

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

In re:)
)
MISSISSIPPI PHOSPHATES)
CORPORATION, *et al.*¹)
)
)
)
Debtors)
_____)

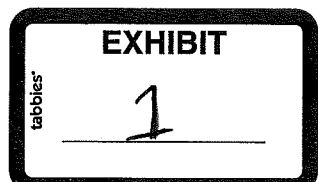
CASE NO. 14-51667-KMS
Chapter 11

(Joint Administration)

**FINAL ORDER UNDER SECTIONS 105, 361, 362, 363, 364 AND 507 OF
THE BANKRUPTCY CODE AND FEDERAL RULES OF BANKRUPTCY
PROCEDURE 2002, 4001 AND 9014 (I) AUTHORIZING THE DEBTORS
TO INCUR POST-PETITION SENIOR SECURED SUPERPRIORITY
INDEBTEDNESS; (II) AUTHORIZING USE OF CASH COLLATERAL;
(III) GRANTING POST-PETITION PRIMING AND SENIOR PRIORITY
SECURITY INTERESTS AND SUPERPRIORITY CLAIMS; (IV) GRANTING
ADEQUATE PROTECTION; AND (V) MODIFYING THE AUTOMATIC STAY
[Relates to Docket Nos. 14 and 66]**

Mississippi Phosphates Corporation, *et al.*, the Debtors and debtors-in-possession
(collectively, the “*Debtors*”) in the above-captioned Chapter 11 cases (the “Chapter 11 Cases”),

¹ The Chapter 11 cases of the following affiliated Debtors have been administratively consolidated pursuant to this Court’s Order of October 29, 2014 [Dkt. #62]: Mississippi Phosphates Corporation (“MPC”), Ammonia Tank Subsidiary, Inc. (“ATS”) and Sulfuric Acid Tanks Subsidiary, Inc. (“SATS”).



moved on October 27, 2014 (the “Motion”) for interim and final orders seeking:

(a) authorization for the Debtors to obtain up to \$5,000,000 in principal amount of post-petition financing under a revolving loan credit facility (the “DIP Financing”), on the terms and conditions set forth in the Interim Order (defined below), this Order, the Debtor-in-Possession Credit Agreement attached hereto as Exhibit “A” (the “DIP Credit Agreement”), such other documents setting forth the terms of the DIP Financing (as amended, supplemented or otherwise modified, the “DIP Facility”);² and together with all agreements, documents and instruments delivered in connection with the DIP Financing, the “DIP Loan Documents”), among the Debtors, STUW LLC, as agent (the “DIP Agent”), and the lenders identified therein (the “DIP Lenders”);

(b) authorization for the Debtors to execute and deliver the DIP Facility and the DIP Loan Documents (when finalized in a form acceptable to the DIP Agent and DIP Lenders) and to perform such other and further acts as may be necessary or appropriate in connection therewith;

(c) authorization for the Debtors to grant the DIP Agent and DIP Lenders liens on and security interests in all of the Debtors’ assets as provided herein and in the DIP Loan Documents and to grant the DIP Lenders superpriority administrative expense claims;

(d) authorization for the Debtors to use “Cash Collateral” (within the meaning of section 363(a) of the Bankruptcy Code) and provide adequate protection to the Pre-Petition Lenders (as defined below);

(e) to schedule, pursuant to Bankruptcy Rule 4001, an interim hearing (the “Interim Hearing”) on the Motion to be held before this Court to consider entry of a proposed interim order (the “Interim Order”) authorizing the Debtors to borrow up to an aggregate principal

² Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the DIP Credit Agreement.

amount of \$5,000,000 under the Interim Order and the DIP Facility until entry of this Order; and

(f) to schedule, pursuant to Bankruptcy Rule 4001, a final hearing (the “Final Hearing”) for this Court to consider entry of a proposed final order (the “Order”) authorizing, on a final basis, the DIP Financing and all relief requested in the Motion.

Upon the record presented at the Interim Hearing, conducted on October 29, 2014 and the Final Hearing, Conducted on November 18, 2014, after due deliberation, for good and sufficient cause,

IT IS HEREBY FOUND, DETERMINED, ORDERED, ADJUDGED, AND DECREED THAT:³

1. Disposition. The Motion is granted on a final basis on the terms set forth in this Order. Any objections to the relief sought in the Motion that have not previously been resolved or withdrawn, including any reservations of rights therein, are hereby overruled on their merits. This Order shall be valid, binding on all parties-in-interest, and fully effective immediately upon entry.

2. Jurisdiction; Venue. The Court has jurisdiction over the Chapter 11 Cases, the parties, and the Debtors’ property pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue of the Chapter 11 Cases is proper under 28 U.S.C. §§ 1408 and 1409.

3. Notice. Notice of the Motion, the relief requested and the Interim Hearing was served by the Debtors on (a) the Official Committee of Unsecured Creditors appointed by the United States Trustee (the “Committee”) and counsel for the Committee; (b) the United States Trustee; (c) all parties who have filed requests for notice under Bankruptcy Rule 2002; (d) the

³ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

holders of the twenty (20) largest unsecured claims against the Debtors; (e) the Agent for the DIP Lenders and its counsel; (f) the Agent and its counsel; and (g) all parties who have asserted liens on assets of the Debtors. The Debtors request that the Court deem such notice of the Interim and Final Hearings to be sufficient notice under Bankruptcy Rule 4001. Under the circumstances, the notice given by the Debtors of the Motion, the relief requested and the Interim and Final Hearings constitutes due and sufficient notice, and no further notice of the relief sought at the Interim and Final Hearings and the relief granted by this Order is necessary or required; except, however, that the provisions of this Final Order shall not prejudice the rights of parties in interest to whom such notice has not been given.

