



SO ORDERED,

Judge Katharine M. Samson  
United States Bankruptcy Judge  
Date Signed: March 16, 2015

The Order of the Court is set forth below. The docket reflects the date entered.

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

In re:	)	
	)	
MISSISSIPPI PHOSPHATES	)	
CORPORATION, <i>et al.</i> <sup>1</sup>	)	CASE NO. 14-51667-KMS
	)	Chapter 11
	)	
Debtors	)	Jointly Administered
	)	

**AMENDED ORDER GRANTING MOTION OF DEBTORS, PURSUANT TO BANKRUPTCY CODE SECTIONS 105(A), 363, 365, 503, AND 507, AND BANKRUPTCY RULES 2002, 3007, 6004, 6006, 9007, AND 9014 FOR ENTRY OF: (I) ORDER (A) APPROVING SALES AND BIDDING PROCEDURES IN CONNECTION WITH SALE OF ASSETS OF THE DEBTORS, (B) APPROVING FORM AND MANNER OF NOTICE, (C) SCHEDULING AUCTION AND SALE HEARING, (D) AUTHORIZING PROCEDURES GOVERNING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (E) GRANTING RELATED RELIEF**  
[Dkt. ##155, 320, 353, 354, 362, 410, 509]

This matter came before the Court on the *Motion of Debtors, pursuant to Bankruptcy Code Sections 105(a), 363, 365, 503, and 507, and Bankruptcy Rules 2002, 3007, 6004, 6006,*

<sup>1</sup> The chapter 11 cases of the following affiliated Debtors have been administratively consolidated for joint administration pursuant to that certain *Order Granting Motion of the Debtor for Order Directing Joint Administration of Affiliated Cases Pursuant to Bankruptcy Rule 1015(b)*, dated October 29, 2014 [Dkt. # 62]: Mississippi Phosphates Corporation (“MPC”), Case No. 14-51667, Ammonia Tank Subsidiary, Inc. (“ATS”), Case No. 14-51668 and Sulfuric Acid Tanks Subsidiary, Inc. (“SATS”), Case No. 14-51671. These chapter 11 cases are sometimes referred to herein as the “*Bankruptcy Cases*.”

9007. and 9014. for Entry of: (I) Order (A) Approving Sales and Bidding Procedures in Connection with Sale of Assets of the Debtors, (B) Approving Form and Manner of Notice, (C) Scheduling Auction and Sale Hearing, (D) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (E) Granting Related Relief; and (II) Order (A) Approving Purchase Agreement, (B) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (C) Granting Related Relief (the “**Sales Procedures Motion**”)<sup>2</sup> [Dkt. # 155] filed by Mississippi Phosphates Corporation, *et al.*, the Debtors and debtors-in-possession (collectively, the “**Debtors**”), through their counsel. The Court considered the Motion, the objections and responses filed by E. I. du Pont de Nemours and Company (“**DuPont**”) [Dkt. # 320]; Brock Services, LLC (“**Brock**”) [Dkt. ## 353, 362]; McCain Engineering Co., Inc. (“**McCain**”) [Dkt. # 354]; and Mississippi Power Company (“**Mississippi Power**”) [Dkt. # 410] (DuPont, Brock, McCain and Mississippi Power are collectively referred to as the “**Objecting Creditors**”), and that the parties have agreed to the entry of the order, and, considering all of the foregoing, finds that the Motion is well-taken and that the Sales and Bidding Procedures, which are attached hereto as **Exhibit “1”** (the “**Sales and Bidding Procedures**”) and the Assumption Procedures for unexpired leases and executory contracts, which are attached hereto as **Exhibit “2”** (the “**Assumption Procedures**”) should be approved.

IT IS, THEREFORE, ORDERED that the Sales and Bidding Procedures are hereby approved.

IT IS FURTHER ORDERED that the Debtors are authorized to take such actions as are necessary or appropriate to implement the Sales and Bidding Procedures.

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

IT IS FURTHER ORDERED that the Assumption Procedures are hereby approved.

IT IS FURTHER ORDERED that the Debtors are authorized to take such actions as are necessary or appropriate to implement the Assumption Procedures.

IT IS FURTHER ORDERED that Bidders are advised that the transfer of assets may involve the transfer of necessary permits and licenses, subject to governmental approval, and compliance with environmental laws and regulations.

