toxic substances found to be present in the unnamed tributary to Akin Creek and known to be present in the firefighting foam used by Sugar Camp at the Mine. The persistent and toxic chemicals Sugar Camp admits that it used at the Mine are listed in Table A attached to this letter. Table B attached to this letter details the results of PFAS water sampling conducted by IEPA.

PFAS are a group of man-made chemicals that includes PFOA, PFOS, and many other chemicals. PFAS have been manufactured and used in a variety of industries around the globe, including in the United States since the 1940s. PFOA and PFOS have been the most extensively produced and studied of these chemicals. Both chemicals are very persistent in the environment and in the human body – meaning they do not break down and they can accumulate over time. 6:2 FTSA and other 6-chain fluorochemicals have replaced PFOS in many firefighting foams.

Exposure to PFAS chemicals can lead to adverse health outcomes in humans. If humans, or animals, ingest PFAS (by eating or drinking food or water that contain PFAS), the PFAS are absorbed, and can accumulate in the body. PFAS stays in the human body for long periods of time. As a result, as people are exposed to PFAS from different sources over time, the level of PFAS in their bodies may increase to the point where they suffer from adverse health effects. Studies indicate that PFOA and PFOS can cause reproductive and developmental, liver and kidney, and immunological effects in laboratory animals. Both chemicals have caused tumors in animal studies. The most consistent findings from human epidemiology studies are increased cholesterol levels among exposed populations, with more limited findings related to infant birth weights, effects on the immune system, cancer (for PFOA), and thyroid hormone disruption (for PFOS). 6:2FTSA, the chemical detected in the highest concentrations in water near the mine site shows that oral doses accumulate in the blood and liver, resulting in increased liver weight and other markers of liver impacts in animals.

As a result of IEPA's investigation of Sugar Camp's discharge of firefighting foam, IEPA issued a Violation Notice to the company on September 21, 2021. Sugar Camp Energy has to date undertaken no action to remediate the environmental and health damage caused by the ongoing PFAS discharge to the unnamed tributary to Akin Creek and environment surrounding the Mine.

Clean Water Act Violations

Sugar Camp has discharged and is continuing to discharge firefighting foam containing PFAS and other toxic pollutants into an unnamed tributary of Akin Creek in violation of section 301 of the CWA, 33 U.S.C. § 1311, from one or more point sources without a permit issued pursuant to section 402 of the CWA and in violation of section 12 of the Illinois Environmental Protection Act, 415 ILCS 5/12 and Illinois regulations 35 Ill. Admin. Code §§ 302.203, 302.210, 304.105 and 304.106.

Sugar Camp discharged firefighting foam, PFAS and other toxic pollutants to an unnamed tributary of Akin Creek by way of one or more point sources. These point sources include, but are not necessarily limited to, one or more of the following:

- 1) Sugar Camp injected firefighting foam and water into the mine entrance at the location marked Location 6 on Figure 1 above. The injected materials travelled through boreholes the company had drilled into the mine and ended up in the adjacent creek at the location marked Location 5 on Figure 1 above.
- 2) Sugar Camp stored and mixed concentrated firefighting foam materials adjacent to the mine entrance at the location marked Location 6 on Figure 1 above. Concentrate was subsequently allowed to run off into the adjacent creek at the location marked Location 5 on Figure 1 above.
- 3) Sugar Camp stored concentrate at the Mine Hoist location, at the location marked Location 4 on Figure 1 above. Concentrate was subsequently allowed to run off into the adjacent creek at the locations marked Location 2 or 3.
- 4) The contaminants entered Akin Creek, unnamed tributaries of Akin Creek, the Middle Fork of the Big Muddy River, an unnamed tributary of Sugar Camp Creek, or the Big Muddy River through one or more of the point sources identified in Sugar Camp's NPDES permit as authorized to discharge non-PFAS pollutants.

These point source discharges resulted in contamination of an unnamed tributary of Akin Creek with PFAS and other toxic materials. The point source discharges also resulted in the discharge of floating debris, and visible oil, color and turbidity of other than natural origin to the unnamed tributary of Akin Creek. Evidence of the contamination was established through photographs and by water sampling conducted by IEPA. IEPA collected water quality samples directly from the unnamed tributary of Akin Creek at Locations 1 and 5 as marked on Figure 1 above, and from field ditches that report to the unnamed tributary of Akin Creek at Locations 2 and 3 on Figure 1 above. All four samples were found to contain PFAS compounds in levels above Illinois drinking water health advisory levels, and the sample taken at Location 5 was found to exceed the EPA drinking water health advisory. Table B attached hereto itemizes the results of this water sampling.