4. Purpose and Necessity of Financing and Use of Cash Collateral.

(a) The Debtors require the interim and final financing and use of Cash Collateral described in the Motion to fund, among other things, the Debtors' cash requirements, working capital, required and approved capital expenses and general corporate purposes relating to post-petition operations, including the production and sale of DAP in the ordinary course of business and to fund maintenance of water treatment costs of the east gypsum disposal facility and treatment for water and leachate, as well as expenses related to a sales process for the Debtors' assets consistent with the terms set forth in this Order and the Approved Budget (defined below), and the DIP Loan Documents, and for other purposes permitted by the DIP Loan Documents.

(b) The Debtors are unable to obtain adequate unsecured credit allowable under section 503 of the Bankruptcy Code as an administrative expense or other financing under section 364(c) or (d) of the Bankruptcy Code on equal or more favorable terms than those set forth in the DIP Facility and the other DIP Loan Documents within the time frame required by their needs to avoid immediate and irreparable harm. The Debtors are unable to obtain financing

on a post-petition basis without the Debtors granting the Superpriority Claims (as defined below) and the DIP Liens (as defined below).

5. Good Cause. The Debtors' ability to obtain sufficient working capital and liquidity under the DIP Loan Documents is vital to the Debtors' estates and their creditors, so that the Debtors can continue to operate their businesses in the ordinary course, including preserving the jobs of their employees, meeting environmental obligations and maximizing the value of their assets. The Debtors' estates, creditors, and employees will be immediately and irreparably harmed if this Order is not entered. Consummation of the DIP Financing in accordance with this Order and the DIP Loan Documents is in the best interests of the Debtors' estates, creditors, and employees. Good cause thus has been shown for the interim and final relief sought in the Motion.

6. Good Faith; Fair Consideration. The terms of the DIP Loan Documents, including the interest rates and fees applicable thereto, are more favorable to the Debtors than those available from alternative sources. Based upon the record before the Court, the DIP Loan Documents have been negotiated in good faith and at arm's-length among the Debtors, the DIP Agent, and DIP Lenders. Any DIP Loans and other financial accommodations made to the Debtors by the DIP Agent and DIP Lenders pursuant to this Order and the DIP Facility or other DIP Loan Documents shall be deemed to have been extended by the DIP Agent and DIP Lenders in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and the DIP Agent and DIP Lenders shall be entitled to all protections afforded under section 364(e). The terms of the DIP Facility provided under the DIP Loan Documents are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and/or fair consideration.

7. Immediate Entry of Order. The Debtors have requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). The permission granted herein to enter into the DIP Loan Documents and to obtain funds thereunder is necessary to avoid immediate and irreparable harm to the Debtors. This Court concludes that entry of this Order is in the best interests of the Debtors' respective estates and creditors as its implementation will, among other things, allow for access to the financing necessary for the continued flow of supplies and services to the Debtors necessary to sustain the operation of the Debtors' businesses, to maximize the value of the Debtors' assets, to meet the Debtors' environmental obligations and further enhance the Debtors' prospects for a successful restructuring.

8. Authorization to Use Cash Collateral. The Debtors are authorized to use Cash Collateral during the period from the Petition Date through and including the Maturity Date, in accordance with the terms, conditions, and limitations set forth in the Budget approved by the DIP Agent (the "Approved Budget")⁴ and otherwise pursuant and subject to the terms and conditions of the DIP Loan Documents, section 363(c) of the Bankruptcy Code and this Order.

9. Borrowing.

(a) Subject to the terms and conditions of this Order and the DIP Loan Documents, including without limitation, the covenants and Approved Budget as specified in the DIP Loan Documents, the Debtors are authorized to borrow up to \$5,000,000 in advances from the DIP Lenders in accordance with the Approved Budget, the DIP Facility and this Order. For the avoidance of doubt, the Loan Advances under this Order shall be made in accordance with the terms and provisions of the DIP Credit Agreement.

(b) The Debtors shall use the proceeds of the DIP Financing solely in accordance with the covenants, formulae, Approved Budget and other terms and conditions set forth in the

⁴ A copy of the Approved Budget is attached as Exhibit "B".

DIP Loan Documents. Neither the DIP Agent nor the DIP Lenders shall have any obligation with respect to the proceeds of the DIP Financing, nor shall any of them be obligated to ensure or monitor the Debtors' compliance with any such covenants, formulae, Approved Budget or other terms and conditions, or be obligated to pay any expenses incurred or authorized to be incurred pursuant to the DIP Loan Documents.

(c) The Approved Budget shall be in form and substance acceptable to and approved by the DIP Agent. Any non-material modifications to, or amendment or update of, the Approved Budget shall be in form and substance acceptable to and approved by the DIP Agent, and may be amended or modified without the need for further approval by this Court only with the written consent of the DIP Agent by filing a notice of such non-material modification, amendment or update with the Court.

