

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

| | | |
|---|---|------------------------------|
| In re: |) | |
| |) | |
| MISSISSIPPI PHOSPHATES |) | CHAPTER 11 |
| CORPORATION, <i>et al.</i>, |) | Case No. 14-51667-KMS |
| |) | |
| Debtor. |) | Jointly Administered |
| <hr/> | | |
| MISSISSIPPI PHOSPHATES CORPORATION |) | |
| LIQUIDATING TRUST (MPCLT), EDWIN N. |) | |
| ORDWAY, JR., Managing Director, |) | |
| BERKELEY RESEARCH GROUP, LLC in his |) | |
| capacity as MPCLT Trustee of the MPCLT |) | |
| |) | |
| Plaintiff, |) | A.P. No.: _____ |
| |) | |
| v. |) | |
| |) | |
| WASTE MANAGEMENT - EMELLE |) | |
| TREATMENT FACILITY, |) | |
| |) | |
| Defendant. |) | |

**COMPLAINT TO AVOID PREFERENTIAL TRANSFERS AND TO RECOVER
PROPERTY TRANSFERRED PURSUANT TO 11 U.S.C. §§ 547 and 550**

The Mississippi Phosphates Corporation Liquidating Trust (“MPCLT”), Edwin N. Ordway, Jr., Managing Director, Berkeley Research Group, LLC, in his capacity as MPCLT Trustee for the MPCLT Trust (the “Trust” or “Plaintiff”) files this Complaint against Waste Management - Emelle Treatment Facility (the “Defendant”) and in support thereof, the Trust alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. On October 27, 2014, Mississippi Phosphates Corporation (“MPC”), Ammonia Tank Subsidiary, Inc. (“ATS”), and Sulfuric Acid Tanks Subsidiary, Inc. (“SATS,” and together with MPC and ATS are hereinafter collectively referred to as the “Debtors”) filed their voluntary

petitions for relief (the “Petitions”) under Chapter 11 of 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”) with the Clerk of this Court. On October 29, 2014, the Court granted the Debtors’ motion for joint administration of the Debtors’ cases.

2. Pursuant to the Debtors’ *First Amended Joint Chapter 11 Plan of Debtors and the Official Committee of Unsecured Creditors* [Doc. No. 1168] (the “Plan”), the Trust “shall be vested with full legal power, capacity and authority, and shall be directed to administer, collect and liquidate the Debtors’ remaining Assets and to administer and implement the Plan.” Edwin N. Ordway, Jr., Managing Director, Berkeley Research Group, LLC (the “Trustee”) was designated as the Trustee of the Trust, which was created by the Liquidating Trust Agreement between the Debtors and the Trustee dated October 25, 2016. The Trustee serves as the current trustee of the Trust.

3. The Defendant was at all times relevant hereto a creditor of the Debtors, within the meaning of 11 U.S.C. § 101(10)(A).

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 547 and 550.

5. Venue of the Debtors’ chapter 11 cases and of this matter is proper in this district pursuant to 28 U.S.C. § 1409.

6. This a core proceeding pursuant to 28 U.S.C. § 157(b).

COUNT I
AVOIDANCE AND RECOVERY OF PREFERENTIAL
TRANSFER PURSUANT TO 11 U.S.C. §§ 547 AND 550

7. The Trust adopts and incorporates by reference the allegations in the paragraphs above as if fully set forth herein.

8. In the ninety (90) day period preceding the filing of the Petitions (the “Preference Period”), the Debtors transferred property to the Defendant, including, but not limited to, through

the payment of money by check, wire transfer or otherwise, in the aggregate amount of no less than \$40,000.00 (the “Preferential Transfers”). Attached hereto as Exhibit “A,” and incorporated herein by reference, is a non-exhaustive list of the Preferential Transfers, including: (i) the date of each transfer, (ii) the check or wire number of each transfer, and (iii) the amount of each transfer.

9. The source of funds for the Preferential Transfers was property of the Debtors or property in which the Debtors had an interest.

10. The Preferential Transfers were to or for the benefit of the Defendant.

11. The Preferential Transfers were made for or on account of an antecedent debt owed by the Debtors to the Defendant before such Preferential Transfers were made.

12. At the time the Preferential Transfers were made, the Debtors were, in accordance with applicable law, insolvent as contemplated by §§ 101(32) and 547 of the Bankruptcy Code.

13. The Preferential Transfers enabled the Defendant to receive more than it would have received if: (i) the Debtors had filed Chapter 7 cases under the Bankruptcy Code, (ii) the Preferential Transfers had not been made, and (iii) the Defendant received payment of the antecedent debts to the extent provided by the Bankruptcy Code.

14. The Preferential Transfers are avoidable pursuant to § 547 of the Bankruptcy Code, and as a result, the Preferential Transfers are recoverable by the Trust pursuant to § 550 of the Bankruptcy Code.

WHEREFORE, for the foregoing reasons, the Trust respectfully requests that:

1. The Preferential Transfers be avoided pursuant to §§ 547 and 550 of the Bankruptcy Code;

2. Judgment be entered in favor of the Trust, and against the Defendant, in the amount of no less than \$40,000.00 (plus any additional transfer amounts, the Plaintiff learns through discovery or otherwise, were made to Defendant during the Preference

Period), plus interest at the legal rate from the date of the Preferential Transfers, together with any fees and costs of this action;

3. The Defendant be directed to pay to the Trust the sum of no less than \$40,000.00 plus interest at the legal rate from the date of the Preferential Transfers, together with any fees and costs of this action;

4. The Defendant's claims against the Debtors be disallowed pursuant to Section 502(d) of the Bankruptcy Code or otherwise; and

5. That the Liquidating Trustee be permitted to setoff any judgment obtained hereunder against any payment or distribution to be made on account of the Claims pursuant to the Plan; and

6. The Trust be granted such other and further relief as is just and equitable.

Respectfully submitted this the 26th day of October, 2016.

MISSISSIPPI PHOSPHATES CORPORATION
LIQUIDATING TRUST (MPCLT),
EDWIN N. ORDWAY, JR., Managing Director,
BERKELEY RESEARCH GROUP, LLC in his
capacity as MPCLT Trustee of the MPCLT

BY: /s/ D. Andrew Phillips
D. ANDREW PHILLIPS (MB #8509)
JAMES P. WILSON, JR. (MB #10783)
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Telephone: (662) 234-4845

WASTE MANAGEMENT - EMELLE TREATMENT FACILITY

Exhibit "A"

| Payment Date | Check or Wire Number | Amount Paid |
|---------------------|---------------------------------|--------------------|
| 8/15/2014 | 57261 | \$20,000.00 |
| 9/15/2014 | 57466 | \$20,000.00 |
| Total | | \$40,000.00 |