IT IS FURTHER ORDERED that approval of this Order is without prejudice to any objections the United States, Mississippi Department of Environmental Quality, the Committee, or the Objecting Creditors may assert with respect to any proposed Sale Order.

IT IS FURTHER ORDERED that the Court will consider Debtors' request for an Order (A) Approving Purchase Agreement, (B) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (C) Granting Related Relief at the Sale Hearing.

IT IS FURTHER ORDERED that any issues with respect to the rights to the proceeds of any sale will be addressed in any proposed Sale Order or such other Order of the Court.

**### END OF ORDER ###**

**ORDER PREPARED AND SUBMITTED BY:**

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**ATTORNEY FOR THE DEBTORS**

**AGREED TO AND APPROVED FOR ENTRY:**

**UNITED STATES DEPARTMENT OF JUSTICE, ENVIRONMENTAL  
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**ITS ATTORNEYS**

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HUDSON BAY MASTER FUND, LTD**

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**EXHIBIT "1"**

**SALES AND BIDDING PROCEDURES**

These sales and bidding procedures (the "*Sales and Bidding Procedures*") set forth the process by which Mississippi Phosphates Corporation, *et al.* are authorized to conduct a sale by auction of substantially all of the assets of Sellers in accordance with the Sales and Bidding Procedures Order (defined below).

These Sales and Bidding Procedures initially were approved by order of the Bankruptcy Court dated February 20, 2015, 2015 (the "*Sales and Bidding Procedures Order*") [Dkt. 509], pursuant to the *Motion of Debtors, pursuant to Bankruptcy Code Sections 105(a), 363, 365, 503, and 507, and Bankruptcy Rules 2002, 3007, 6004, 6006, 9007, and 9014 for Entry of: (I) Order (A) Approving Sales and Bidding Procedures in Connection with Sale of Assets of the Debtors, (B) Approving Form and Manner of Notice, (C) Scheduling Auction and Sale Hearing, (D) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (E) Granting Related Relief; and (II) Order (A) Approving Purchase Agreement, (B) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (C) Granting Related Relief*<sup>3</sup> seeking certain relief. Due to a change of circumstances, it is necessary to amend the Sales and Bidding Procedures Order as follows:

- A. With respect to the Sales and Bidding Procedures Order:
- Approving these Sales and Bidding Procedures;
  - Authorizing the Debtors to schedule an auction to sell the Sellers Assets (the "*Auction*") to be held on **Tuesday, May 12, 2015**;

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<sup>3</sup>Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion and the Sales and Bidding Procedures Order, as applicable.



- Scheduling the final hearing to approve a sale of the Sellers Assets (the “*Sale Hearing*”) for a date on **May 22, 2015, beginning at 9:30 a.m.**, at the United States Bankruptcy Courtroom, 7<sup>th</sup> Floor, Dan M. Russell, Jr. United States Courthouse, 2012 15<sup>th</sup> Street, Gulfport, MS 39501;
- Approving the form and manner of notice of the proposed sale transactions, the Sales and Bidding Procedures, the Auction, and the Sale Hearing;
- Authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases (the “*Assigned Contracts*”) by the purchaser who submits the highest or otherwise best offer at the Auction in accordance with the Sales and Bidding Procedures (the “*Prevailing Purchaser*”); and
- Granting related relief.

B. With respect to the Sale of the Sellers Assets, an order, the form of which will be filed with the Court and served on the entities receiving this Motion by **Friday, May 1, 2015** at 5:00 p.m. prevailing Central Time (the “*Sale Order*”):

- Authorizing the sale (the “*Sale*”) of the Sellers Assets and the assumption and assignment of the Assigned Contracts (as defined herein) to the Prevailing Purchaser at the Auction free and clear of all liens, claims, encumbrances, and other interests (as more fully described in Paragraph 2 below) (collectively, “*Liens*”), other than any Liens permitted by the purchase agreement between the Debtors and the Prevailing Purchaser; and
- Granting related relief.