(d) The DIP Agent's consent to any budget shall not be construed as a commitment to continue to provide the DIP Financing after the occurrence of an Event of Default (as defined below) or beyond the Maturity Date, regardless of whether the aggregate funds described in the Approved Budget have been expended. None of the DIP Lenders shall have any obligation to make any loan or advance under the DIP Loan Documents, unless all of the conditions precedent to the making of such extension of credit under the applicable DIP Loan Documents and this Order have been satisfied in full or waived in writing or otherwise provided for in the DIP Loan Documents.

10. Superpriority Claim and DIP Liens.

(a) Except as provided in this Order with respect to the Carve Out, the DIP Agent and DIP Lenders are hereby granted, and all of the obligations of the Debtors under the DIP Facility, this Order and the DIP Loan Documents (collectively, the "DIP Obligations") shall and hereby

do constitute, an allowed superpriority administrative expense claim against each Debtor (the “Superpriority Claims”) pursuant to section 364(c)(1) of the Bankruptcy Code, having priority over any and all administrative expense claims, adequate protection claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including without limitation, all claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 and any other provision of the Bankruptcy Code or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. The Superpriority Claims shall be payable from and have recourse to all pre-petition and post-petition property of the Debtors and all proceeds thereof, including the proceeds or other amounts received in respect of the Debtors’ claims and causes of action arising under state or federal law under sections 541, 542, 544, 545, 547, 548, 549, 550, 551, 552 and 553 of the Bankruptcy Code (collectively, the “Avoidance Actions”). The Superpriority Claims granted pursuant to this paragraph shall be subject and subordinate in priority of payment only to, during the occurrence and continuance of an Event of Default or after the Maturity Date, payment of the Carve Out.

(b) Under section 364(d) of the Bankruptcy Code, as security for the DIP Obligations, the DIP Agent, on behalf of itself and the DIP Lenders, is hereby granted, subject and subordinate in priority only to, and only during the occurrence and continuance of an Event of Default or after the Maturity Date, payment of the Carve Out, valid, enforceable and perfected first-priority priming security interests in and liens (the “DIP Liens”) on all of the Debtors’ property, assets, or interests in property or assets of any kind or nature whatsoever, real or personal, whether now owned or hereafter existing, and wherever located and whether now existing or hereafter acquired or created, including, without limitation, all property of the

Debtors' estates, including, without limitation, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, fixtures, goods, investment property, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries, trademarks, trade names, all deposit accounts, all securities accounts, all cash maintained in deposit and other accounts, all commercial tort claims, all causes of action, all cash and non-cash proceeds, rents, products and profits of any of the foregoing (collectively, the "Collateral"). The DIP Liens shall have priority over any and all pre-petition or post-petition liens and security interests; provided however, that the DIP Liens shall not have priority over

(i) the holder of a purchase money security interest or the rights of any party to reclamation under Bankruptcy Code § 546(c);

(ii) any rights of setoff or recoupment of Interoceanic Corporation ("IOC"), and provided further however that the Collateral shall not include any property, whether or not held by the Debtors, to which title is vested in or has passed to a party other than the Debtors, including pursuant to that certain Marketing Agreement dated February 27, 2014 (the "Marketing Agreement") between IOC and MPC, which provides in relevant part that legal title to each of the Products (as defined in the Marketing Agreement) passes from MPC to IOC upon delivery at the Delivery Point (as defined in the Marketing Agreement), which is "the point where the conveyor belts from the [Debtors'] Plant enter each of the Product storage warehouses at Pascagoula"; and

(iii) the Carve Out.

(c) The DIP Liens shall be effective automatically and immediately upon the entry of

this Order, and no lien or security interest granted to the DIP Agent or DIP Lenders under this Order or the DIP Loan Documents, as approved by this Order, shall be subject to any lien or security interest that is avoided by the Debtors and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code. The DIP Liens arising hereunder shall be and hereby are fully perfected security interests, such that no additional steps need be taken by the DIP Agent or the DIP Lenders to perfect such interests.

(d) The DIP Liens and Superpriority Claims and other rights and remedies granted to the DIP Agent and DIP Lenders under this Order shall continue in the Chapter 11 Cases and in any superseding case or cases for the Debtors under any Chapter of the Bankruptcy Code, and such liens, security interests and claims shall maintain their priority as provided in this Order until all the DIP Obligations have been indefeasibly paid in full in cash and the total commitment has been terminated in accordance with the DIP Loan Documents.

11. [Omitted]

12. Fees and Expenses. The DIP Agent and DIP Lenders shall submit summary invoices for fees and expenses (the "Summary Invoices") to the United States Trustee, counsel for Debtors, and counsel for the Committee and such parties and creditors in this case shall have ten (10) calendar days from the receipt of such Summary Invoice to object to the reasonableness of any portion of the Summary Invoice. If no party objects to the Summary Invoice, the fees and expenses shall increase the DIP Obligations. If a party objects to a portion of any Summary Invoice, the remaining amounts due under the Summary Invoice shall be added to the DIP Obligations. If the parties are unable to resolve the objection to any portion of the remaining amounts due under a Summary Invoice, the DIP Agent may file an application requesting approval of the remaining fees and expenses with the Court. Notwithstanding the foregoing, none

of the DIP Agent's or DIP Lenders' costs, fees, charges, or expenses shall be required to be maintained in accordance with the United States Trustee guidelines or file any interim or final fee application with the Court.