These discharges are in no way authorized by the NPDES permit for the Mine, permit number IL0078565. The Mine's NPDES permit does not authorize any discharges of PFAS or any of the other toxins contained in the firefighting foam utilized by the Company or found in the samples collected by IEPA; nor does it authorize any discharges to the unnamed tributary to Akin Creek or nearby farm fields where firefighting foam was observed; nor does it authorize any discharge that violates Illinois water quality standards. Further, Special Condition No. 1 of the NPDES permit prohibits any discharge that causes or contributes to violations of water quality standards, which would include 415 ILCS 5/12(a), (d) and (f) and 35 Ill. Adm. Code 302.203, 302.210, 304.105 and 304.106, all of which IEPA determined Sugar Camp Energy to have violated as a result of the above-described point source discharges.

If within sixty days of the postmark of this letter Sugar Camp Energy LLC does not come into full compliance with the CWA by containing, destroying and removing any firefighting foam from the Mine and remediating any impacted surface and groundwater, the Complainants intend to file a citizens' suit seeking civil penalties for ongoing and continuing violations and for an injunction compelling compliance with the Act.

SMCRA Violations

The Complainants will also bring claims against Sugar Camp Energy under section 520(a)(1) of the federal Surface Mining Control and Reclamation Act ("SMCRA"), 30 U.S.C. § 1270(a)(1) and 30 C.F.R. § 700.13 because Sugar Camp is in violation of the terms and conditions of its Illinois Mining Permit, as well as the requirements of the Illinois Surface Coal Mining Land Conservation and Reclamation Act, 225 ILS 720/1.01 *et seq.*, and Illinois regulations 62 Ill. Admin. Code §§ 1817.13, 1817.41(a), 1871.41(d)(1), 1871.41(h)(1), 1871.41(h)(2), and 1817.42 as a result of its ongoing discharge of firefighting foam containing PFAS and other toxic compounds into an unnamed tributary of Akin Creek and into the Mine. In particular, 62 Ill. Admin Code § 1817.41(h) precludes any discharges into an underground mine unless specifically approved by the IDNR and the discharges are made in compliance with applicable effluent limitations. Further, Ill. Admin Code § 1817.42 requires that all discharges of water from areas disturbed by mining activities be made in compliance with the Clean Water Act. As outlined above, Sugar Camp has violated the CWA and its NPDES permit by discharging toxic foam materials into the Mine and the unnamed tributary of Akin Creek.

Sugar Camp was issued a mining permit pursuant to SMCRA and the Illinois Surface Coal Mining Land Conservation and Reclamation Act. Permit Condition E of this mining permit requires the permittee to take all possible steps to minimize any adverse impacts to the environment or public health and safety resulting from noncompliance with any term or condition of its mining permit. Permit Condition C requires the permittee to comply with all applicable performance standards of the Federal and State Acts, and the requirements of the regulatory program. As a result of the discharges of firefighting foam containing PFAS and other toxic compounds into an unnamed tributary of Akin Creek and into the Mine, Sugar Camp is in violation of the violation of both of these permit conditions, and must take action to address the hazard it has caused.

At the close of the 60-day notice period, Complainants intend to file a citizen suit against Sugar Camp Energy in accordance with 30 U.S.C. § 1270(a)(1). Complainants will seek all available injunctive relief, future costs, damages, expert witness fees and attorneys' fees for Sugar Camp's violations of SMCRA.

RCRA Violations

In the alternative, the Complainants will bring claims against Sugar Camp Energy under section 7002(a)(1)(B) of the federal Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §

6972(a)(1)(B) and 40 C.F.R. § 254 because Sugar Camp owned and/or controlled the Mine at the time of the PFAS contamination of the Mine, surrounding environment and unnamed tributary of Akin Creek, and continues to own or control the Mine now; was in charge of, determined and directed the activities at the Mine at the time of the PFAS contamination of the Mine, surrounding environment and unnamed tributary of Akin Creek; and had management of and directed the operations at the Mine that caused the PFAS contamination of the Mine, surrounding environment and unnamed tributary of Akin Creek. Based upon the foregoing, Complainants intend to sue Sugar Camp Energy under the RCRA citizen suit provision, 42 U.S.C. § 6972(a)(1)(B) for “contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.”