1. **Assets to Be Sold.**

The Debtors provide these Sales and Bidding Procedures whereby prospective bidders may qualify for and participate in the Auction, thereby competing to make the highest or otherwise best offer for all or substantially all assets of the Sellers (the “*Sellers Assets*”). The Sellers Assets shall not include the estates’ claims or causes of action under Chapter 5 of the Bankruptcy Code (including such claims under state law that may be asserted by the Debtors pursuant to 11 U.S.C. § 544) or any claims or causes of action against any of the Debtors’ officers or directors.

**2. Sale Free and Clear of Liens, Interests, Claims and Encumbrances.**

The Debtors seek to sell the Sellers Assets to the Prevailing Purchaser, and the assumption, assignment and sale of the Executory Contracts to the Prevailing Purchaser, free and clear of all Liens and Claims (as defined below) of any kind or nature whatsoever in respect of the following: (1) any labor agreements; (2) all mortgages, deeds of trust and security interests; (3) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any Debtor; (4) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to: (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (h) the Americans with Disabilities Act of 1990, (i) the Consolidated Omnibus Budget Reconciliation Act of 1985, (j) state discrimination laws, (k) state unemployment compensation laws or any other similar state laws, or (l) any other state or federal benefits or claims relating to any employment with any of the Debtors or any of their respective predecessors; (5) any bulk sales or similar law; (6) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (7) any theories of successor liability; and (8) any environmental laws, provided, however, nothing in the Sale Order authorizing and permitting such sale will be construed to release, nullify, or enjoin a governmental body from seeking to enforce any environmental laws under which a purchaser of

property would otherwise be determined to be liable as a current owner or current operator after the date of closing of the sale and purchase of the Sellers Assets.

**3. Confidentiality Agreements.**

Upon execution of a confidentiality agreement in a form and substance satisfactory to the Debtors, the DIP Agent, for and on behalf of the DIP Lenders, and the Agent, for an on behalf of the Pre-Petition Lenders, any prospective bidder that wishes to conduct due diligence on the Sellers Assets may be granted access to all marketing information. The information to be provided to such parties will be information that the Debtors reasonably believe is appropriate in light of the Debtors' need to protect their confidential commercial information.

Each party expressing an interest in the Sellers Assets shall comply with all reasonable requests for additional information and due diligence access by the Debtors regarding such party and its contemplated transaction. Failure by a party to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors, in consultation with the Investment Banker (as defined herein) and the Creditor Constituencies to determine that such bidder is not a Qualified Bidder (as defined herein).

By submitting a bid, each bidder shall be deemed to acknowledge and represent as follows: (a) it has had an opportunity to conduct due diligence on the Sellers Assets prior to making its bid; (b) it has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the assets in making its bid; and (c) it did not rely upon any written or oral statement, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Sellers Assets, or the completeness of any information provided in connection therewith.

4. **Notice Parties.**

The following persons or entities are the “*Notice Parties*” who are entitled to receive a copy of any initial bid that is submitted by a Qualified Bidder:

Investment Banker for the Debtors: Sandler O’Neill + Partners, L.P. (the “*Investment Banker*”), 1251 Avenue of the Americas, 6th Floor, New York, NY 10020, Attn: Sunny Cheung ([scheung@sandleroneill.com](mailto:scheung@sandleroneill.com)), Avinash Tolani ([atolani@sandleroneill.com](mailto:atolani@sandleroneill.com)), and Timur Hubey ([thubey@sandleroneill.com](mailto:thubey@sandleroneill.com));

Chief Restructuring Officer of the Debtors: Jonathan J. Nash, 601 Industrial Drive, Pascagoula, MS 39581 ([jonnash@deloitte.com](mailto:jonnash@deloitte.com));

Chief Executive Officer of the Debtors: Stephen S. Russo, 601 Industrial Drive, Pascagoula, MS 39581 ([s.russo@missphosphates.com](mailto:s.russo@missphosphates.com));

Counsel to the Debtors, Butler Snow LLP, 1020 Highland Colony Parkway, Suite 1400, Ridgeland, MS 39157, Attn: Stephen W. Rosenblatt ([steve.rosenblatt@butlersnow.com](mailto:steve.rosenblatt@butlersnow.com)) and Christopher R. Maddux ([chris.maddux@butlersnow.com](mailto:chris.maddux@butlersnow.com));