13. [Omitted]

14. Recording and Filing Fees. All fees and costs and/or expenses payable by the Debtors in connection with the recording, filing and insuring of financing statements, mortgages and financing statements to confirm or evidence the perfection of the security interests granted or authorized by this Order are hereby approved and shall be promptly paid in full by the Debtors without the necessity of the Debtors, the DIP Lenders or the DIP Agent filing any further application with the Court for approval or payment of such fees, costs and/or expenses.

15. Authority to Execute and Deliver Necessary Documents. Without limiting paragraph 10(c) above, each of the Debtors is hereby authorized and empowered and directed to:

(a) enter into and deliver the DIP Credit Agreement and the other DIP Loan Documents, including, but not limited to, UCC financing statements and mortgages or deeds of trust as necessary or appropriate;

(b) to perform all of its obligations under the DIP Loan Documents and such other agreements as may be required by the DIP Loan Documents to give effect to the terms of the financing provided for in the DIP Loan Documents as approved by this Order;

(c) to perform all acts required under the DIP Loan Documents and this Order, including, without limitation, the payment of all principal, interest, charges, fees, and the reimbursement of present and future reasonable costs and expenses (including without limitation, reasonable attorneys' fees and legal expenses) paid or incurred by the DIP Lenders or the DIP Agent as provided for in this Order and the DIP Loan Documents; and

(d) to perform all other acts, to make, execute and deliver all other instruments, agreements and documents, which may be required or necessary for the Debtors to perform all of their obligations under this Order and the DIP Loan Documents, without further order of the Court.

16. Amendments. The Debtors, DIP Agent and DIP Lenders may enter into amendments or modifications to the DIP Facility and the other DIP Loan Documents. With respect to non-material amendments or modifications to the DIP Facility and the other DIP Loan Documents (the "Non-Material Modifications"), the Debtors shall file a notice with the Court regarding the Non-Material Modifications (the "Non-Material Modifications Notice") and such Non-Material Modifications shall be effective without the need of further notice, hearing or order of this Court. With respect to material amendments or modifications to the DIP Facility and the other DIP Loan Documents (the "Material Modifications"), the Debtors shall file a notice with the Court regarding the Material Modifications (the "Material Modifications Notice") and serve such Material Modifications Notice on counsel for the Committee, Environmental Protection Agency (the "EPA"), Mississippi Department of Environmental Quality ("MDEQ") and United States Trustee, and such Material Modifications shall be effective without the need of further notice, hearing or order of the Court, provided however, counsel for the Committee, EPA, MDEQ, the United States Trustee and any interested party shall have ten (10) calendar days from the date of filing the Material Modification Notice to file an objection with the Court; and if any such objection is timely made, then such modification or amendment to the DIP Facility and the other DIP Loan Documents shall be permitted only pursuant to an order of the Court (or upon withdrawal of the objection).

17. Carve Out.

(a) The DIP Liens and the Superpriority Claims shall be subject to (i) the unpaid fees of the Clerk of the Court and the United States Trustee; (ii) the fees and expenses incurred by any Chapter 7 trustee and any professionals retained by such trustee, in an aggregate amount not to exceed \$50,000; (iii) to the extent provided in the Approved Budget and allowed by final order (which cannot exceed such budgeted amounts), all unpaid fees and expenses of Chapter 11 professionals retained by the Debtors or the Committee, which are incurred at any time on or before the first business day following a Termination Event, whether allowed by the Court prior to or after the Termination Event; and (iv) after the first business day following a Termination Event, to the extent allowed by a final order, the payment of reasonable fees of such Chapter 11 professionals referenced in *clause (iii)* above in an aggregate amount not to exceed \$200,000; ((i) through (iv), the “Carve Out”). No fees or disbursements shall be compensable from the Carve Out to the extent such fees are related to the preparation for, or commencement and prosecution of any Challenge (as defined below) or objection to the debt or collateral position of the DIP Agent or the DIP Lenders or hindering or delaying the DIP Agent’s or any DIP Lender’s enforcement or realization upon the Collateral once an Event of Default has occurred and is continuing. Notwithstanding the foregoing restrictions, up to an aggregate of \$50,000 of Cash Collateral or proceeds of the DIP Loans may be used to pay professional fees and expenses incurred by the Committee to investigate the extent, validity and priority of claims and liens of the Agent and/or Pre-Petition Lenders relating to the Pre-Petition Loan Documents, but not to challenge any liens or claims under the Pre-Petition Loan Documents.

(b) Any payment of fees and expenses incurred after the occurrence and during the continuance of an Event of Default, including any payment of Chapter 11 professional fees, shall permanently reduce the Carve Out on a dollar-for-dollar basis. The payment of the Carve Out

from the proceeds of DIP Agent and DIP Lenders' Collateral shall be (i) added to and made part of the DIP Obligations, (ii) secured by the Collateral, and (iii) otherwise entitled to the protections granted under this Order, the DIP Loan Documents, the Bankruptcy Code and applicable law.

(c) Nothing contained in this Order shall be construed: (i) to exempt those persons hereafter receiving interim compensation payments or reimbursement of expenses pursuant to any such Court-approved procedure from the applicable provisions of bankruptcy law, including the requirements that such compensation or reimbursement be allowed on a final basis after the filing of appropriate fee applications, and, if applicable, any subsequent order of this Court requiring that such payments be disgorged, and/or (ii) as consent to the allowance of any fees and expenses referred to above, and shall not affect any right of the DIP Agent or the DIP Lenders to object to the reasonableness of such amounts.

