

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

In re:	)	
	)	
MISSISSIPPI PHOSPHATES	)	
CORPORATION, et al.	)	CASE NO. 14-51667-KMS
	)	Chapter 11
	)	Jointly Administered
Debtors	)	
_____	)	

**EMERGENCY MOTION OF THE UNITED STATES OF AMERICA, ON BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, FOR AN EXTENSION OF THE DEADLINE FOR INVESTIGATION TERMINATION DATE, OBJECTIONS, AND CHALLENGE PERIOD UNDER INTERIM DIP ORDER.**

The United States of America, on behalf of the Environmental Protection Agency (EPA), files this Emergency Motion for an extension of the deadline for completing the investigation and for 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 for otherwise asserting any claims or causes of action against the Agent or pre-Petition Lenders (a Challenge) until February 10, 2015.

1. On January 8, 2015, Debtors filed a Notice of Debtors’ Agreement extending the challenge period set forth in the Interim DIP Order (Dkt # 066) from January 11, 2015, to January 19, 2014, to permit any party in interest additional time to Challenge the Pre-Petition Lenders’ and Agent’s interests and the allowance for Pre-Petition Indebtedness. (Dkt # 350).

2. As set forth below, the United States is investigating the Pre-Petition Lenders’ claim and has issued requests for production of documents in accordance with Bankruptcy Rules 2004 and 9016, and Fed.R.Civ.P. 45. The United States has not received all documents requested and will

be unable to complete its investigation and evaluate the validity and amount of the Pre-Petition Lenders' claim and secured status by January 19, 2015. Therefore, the United States requests an extension of the challenge period by approximately three (3) weeks to February 10, 2015.

3. On December 12, 2014, counsel for the United States emailed proposed document production requests to counsel for Debtors and Phosphates Holdings, Inc. (the parent of Debtor Mississippi Phosphates Corporation). On December 15, 2014, counsel for the United States emailed proposed document production requests to counsel for STUW LLC (as administrative agent for the Pre-Petition Lenders), and certain Pre-Petition Lenders identified as Hudson Bay Fund LP, Hudson Bay Intermediate Fund, LTD., and Hudson Bay Master Fund, LTD. (hereafter, "the Hudson Bay Lenders").

4. Counsel for the United States conferred with counsel for Debtors, PHI, STUW LLC, and the Hudson Bay Lenders by telephone on December 17-18, 2014, and the United States agreed to modify or defer certain requests for production. Counsel agreed to accept service of a subpoena and to produce documents, subject to the right to assert objections, and subject to the completion and entry of a negotiated Protective Order.

5. The United States issued subpoenas to counsel for Debtors, PHI, STUW LLC and the Hudson Bay Lenders that were served electronically on December 23<sup>rd</sup> with a production request deadline of January 6, 2015.

6. Due in part to an attempt by counsel for Debtors, Lenders and PHI to reach agreement on terms of a protective order with other interested parties and the Unsecured Creditors Committee, the Stipulated and Agreed Protective Order Governing the Production and/or Disclosure of Confidential Information and Discovery Materials (Protective Order) that pertains to the United States' discovery requests was not filed and then entered by the Court until January 6, 2015. In

should be noted that Counsel for the United States sought access to the documents in the Debtors' data room since November 2014, but that access was not granted by Debtors until the Protective Order was approved by the Court.

7. Counsel for STUW LLC and the Hudson Bay Lenders produced 40,000 pages of documents to the United States electronically on Wednesday, January 7 (an email with zip file was received at 8:53 p.m. on the 6<sup>th</sup>) and a DVD with the materials was received on January 7, 2015. It took one full day to load those files into a searchable format database.

8. PHI only began its initial production of responsive documents on Tuesday afternoon, January 13, 2015, and it will be producing documents on a rolling basis. Counsel for Debtor made the 'data room' accessible to the United States on January 6, 2015. The data room contains some responsive documents, but Debtors are continuing to produce documents on a rolling basis. Thousands of pages of documents are only available for review in Mississippi. It may be necessary to examine the Debtors or others based on the information received.

9. The United States cannot review and evaluate information that it has not yet received and it is still reviewing materials that it received last week and just this week. Under these circumstances, it is not possible to complete our investigation to determine whether a challenge on any grounds is appropriate and to file such a challenge by January 19, 2015.