Office of the United States Trustee for the Southern District of Mississippi, 501 East Court Street, Suite 6430, Jackson, MS 39201, Attn: Christopher J. Steiskal ([Christopher.J.Steiskal@usdoj.gov](mailto:Christopher.J.Steiskal@usdoj.gov));

Counsel to the DIP Agent and the Agent for the Pre-Petition Lenders: (i) Haynes and Boone, LLP, 1221 McKinney Street, Suite 2100, Houston, Texas 77010, Attn: Lenard M. Parkins ([lenard.parkins@haynesboone.com](mailto:lenard.parkins@haynesboone.com)) and Karl D. Burrer ([karl.burrer@haynesboone.com](mailto:karl.burrer@haynesboone.com)); and (ii) Byrd & Wisner, 145 Main Street, Biloxi, MS 39530-4333, Attn: Robert A. Byrd ([rab@byrdwisner.com](mailto:rab@byrdwisner.com)); and

Counsel for the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the “*Committee*”): Burr & Forman LLP, 420 North 20th Street, Suite 3400, Birmingham, AL 35203, Attn: Derek F. Meek, Esq. ([dmeek@burr.com](mailto:dmeek@burr.com)).

The Agent, the DIP Agent and the Committee may be collectively referred to herein as the (“*Creditor Constituencies*”).

5. **Determination of “Qualified Bidder” Status.**

To participate in the sales and bidding process, and to be deemed a “*Qualified Bidder*,” each potential bidder (except the DIP Agent, for and on behalf of the DIP Lenders, and the Agent, for and on behalf of the Pre-Petition Lenders, which are deemed to be Qualified Bidders)

must comply with the requirements of this Paragraph 5 and deliver to the Notice Parties a written offer, so as to be received by no later than **Tuesday, May 5, 2015 at 5:00 p.m. (prevailing Central Time)** (the "***Bid Deadline***"), that meets the following requirements:

(a) states such bidder offers to purchase the Sellers Assets, with a specific indication of which Sellers Assets are subject to the bid;

(b) is based on the Form Asset Purchase Agreement (the "***Form APA***") and includes executed transaction documents, including a definitive purchase agreement and all schedules and exhibits thereto (in the same detail as those attached to the Form APA that was filed with the Bankruptcy Court [Dkt. # 511], signed by an authorized representative of such bidder, pursuant to which the bidder proposes to effectuate a transaction for some or all of the Sellers Assets (the "***Bidder APA***"), and such Bidder APA shall also include a copy of the Bidder APA marked against the Form Asset Purchase Agreement to show all changes requested by the bidder;

(c) includes a summary term sheet with the material terms of the bid;

(d) provides for the immediate payment at closing of all obligations, including principal, fees, interest and expenses, arising under or related to the Debtors' post-petition financing at the closing of the sale transaction;

(e) is irrevocable unless and until the Debtors accepts a higher or otherwise better bid and the bidder is not selected as the Back-Up Bidder;

(f) does not request any expense reimbursement, break-up fee, "topping," termination, contribution, or other similar fee or payment;

(g) contains such financial and other information that will reasonably allow the Debtors, in consultation with the Investment Banker and the Creditor Constituencies, to make a determination as to the bidder's financial and other capabilities to consummate the transactions contemplated by the Bidder APA, which information shall be satisfactory to the Debtors, the Agent and the DIP Agent, including:

(i) contact names and numbers for verification of financing sources;

(ii) evidence of such bidder's internal resources and proof of unconditional debt or equity funding commitments from a recognized financial institution in the amount of the bid or the posting of an irrevocable letter of credit from a recognized financial institution issued in favor of the Debtors in the amount of the bid, in each case, as are needed to consummate the Bidder APA;

(iii) such bidder's current financial statements (audited, if they exist) or other similar financial information reasonably acceptable to the Debtors and the Creditor Constituencies;

(iv) such financial and other information setting forth adequate assurance of future performance under section 365 of the Bankruptcy Code, in a form requested by the Debtors to allow the Debtors to serve on counterparties to any contracts or leases being assigned or both assumed and assigned in

connection with the proposed sale in a timely manner so as to not disrupt the sale process; and

(v) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors, demonstrating that such Bidder has the ability to consummate the Bidder APA;