18. Prohibited Uses of Cash Collateral/DIP Proceeds. Neither Cash Collateral nor proceeds of any of the DIP Financing shall be used to request the use of Cash Collateral without the DIP Agent's and DIP Lenders' prior written consent, or authorization to obtain post-petition loans or other financial accommodations pursuant to section 364(c) or (d) of the Bankruptcy Code, or otherwise, other than from the DIP Lenders without the consent of the DIP Lenders. Neither Cash Collateral nor proceeds of any of the DIP Financing shall be used for the payment or reimbursement of any fees or disbursements of the Debtors, the Committee, any trustee appointed in these Chapter 11 Cases, or any other person that are incurred in connection with the assertion and prosecution of, or joinder in, any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter (a) asserting claims pursuant to sections 542, 544, 545, 546, 547, 548, 549, 550, 551, 553(b) or 724(a) of the Bankruptcy Code or

other cause of action (whether arising under state law, the Bankruptcy Code or other federal law) against any of the DIP Lenders, DIP Agent, Agent, or Pre-Petition Lenders, including any action with respect to the validity and extent of the DIP Obligations or the Pre-Petition Indebtedness or the validity, extent, priority and enforceability of liens and security interests securing the DIP Obligations or the Pre-Petition Indebtedness; (b) invalidating, setting aside, avoiding or subordinating, in whole or in part, the DIP Lenders' and/or DIP Agent's liens on and security interests in the Collateral, or the Agent's and/or Pre-Petition Lenders' liens on and security interests in the Pre-Petition Collateral; or (c) seeking to modify any of the rights granted to the DIP Agent or the DIP Lenders or the Adequate Protection Claims and Adequate Protection Liens granted to the Agent and Pre-Petition Lenders under this Order or the DIP Loan Documents.

19. [Omitted]

20. Adequate Protection. The Debtors, in connection with the Pre-Petition Credit Agreement, granted the Agent and Pre-Petition Lenders, mortgages, liens on and security interests in the Pre-Petition Collateral. The Agent and Pre-Petition Lenders are entitled, pursuant to sections 105, 361, 363 and 364 of the Bankruptcy Code, to adequate protection of their interests in the Pre-Petition Collateral, including Cash Collateral, in an amount equal to the diminution in value of the Pre-Petition Collateral. As adequate protection, the Agent and Pre-Petition Lenders are hereby granted the following:

(a) Adequate Protection Claims. The Agent and Pre-Petition Lenders are granted allowed superpriority administrative expenses claims against the Debtors (the "Adequate Protection Claims") as provided in section 507(b) of the Bankruptcy Code, in such amounts, if any, as the Court may hereafter order. The Adequate Protection Claims shall have recourse to and be payable from all Collateral. Notwithstanding the foregoing, the Adequate Protection

Claims shall be subordinate and subject to (i) the Carve Out and (ii) the Superpriority Claims.

(b) Adequate Protection Liens. To the extent of any diminution in value of the Pre-Petition Collateral in such amounts, if any, as the Court may hereafter order, as additional adequate protection, the Agent and Pre-Petition Lenders are hereby granted (effective and perfected upon the date of this Order and without the necessity of the execution by the Debtors of security agreements, pledge agreements, mortgages, financing statements or other agreements) a valid, perfected replacement security interest in and lien on all of the Collateral (the "Adequate Protection Liens") to secure any Adequate Protection Claim, subject and subordinate only to the DIP Liens and the Carve Out.

(c) Reservation of Rights to Seek Additional Adequate Protection. The grant of adequate protection to the Agent and Pre-Petition Lenders is without prejudice to the right of the Agent and Pre-Petition Lenders to seek modification of the grant of adequate protection provided by this Order so as to provide different or additional adequate protection; provided, however, that any such additional or modified adequate protection shall at all times be subordinate and junior to the Carve Out and the claims and liens granted to the DIP Agent and DIP Lenders under this Order and the DIP Loan Documents.

21. Challenge to Pre-Petition Indebtedness and Liens.

(a) Any party-in-interest (including the Committee and any trustee appointed or elected in the Chapter 11 Cases prior to the termination of the Challenge Period (as defined in this paragraph)⁵ but excluding the Debtors and the Guarantor), predetermined by the Court to have standing, shall have until the later of: (i) sixty (60) days following the appointment of the Committee, or (ii) a later date consented to by the Agent and Pre-Petition Lenders; or (iii) a date

⁵ Upon request to counsel for the Agent by any party-in-interest, the Agent shall provide electronic access to the Pre-Petition Loan Documents.

ordered by the Court (the "Challenge Period")⁶ to file an adversary proceeding or contested matter (i) challenging or objecting to the validity, perfection, enforceability, or priority of the Agent's and Pre-Petition Lenders' security interests in and liens on the Pre-Petition Collateral or the amount and allowance of the Pre-Petition Indebtedness, or (ii) otherwise asserting any claims or causes of action against the Agent or Pre-Petition Lenders which accrued Pre-Petition (any action under (i) or (ii), a "Challenge").