At the close of the 90-day notice period, Complainants intend to file a citizen suit against Sugar Camp Energy in accordance with 42 U.S.C. § 6972(a)(1). Complainants will seek all available injunctive relief, future costs, damages and attorneys’ fees for Sugar Camp’s creation of an imminent and substantial endangerment in violation of RCRA.

Conclusion

Sugar Camp Energy has violated the CWA and SMCRA by discharging PFAS and toxic firefighting foam into the Mine and unnamed tributaries of Akin Creek. In the alternative, and as a result of the same discharges, Sugar Camp Energy has created an imminent and substantial endangerment in violation of RCRA. Sierra Club and Prairie Rivers Network intend to file suit against Sugar Camp in the U.S. District Court for the Southern District of Illinois to secure appropriate relief under federal and state law for these violations, and for any similar violations that occur after the date of this notice letter. In doing so, Sierra Club and Prairie Rivers Network will help to protect and improve Illinois’ water quality, provide a healthy world for all Illinois residents, and heal damaged land in the State of Illinois.

Sincerely,



Albert Ettinger
53 W. Jackson Suite 1664
Chicago, Illinois 60604
Ettinger.Albert@gmail.com
(773) 818 4825

And



Sarah Rubenstein
Great Rivers Environmental Law Center
319 N. 4th Street, Suite 800
St. Louis, Missouri 63102
srubenstein@greatriverslaw.org
(314) 231-4181

Counsel for Sierra Club and Prairie Rivers Network

PERSONS PROVIDING NOTICE AND REPRESENTING ATTORNEYS

The name, address and telephone number of the parties providing this notice are:

Sierra Club
2101 Webster St., Suite 1300
Oakland, CA 94612
(415) 977-5500

Prairie Rivers Network
1605 South State Street
Champaign, IL 61820
(217) 344-2371

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THE ATTORNEYS REPRESENTING SIERRA CLUB AND PRAIRIE RIVERS NETWORK IN THIS MATTER ARE:

Albert Ettinger
53 W. Jackson Suite 1664
Chicago, Illinois 60604
Ettinger.Albert@gmail.com
(773) 818 4825

Sarah Rubenstein
Great Rivers Environmental Law Center
319 N. 4th Street, Suite 800
St. Louis, Missouri 63102
srubenstein@greatriverslaw.org
(314) 231-4181

COPIES, VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED TO:

Michael Regan
Administrator, US EPA
1200 Pennsylvania Ave., NW
Washington, DC 20460

Cheryl Newton
Acting Regional Administrator
Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Sanjay Soffat
Chief, Bureau of Water
Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

Deb Haaland
Secretary
U.S. Department of the Interior
1849 C St., NW
Washington, DC 20240

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Glenda Owens
Deputy Director
Office of Surface Mining Reclamation and Enforcement
1849 C St., NW
Washington, DC 20240

Alfred Clayborne
Regional Director
Mid-Continent Regional Office of Surface Mining Reclamation and Enforcement
501 Belle St., Suite 216
Alton, IL 62002

Thomas A. Benner
Director, Mines and Minerals
Illinois Department of Natural Resources
1 Natural Resources Way
Springfield, IL 62702

Nick San Diego
Supervisor, Land Reclamation Division
Illinois Department of Natural Resources
1 Natural Resources Way
Springfield, IL 62702

John Kim
Director
Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

Kyle Rominger
Chief, Bureau of Land Management
Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

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James Jennings
Waste Reduction and Compliance Section Chief
Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

Kwame Raoul
Illinois Attorney General
500 South Second Street
Springfield, IL 62701

Table A – Chemicals used in Sugar Camp fire response
 (Information provided by Illinois EPA in response to public records request)