(h) contains such information requested by the Debtors, including any and all executory contracts and unexpired leases of the Debtors that the bidder wishes to have assigned to it pursuant to the Bidder APA, and provides that the bidder will pay all cure costs necessary to assign such executory contracts and unexpired leases at the closing of the sale transaction;

(i) contains such information requested by the Debtors, regarding the identity of each entity that will be bidding for the Sellers Assets or otherwise participating in connection with such bid, and the complete terms of any such participation, which information is satisfactory to the Debtors;

(j) includes evidence of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the Bidder APA, which evidence is satisfactory to the Debtors;

(k) includes covenants and conditions, if any, reasonably acceptable to the Debtors (in consultation with the Investment Banker and the Creditor Constituencies), but under no circumstances shall a bid be conditioned on the obtaining or the sufficiency of financing or any internal or credit committee approval, syndication requirements, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, all of such shall be specifically set forth in the Bidder APA; and

(l) is accompanied by a good faith cash deposit in an amount no less than 10% of the purchase price set forth in the Bidder APA, which shall be deposited in an escrow account to be established by the Debtors subject to an escrow agreement satisfactory to the Debtors, and which will be credited against the purchase price, provided, however, that the DIP Agent, for and on behalf of the DIP Lenders, and the Agent, for an on behalf of the Pre-Petition Lenders, shall not be required to provide any such cash deposit.

By submitting a bid, a bidder shall be deemed to waive the right to assert or seek payment of any post-filing claim, including administrative expense claims, and to the extent otherwise applicable, a substantial contribution claim under section 503 of the Bankruptcy Code, with respect to its bid or the marketing or auction process.

A competing bid meeting the above requirements, as may be supplemented by the Debtors in consultation with the Investment Banker and the Creditor Constituencies, will

constitute a “*Qualified Bid*.” The Debtors will make a determination, in consultation with the Investment Banker and the Creditor Constituencies, regarding whether a bid is a Qualified Bid and will notify each such bidder of such determination on or before **Friday, May 8, 2015 at 12:00 p.m. noon (Central Time)**.

The DIP Agent, for and on behalf of the DIP Lenders, and the Agent, for an on behalf of the Pre-Petition Lenders, are each a Qualified Bidder without having to comply with the requirements of this Paragraph 5. Nothing contained herein or in the sale order shall affect the right of the Agent or DIP Agent to assert any claims held by either of them against the Debtors and their respective bankruptcy estates including, any administrative priority claims.

**6. Environmental Matters.**

The Debtors and their advisors will reasonably consult with the Mississippi Department of Environmental Quality and the Environmental Protection Agency (the “*Regulatory Agencies*”) with respect to material aspects of the sale process described in these Sales and Bidding Procedures. Further, during the sales process, the Debtors and their advisors will coordinate and facilitate communication between (i) potential bidders and Qualified Bidders and (ii) the Regulatory Agencies with respect to the Sale Assets.

**7. Modifications of Qualified Bids Prior to Auction.**

Between the date that the Debtors notify a bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period of time such Qualified Bid remains binding as specified herein; provided that any

Qualified Bid may be improved between the date of its submission and the conclusion of the Auction as set forth herein.

**8. Auction Baseline Bid.**

No later than **12:00 p.m. (prevailing Central Time) on Friday, May 8, 2015**, the Debtors will provide to each Qualified Bidder notice of the terms of the highest or otherwise best Qualified Bid or Qualified Bids received (such highest or otherwise best Qualified Bid, the "***Auction Baseline Bid***"). The Debtors, in consultation with the Creditor Constituencies, will determine the highest or otherwise best Qualified Bid or Qualified Bids.

**9. Auction.**

In the event that the Debtors determine there is more than one Qualified Bidder, the Debtors are authorized to conduct an Auction. Other than as expressly set forth herein, the Debtors may conduct an Auction in the manner it determines, in consultation with the Investment Banker and the Creditor Constituencies, will result in the highest or otherwise best offer for the Sellers Assets. The Auction will be held on **Tuesday, May 12, 2015, beginning at 9:30 a.m. (prevailing Central Time)**, at the offices of Butler Snow LLP, 1020 Highland Colony Parkway, Suite 1400, Ridgeland, MS 39157, or such other location as will be timely communicated to all entities entitled to attend the Auction. The Debtors, Qualified Bidders, the Creditor Constituencies, the Pre-Petition Lenders, the DIP Lenders, the United States Trustee, representatives of any of the Regulatory Agencies, and the respective advisors of any of the foregoing, will be permitted to attend the Auction.