(b) If, as to (i) any parties in interest, including the Committee, who fail to file a Challenge within the Challenge Period, or if any such Challenge is filed and overruled, or (ii) any and all matters that are not expressly the subject of a timely Challenge, then (A) the Agent and Pre-Petition Lenders shall be deemed to have allowed secured claims against each of the Debtors in the aggregate of the amount of \$58,197,393 consisting of \$57,549,956 in principal and \$647,437 in interest (plus costs expenses and fees recoverable under the Pre-Petition Loan Documents) for all purposes in the Chapter 11 Cases and any subsequent Chapter 7 cases, and shall be entitled, subject to entry of an order to the contrary, to credit bid the full amount of their aggregate Pre-Petition Indebtedness and claims at any sale of assets in the Chapter 11 Cases pursuant to sections 363(k) or 1129 of the Bankruptcy Code, (B) the Agent's and Pre-Petition Lenders' security interests in and liens on the Pre-Petition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, first-priority security interests and liens, not subject to any defense or affirmative claim that would operate to reduce the amount of the Pre-Petition Indebtedness, including without limitation, setoff, recharacterization, subordination or other affirmative claims by the estates against the Agent or Pre-Petition Lenders, and (C) the Pre-Petition Indebtedness and the Agent's and the Pre-Petition Lenders'

⁶ Until the conclusion of the Challenge Period, the Debtors' acknowledgements, representations, stipulations and agreements contained in this Order shall not be binding upon the Committee or any non-debtor parties-in-interest.

security interests in and liens on the Pre-Petition Collateral shall not be subject to any further Challenge by the Debtors or any other party-in-interest, including, without limitation, any Committee, receiver, administrator, trustee, examiner with expanded powers, responsible officer, or other estate representative appointed in any of these Chapter 11 Cases.

22. Additional Perfection Measures.

(a) The liens, security interests, and priorities granted to the DIP Agent, DIP Lenders, Agent and Pre-Petition Lenders pursuant to this Order and the DIP Loan Documents with respect to property of the Debtors' estates shall be perfected by operation of law immediately upon entry of this Order by the Court.

(b) Neither the Debtors nor the DIP Agent, DIP Lenders, Agent or Pre-Petition Lenders shall be required to enter into or to obtain landlord waivers, mortgagee waivers, bailee waivers or warehouseman waivers or to file or record financing statements, mortgages, deeds of trust, leasehold mortgages, notices of lien or similar instruments in any jurisdiction (including, trademark, copyright, trade name or patent assignment filings with the United States Patent and Trademark Office, Copyright Office, or any similar agency with respect to intellectual property), or obtain consents from any licensor or similarly situated party-in-interest, or take any other action in order to validate and to perfect the security interests, DIP Liens or Adequate Protection Liens granted pursuant to this Order.

(c) If the Agent, Pre-Petition Lenders, DIP Agent or DIP Lenders, in their sole discretion, choose to obtain consents from any licensor or similarly situated party-in-interest, to file financing statements, notices of lien or similar instruments, to record financing statements, mortgages or deeds of trust, or to otherwise confirm perfection of such security interests and liens: (i) the Agent, Pre-Petition Lenders, DIP Agent and DIP Lenders are authorized and

empowered to file or record financing statements, mortgages, deeds of trust or similar instruments which secure the DIP Obligations or the Adequate Protection Liens; (ii) all such documents shall be deemed to have been recorded and filed as of the time and on the date of entry of the Interim Order; and (iii) no defect in any such act shall affect or impair the validity, perfection and enforceability of the liens granted hereunder.

(d) In lieu of obtaining such consents or filing such financing statements, notices of lien or similar instruments, the Agent, Pre-Petition Lenders, DIP Agent or DIP Lenders may, in their discretion, choose to file a true and complete copy of this Order in any place at which any such instruments would or could be filed, together with a description of Collateral located within the geographic area covered by such place of filing, and such filing shall have the same effect as if such financing statements, notices of lien or similar instruments had been filed or recorded at the time and on the date of entry of this Order.

(e) Federal, state and local governmental agencies, authorities and instrumentalities that have jurisdiction over the Collateral are hereby directed to accept for filing a certified copy of this Order or an acknowledgement of this Order.

23. Access to Information. Without limiting the rights of access and information afforded the DIP Agent or the DIP Lenders under the DIP Loan Documents, the Debtors shall permit representatives, agents and/or employees of the DIP Agent and DIP Lenders to have reasonable access to their premises and their records during normal business hours (without unreasonable interference with the proper operation of the Debtors' businesses) and shall cooperate, consult with, and provide to such persons all such nonprivileged information as they may reasonably request.

24. Event of Default. The date upon which any of the following events occur and are

continuing beyond any applicable grace period set forth below shall each be an “Event of Default” hereunder: (a) the Debtors fail to make a payment to the DIP Lenders as and when required by the DIP Loan Documents or this Order, or otherwise fail to comply in any material respect with any of the terms or conditions of the DIP Loan Documents and/or this Order; and (b) the occurrence of a “Termination Event” under the DIP Credit Agreement.