10. The United States, through EPA, is charged with regulatory responsibility to protect public health and the environment under several environmental statutes that pertain to Debtor's facility, including the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq., the Clean Water Act (CWA), 33 U.S.C. §§ 1251 et seq., the Clean Air Act (CAA), 42 U.S.C. §§ 7401 et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq. These statutes and similar statutes under

state law are designed, *inter alia*, to ensure that owners of facilities using hazardous substances or generating hazardous waste take necessary steps to protect the public and the environment from environmental hazards.

11. There are extensive federal and state environmental obligations and liabilities at Debtors' manufacturing facility that must be addressed in order to protect the environment, human health, and the public interest. Therefore, the United States has a strong interest in determining the validity of the Pre-Petition Lenders' asserted claim of \$58.2 million.

12. In the United States' Response to the Debtors' Emergency DIP Motion (Dkt. ## 14, 66, 143 and 164),<sup>1</sup> the United States advised the Court: "*Under Paragraph 21, parties in interest are given 60 days to challenge the Agent's and Pre-Petition Lender's security interests in the Pre-Petition Collateral and the amount and allowance of Pre-Petition Indebtedness. The ability of the Governments or any party in interest to evaluate and, if appropriate, challenge the Pre-Petition Lenders' interests within 60 days depends on the cooperation of Debtors and Pre-Petition Lenders in producing relevant documents and information in a timely manner upon request or in discovery. The United States has informally requested documents from Debtors' counsel, but it has not yet received them.*" (Dkt. # 164) at Paragraph 20. Counsel for the United States expressed this concern at the hearing held on

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<sup>1</sup> See UNITED STATES' RESPONSE TO DEBTORS' EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS PURSUANT TO 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; (V) MODIFYING THE AUTOMATIC STAY; AND (VI) SCHEDULING A FINAL HEARING ON MOTION. (Dkt # 164)

November 18, 2014. By Minute Order dated December 03, 2014, the Court stated that it would entertain requests for an extension by the Unsecured Creditors Committee “for cause”. (Dkt# 291). The United States respectfully requests that it be granted an extension for cause.

13. The United States contacted counsel for the Debtors, PHI, STUW LLC, and the Hudson Bay Lenders this morning by electronic mail to seek agreement on the extension, but we have not yet received a response.

14. The United States also contacted counsel for the Unsecured Creditors Committee, and the Committee does not object to the extension.

15. Accordingly, the United States respectfully requests that the deadline for challenges to the Agent’s and Pre-Petition Lenders’ security interests be extended to February 10, 2015.

16. Counsel for the Mississippi Department of Environmental Quality authorizes the undersigned to represent that it joins in the Motion.

#### PRAYER FOR RELIEF

For all of the above reasons, the United States respectfully requests that the Court extend the deadline for the United States to complete its investigation and the challenge period under the Interim DIP Order to February 10, 2015. The United States also respectfully requests that, if

necessary, an emergency telephonic hearing be scheduled by no later than Friday, January 16, 2015. A proposed Order granting the extension is attached hereto.

DATE: 01/14/15

Respectfully submitted,

FOR THE UNITED STATES

/s/ Kenneth G. Long

KENNETH G. LONG

Senior Attorney

D.C. Bar No. 414791

KARL J. FINGERHOOD

Senior Counsel

PA Bar No. 63260

Environmental Enforcement Section

Environment and Natural Resources Division

U.S. Department of Justice

P.O. Box 7611

Washington, DC 20044-7611

Tel. (202) 514-2840

Fax (202) 616-6584

Email: [kenneth.long@usdoj.gov](mailto:kenneth.long@usdoj.gov)

CERTIFICATE OF SERVICE

I certify that the foregoing pleading was filed electronically through the Court's ECF system and served electronically on all parties enlisted to receive service electronically.

SO CERTIFIED, this the 14th day of January, 2015.

/s/ Kenneth G. Long  
Kenneth G. Long  
D.C. Bar No. 414791  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
Tel. (202) 514-2840  
Fax (202) 616-6584  
Email: [kenneth.long@usdoj.gov](mailto:kenneth.long@usdoj.gov)

Counsel for the United States of America