10. **Overbid.**

An “*Overbid*” is any bid or bids made at the Auction subsequent to the Debtors’ announcement of the Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

(a) any Overbid after and above the Auction Baseline Bid shall be made in increments valued at not less than \$250,000 of the Auction Baseline Bid;

(b) any Overbid shall remain open and binding on the Qualified Bidder until and unless (i) the Debtors accepts as an Overbid a higher Qualified Bid for the Sellers Assets, and (ii) such Overbid is not selected as the Back-Up Bid (as defined below);

(c) to the extent not previously provided, a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, evidence demonstrating such Qualified Bidder’s ability to close the transactions proposed by such Overbid; and

(d) the Debtors reserve the right, in their reasonable business judgment and in consultation with the Investment Banker and the Creditor Constituencies, to make one or more continuances of the Auction to, among other things: facilitate discussions among the Debtors and Qualified Bidders; allow Qualified Bidders to consider how they wish to proceed; and give Qualified Bidders the opportunity to provide the Debtors and Creditor Constituencies with such additional information as the Debtors in their reasonable business judgment, after consultation with the Creditor Constituencies, may require.

11. **Credit Bidding.**

The DIP Agent, for an on behalf of DIP Lenders, and the Agent, for and on behalf of the Pre-Petition Lenders, shall each (a) have the right to credit bid for any or all of their respective collateral (the “*Collateral*”),<sup>4</sup> up to the full amount of their respective total allowed claims in connection with the Sale or any other disposition of their respective Collateral, (b) be deemed a Qualified Bidder, and (c) be able to participate fully at the Auction.

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<sup>4</sup> The Agent and the DIP Agent do not assert a lien on the east gypsum disposal facility. The Agent, the DIP Agent, and the Committee reserve all rights with respect to any allocation of value of the Sellers Assets.

12. **Auction Procedures.**

In addition to complying with the above requirements, the Auction will be governed by the following procedures:

A. the Auction will be conducted openly by the Debtors, and only the Qualified Bidders will be entitled to: (i) make any subsequent bids at the Auction; (ii) make statements on the record at the Auction; or (iii) otherwise participate at the Auction in any manner whatsoever;

B. each Qualified Bidder will be required to represent that it has not engaged in any collusion with respect to the bidding or the sale;

C. the Qualified Bidders will appear in person at the Auction, through a duly authorized representative, or as otherwise agreed by the Debtors;

D. bidding will commence and proceed as determined by the Debtors, in consultation with the Investment Banker and the Creditor Constituencies;

E. the bidding at the Auction will be transcribed or videotaped, at the Debtors' election;

F. all Qualified Bidders will have the right to submit additional bids and make additional modifications to their respective Bidder APA at the Auction, provided that any such modifications to the Bidder APA, on an aggregate basis and viewed in whole, shall not be less favorable to the Debtors than such Qualified Bidder's previous bid in the Debtors' discretion, in consultation with the Investment Banker and the Creditor Constituencies;

G. any Auction will continue until the Debtors determines, in consultation with the Investment Banker and the Creditor Constituencies, that a Qualified Bid or Overbid, as applicable, is the highest or otherwise best offer from among the Qualified Bids (including Overbids) (the "***Prevailing Bid***," and the party or parties that submitted such Prevailing Bid, the "***Prevailing Purchaser***"), which shall be subject to Bankruptcy Court approval; and

H. in selecting the Prevailing Bid, the Debtors, in consultation with the Investment Banker and the Creditor Constituencies, may consider all factors, including the amount of the purchase price, the likelihood of each bidder's ability to close a transaction and the timing thereof, the form and substance of the purchase agreement requested by each bidder, and the net benefit to the Debtors' bankruptcy estates.