25. Automatic Stay Modified. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit, unless the Court orders otherwise:

(a) the DIP Agent and DIP Lenders to exercise, subject to the notice provisions provided below, (1) upon the occurrence of an Event of Default, all rights and remedies under the DIP Loan Documents, including acceleration of the DIP Obligations which shall become due and payable with interest at the default rate and (2) rights to (i) terminate the total commitment under the DIP Loan Documents, (ii) freeze monies or balances in the Debtors’ accounts, (iii) set off monies or balances of the Debtors in accounts maintained by the DIP Agent or DIP Lenders, and (iv) exercise the rights and remedies available under this Order and/or applicable law (including the Uniform Commercial Code as in effect in any jurisdiction), including foreclosing upon and selling all or any portion of the DIP Collateral; and

(b) IOC to exercise, subject to the notice provisions provided below notwithstanding any limitations set forth in section 553 of the Bankruptcy Code or otherwise in the Bankruptcy Code, any and all rights it may hold under applicable non-bankruptcy law to setoff any obligations owed to it by MPC against obligations it owes to MPC; and

(c) Prior to the exercise of any remedies set forth above, the DIP Agent and DIP Lenders and IOC, as applicable, shall file a Notice of Event of Default with the Bankruptcy

Court and shall not exercise any remedies for a period of five (5) business days (the "Notice Period"). During the Notice Period, the DIP Agent and DIP Lenders shall not be required to fund any borrowings under DIP Loan Documents and the Debtor may seek an emergency hearing with the Bankruptcy Court. The DIP Agent's or the DIP Lenders' delay or failure to exercise rights and remedies under the DIP Loan Documents or this Order shall not constitute a waiver of the DIP Agent's or DIP Lenders' rights, unless any waiver is made pursuant to a written instrument executed in accordance with the terms of the DIP Facility.

26. Termination of Authorization to Use Cash Collateral. Unless the Court orders otherwise, or the Debtors obtain the prior written consent of the DIP Agent and DIP Lenders, the Debtors are authorized to use cash collateral only in accordance with the line items set forth in the Approved Budget. Upon the occurrence and during the continuance of an Event of Default, the DIP Agent and DIP Lenders shall have no further obligation to provide financing under the DIP Loan Documents or DIP Facility as approved by this Order, and the authorization to use cash collateral under the terms of this Order shall automatically terminate; provided, however, that if the Debtors' right to use cash collateral has been terminated pursuant to the provisions of this Order, such right may be extended only upon (a) consent of the DIP Agent, (b) the DIP Obligations and the Pre-Petition Indebtedness having been otherwise paid in full, or (c) further Order of this Court entered upon and after appropriate notice and opportunity for a hearing being provided to the DIP Agent and DIP Lenders. The DIP Agent and DIP Lenders shall have no obligation to agree to such an extension under any circumstances and may elect or not elect to agree to such an extension as they determine in its sole and absolute discretion.

27. [Omitted]

28. Successors and Assigns. The DIP Loan Documents and the provisions of this

Order shall be binding upon the DIP Agent, DIP Lenders, Agent, Pre-Petition Lenders, Debtors and their respective successors and assigns, and shall inure to the benefit of the DIP Agent, DIP Lenders, Agent, Pre-Petition Lenders and Debtors and their respective successors and assigns including, without limitation, any trustee, responsible officer, examiner with expanded powers, estate administrator or representative, or similar person appointed in a case for the Debtors under any Chapter of the Bankruptcy Code.

29. No Third Party Beneficiary. Except with respect to any of the DIP Agent, DIP Lenders, Agent, Pre-Petition Lenders, their delegates, and successors and assigns, no rights are created hereunder for the benefit of any third party, any creditor or any direct, indirect or incidental beneficiary.

30. Binding Nature of Agreement. The DIP Obligations shall constitute valid and binding obligations of each of the Debtors enforceable against each of them, and each of their successors and assigns, in accordance with their terms and the terms of this Order.

31. Subsequent Reversal or Modification. This Order is entered pursuant to section 364 of the Bankruptcy Code, granting the DIP Agent and DIP Lenders all protections afforded by section 364(e) of the Bankruptcy Code. If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, that action will not affect (a) the validity of any obligation, indebtedness or liability incurred hereunder by any of the Debtors to the DIP Agent and DIP Lenders or the Agent and Pre-Petition Lenders prior to the date of receipt by the DIP Lenders or Pre-Petition Lenders of written notice of the effective date of such action, or (b) the validity and enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Loan Documents. Notwithstanding any such reversal, stay, modification or vacatur, any post-petition indebtedness, obligation or liability incurred by any of the Debtors to the DIP

Agent and DIP Lenders or the Agent and Pre-Petition Lenders prior to written notice to the DIP Agent, DIP Lenders, Agent and Pre-Petition Lenders of the effective date of such action shall be governed in all respects by the original provisions of this Order, and the DIP Agent and DIP Lenders and the Agent and Pre-Petition Lenders shall be entitled to all the rights, remedies, privileges and benefits granted herein and in the DIP Loan Documents with respect to all such indebtedness, obligation or liability.

32. No Waivers. This Order shall not be construed in any way as a waiver or relinquishment of any rights that the DIP Agent, DIP Lenders, Agent, or Pre-Petition Lenders may have to bring or be heard on any matter brought before this Court. The rights and obligations of the Debtors and the rights, claims, liens, security interests and priorities of the DIP Agent and DIP Lenders arising under this Order are in addition to, and are not intended as a waiver or substitution for, the rights, obligations, claims, liens, security interests and priorities granted by the Debtors under the DIP Loan Documents.