Product Name	Product quantity	Class A or B foam?	Contain PFAS?	Other listed ingredients	Biodegradation*
THERMO-FOAM 100F CLASS A	550 GAL	A	not likely	Hexylene glycol 3 -7%, 18-37% undisclosed "proprietary mixture of alkyl sulfates, ethoxylates, amphoterics, solvents and corrosion inhibitors"	55%
ANSUL SILVEX PLUS	550 GAL	A	not likely	1-(2-Butoxy-1-methylethoxy)propan-2-ol 5-10%; Sodium Alkene sulphonate 10%; Lauryl Alcohol 5%	"no information available"
CRESTAR CLASS A/B FOAM	660 GAL	A & B	YES	"proprietary fluorosurfactant" 3-12%	"no information available"
CHEMGUARD AFFF FOAM	210 GAL	B	not likely	Product name is too generic to identify specific ingredients	
MUNICIPAL CLASS A FOAM	2265 GAL	A	not likely	Product name is too generic to identify specific ingredients	"no information available"
SILVEX PLUS	365 GAL		not likely	lauryl alcohol (1-2.5%), propylene glycol (2.5-10%)	"no information available"
CHEMGUARD DIRECT ATTACK FOAM	7480 GAL	A	not likely	1-(2-Butoxy-1-methylethoxy)propan-2-ol 5-10%, Sodium Alkene sulphonate 5-10%, Lauryl Alcohol 1-5%	biodegradable
CHEMGUARD EXTREME FOAM	3500 GAL	A	not likely	Sodium Alkene sulphonate 10-30%; n-Butanol 5-10%; 2-Methyl-2,4-pentanediol 5-10%; Lauryl Alcohol 1-5%; 1-Tetradecanol <1%	biodegradable
FIRE BULL CLASS A FOAM	25440 GAL	A	not likely	proprietary surfactant blend 1-5%; proprietary blend sodium alkyl sulfates 5-15%	"no information available"

Product Name	Product quantity	Class A or B foam?	Contain PFAS?	Other listed ingredients	biodegradation
FIRE BULL SDS 3%	4240 GAL	A	not likely	glycol ether (10%) proprietary hydrocarbon surfactant blend 1-5%	"no information available"
FIRE BULL CLASS A & FIRE BULL SDS 3%	530 GAL	A	not likely	Ingredients are a combination of both ingredients listed in columns directly above	"no information available"
ANGUS 1-3 FOAM	140 GAL		not likely	diethylene glycol monobutyl ether 10-30%, sodium alkyl ether sulfate 5-10%, ethylene glycol 1-5%	"no information available"
FREEZEADE 2000 (Likely product FireAde2000)	220 GAL	A or B	no	2-methyl-2,4-pentanediol <8%; sodium octyl sulfate <8%; proprietary foamer blend (water, amphoteric copolymer, amphoteric polymer, amphoteric surfactant, acrylic copolymer, propylene glycol, ethanol) <1.2%; sodium decyl sulfate <0.8%	fully biodegradable
Thunder Storm	265 GAL	B	YES	"Concentrate combines fluoro- and hydrocarbon-surfactant technologies to provide superior fire and vapor suppression for Class B, polar solvent and hydrocarbon fuel fires"	"no information available"

*based on information contained in Material Data Safety Sheets

Table B – Results of IEPA Water Quality Sampling
 (Information provided by IEPA in response to public records request)

PFAS chemical	Measurement (parts per trillion)	Exceed EPA drinking water health advisory	Exceed IL drinking water health advisory levels	Exceed IL groundwater standards (draft)
Sample ID S27890.1	Sugar Camp Mine & Knob Prairie (surface water sample) Location 1 on Figure 1			
PFBA	13			
PFPEA	48			
PFHXA	26			
PFHPA	11			
6:2FTSA	75			
PFOA	3.9		X	X
PFHXS	5.1			
PFNA	5.1			
8:2FTSA	13			
PFOS	32		X	X
TOTAL PFAS	232.1			
Sample ID S27890.03	Sugar Camp Mine Thompsonville (surface water sample) Location 2 on Figure 1			
PFPEA	18			
PFHXA	16			
PFHPA	6			
6:2FTSA	73			
PFOA	3.9		X	X
PFHXS	5			
PFNA	2.8			
8:2FTSA	21			
PFOS	26		X	X
TOTAL PFAS	171.7			

Sample Id S27890.05	Sugar Camp service hoist (industrial site) Location 3 on Figure 1			
PFBA	55			
PFPEA	160			
PFHXA	220			
PFBS	6.2			
PFHPA	39			
6:2FTSA	1500			
PFOA	27	X	X	X
PFHXS	47			
PFNA	6.5			
8:2FTSA	170			
PFHPS	14			
PFDA	3.9			
PFOS	220	X	X	X
TOTAL PFAS	2468.6			

Sample ID S27890.07	Sugar Camp mine injection site (surface water) Location 5 on Figure 1			
PFBA	15			
PFPEA	46			
PFHXA	37			
PFBS	3.7			
PFHPA	13			
PFPEs	2.2			
6:2FTSA	270			
PFOA	8.7	X	X	X
PFHXS	14			
PFNA	78			X
8:2FTSA	39			
PFHPS	2.2			
PFOS	110	X	X	X
PFUNDA	12			
TOTAL PFAS	650.8			