33. Sale/Conversion/Dismissal.

(a) Absent leave from this Court, no motion shall be filed by the Debtors seeking either the sale of the ownership of the stock of any of the Debtors or the sale of any of the Collateral under section 363 of the Bankruptcy Code without the express consent of the DIP Agent, DIP Lenders, Agent and Pre-Petition Lenders. In the event that any of the Collateral is the subject of a motion to sell under section 363 of the Bankruptcy Code or under a plan pursuant to section 1129 of the Bankruptcy Code, the DIP Agent and the Agent shall, unless otherwise provided by order of this Court, be entitled to credit bid the full amount of the DIP Obligations and the Pre-Petition Indebtedness under sections 363 and/or 1129 of the Bankruptcy Code.

(b) If an order is entered (i) dismissing any of these Chapter 11 Cases under sections

305 or 1112 of the Bankruptcy Code or otherwise, (ii) converting these Chapter 11 Cases under section 1112 of the Bankruptcy Code or (iii) appointing a Chapter 11 trustee or an examiner with expanded powers, such order shall provide that (a) the liens, security interests and Superpriority Claims and Adequate Protection Claims granted to the DIP Agent and DIP Lenders and the Agent and Pre-Petition Lenders hereunder and in the DIP Loan Documents, as the case may be, shall continue in full force and effect, shall remain binding on all parties-in-interest and shall maintain their priorities as provided in this Order until all DIP Obligations and the Adequate Protection Claims shall have been indefeasibly paid in full in cash and the total commitment shall have been terminated in accordance with the DIP Facility, and (b) this Court shall retain jurisdiction to the fullest extent permitted by law, notwithstanding such dismissal, for purposes of enforcing the liens, security interests and Superpriority Claims of the DIP Agent and DIP Lenders, as the case may be.

34. Injunction. Except as provided in the DIP Facility, and this Final DIP Order, and unless otherwise authorized by order of this Court, the Debtors are prohibited from, at any time during the Chapter 11 Cases, (a) granting liens in the Collateral or any portion thereof to any other parties, pursuant to section 364(d) of the Bankruptcy Code or otherwise, which liens are senior to, pari passu with or junior to the liens of the DIP Agent and DIP Lenders, except for the Adequate Protection Liens and liens granted to the Agent, on behalf of itself and the Pre-Petition Lenders, and/or (b) (i) using the Cash Collateral, and (ii) applying to the Court for an order authorizing the use of the Cash Collateral or the Collateral, except in accordance with this Order.

35. Survival. Unless otherwise ordered by this Court, the liens, lien priority, administrative priorities and other rights and remedies with respect to the Debtors granted to the DIP Agent and DIP Lenders pursuant to the DIP Loan Documents, this Order and the other DIP

Loan Documents (specifically including, but not limited to, the existence, perfection and priority of the liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of indebtedness by any Debtor (pursuant to section 364 of the Bankruptcy Code or otherwise), by any dismissal or conversion of any of the Chapter 11 Cases, or by the confirmation of a plan of reorganization in any of the Chapter 11 Cases which does not (a) contain a provision for termination of the total commitment and payment in full in cash of the Adequate Protection Claims and all DIP Obligations on or before the effective date of such plan or plans upon entry thereof and (b) provide for the continuation of the liens and security interests granted to the DIP Agent and DIP Lenders, and the priorities thereof until the earlier of (i) such plan effective date, and (ii) the date the Adequate Protection Claims and the DIP Obligations are paid in full in cash and the total commitment is terminated, or by any other act or omission whatsoever.

36. Priority of Terms. To the extent of any conflict between or among (a) the express terms or provisions of any of the DIP Loan Documents, the Motion, or any other agreements, on the one hand, and (b) the terms and provisions of this Order, on the other hand, unless such term or provision herein is phrased in terms of “as defined in” or “as more fully described in” the DIP Facility or the DIP Loan Documents, the terms and provisions of this Order shall govern.

37. Environmental Compliance. Nothing in this Order or the DIP Documents shall relieve the Debtor of any obligations under federal, state or local police or regulatory laws or under 28 U.S.C. § 959(b).

38. Environmental Incident or Event. Notwithstanding any provision of this Order or the DIP Documents to the contrary, the Debtor may use Cash Collateral to the extent reasonably

necessary to pay expenses incurred to preserve the debtor's assets from sudden and catastrophic loss and to preserve life and property in the event of any fire, explosion, environmental incident or extraordinary event.

39. Financial Assurance; Setoff for Governmental Units. Nothing in the Interim or Final Order or the DIP Documents impairs or adversely affects any right of the beneficiaries under that certain [Trust Fund insert full name] (the "Trust") established by MPC pursuant to its Solid Waste Management Permit and state regulations to the proceeds of the Trust. Nothing in this Order or the DIP Documents shall discharge, release or otherwise preclude the EPA's or MDEQ's valid right of setoff, recoupment, or entitlement to any insurance proceeds for liabilities under environmental laws to the extent permitted by applicable law.

40. Retention of Jurisdiction. This Court shall retain jurisdiction over all matter pertaining to the implementation, interpretation and enforcement of this Order.

41. Binding Effect of Order. The terms of this Order shall be binding on any trustee appointed under Chapter 7 or Chapter 11 of the Bankruptcy Code.

42. Entry of Order; Effect. This Order shall take effect immediately upon execution, notwithstanding the possible application of Fed. R. Bankr. P. 6004(g), 7062, 9014, or otherwise, and the Clerk of the Court is hereby directed to enter this Order on the Court's docket in these Chapter 11 Cases.

END OF ORDER