13. **Sale Hearing.**

The final hearing to approve the sale of the Sellers Assets to the Prevailing Purchaser (the “*Sale Hearing*”) is scheduled to take place on **Friday, May 22, 2015, beginning at 9:30 a.m. (prevailing Central Time)**, at the United States Bankruptcy Courtroom, 7<sup>th</sup> Floor, Dan M. Russell, Jr. United States Courthouse, 2012 15<sup>th</sup> Street, Gulfport, MS 39501. The Sale Hearing may be adjourned from time to time by the Debtors with the consent of the DIP Lenders and with the approval of the Court and with notice to any other party in interest by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or a notice filed with the Bankruptcy Court. Any objections to the relief requested at the Sale Motion shall be filed and served by **Monday, May 18, 2015 at 5:00 p.m. (prevailing Central Time)**.

14. **Closing Deadline.**

The Prevailing Purchaser shall close and consummate the sale of the Sellers Assets (a) on or before **Friday, June 5, 2015**, if a waiver of the stay set forth in Bankruptcy Rule 6004 is obtained, or (b) on or the first business day after the expiration of the stay Bankruptcy Rule 6004 expires.

15. **Failure to Consummate Purchase by the Prevailing Purchaser.**

If an Auction is conducted, the party with the Qualified Bid that is next highest or otherwise best to the Prevailing Bid at the Auction, as determined by the Debtors in consultation with the Investment Banker and the Creditor Constituencies, shall be required to serve as a back-up bidder (the “*Back-Up Bid*” and the “*Back-Up Bidder*,” respectively) and keep such bid open and irrevocable until 11:59 p.m. (prevailing Central Time) on the date that is the earlier of: (a) 60 days after the date of the Sale Hearing, and (b) the closing of the sale transaction with the Prevailing Purchaser.

Following the Sale Hearing, if the Prevailing Purchaser fails to consummate a sale in accordance with the Prevailing Bid because of a breach or failure to perform on the part of such Prevailing Purchaser, the Debtors, in consultation with the Investment Banker and the Creditor Constituencies, is authorized to deem the Back-Up Bidder to be the new "Prevailing Purchaser," and the Debtors will be authorized, but not required, to consummate a sale with the Back-Up Bidder as contemplated by the Back-Up Bid without further order of the Bankruptcy Court upon at least three days written notice to the Creditor Constituencies. In such case, (a) the defaulting Prevailing Purchaser's deposit, if any, shall be forfeited to the Debtors and (b) all parties in interest, and the Debtors specifically, reserve the right to seek all available damages from the defaulting Prevailing Purchaser.

Except as otherwise provided herein, all deposits shall be returned to each bidder not selected by the Debtors as the Prevailing Purchaser or the Back-Up Bidder by no later than the fifth (5<sup>th</sup>) business day following the conclusion of the Auction. The deposit of the Back-Up Bidder shall be held by the Debtors until the earlier of two (2) business days after: (a) 60 days after the date of the Sale Hearing; and (b) the closing of the sale transaction with the Prevailing Purchaser.

16. **Status of Stalking Horse.**

Notwithstanding anything in these Sales and Bidding Procedures to the contrary, the Debtors reserve the right to modify and amend these Sales and Bidding Procedures on three (3) business days' notice, in consultation with the Creditor Constituencies, to designate one or more "stalking horse bidder(s)" and to seek related relief from the Court on notice and hearing.

**17. Consultation Rights.**

The Debtors and their advisors will reasonably consult regularly with the respective Creditor Constituencies and their advisors on all material aspects of the sale process described in these Sales and Bidding Procedures and all material decisions and documents contemplated herein reasonably prior to their implementation, including, without limitation, all instances in which the Creditor Constituencies have express consultation rights elsewhere in these Sales and Bidding Procedures. The Debtors and their advisors will also respond reasonably promptly to reasonable requests of the respective Creditor Constituencies and their advisors for information and/or documents relating to the sale process, Qualified Bids, the Auction, and the Sale Hearing.

**18. Reservation of Rights; Consent to Jurisdiction.**

The Debtors reserve their rights, in the exercise of their fiduciary obligations, and in consultation with the Investment Banker and the Creditor Constituencies, (a) to modify the Sales and Bidding Procedures or impose, at or prior to the Auction, different and/or additional terms and conditions on the sale of the Sellers Assets, and (b) to announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction.

TO THE EXTENT THAT THE CLAIMS OF THE AGENT, ON BEHALF OF THE PRE-PETITION LENDERS, OR THE DIP AGENT, ON BEHALF OF THE DIP LENDERS, HAVE NOT BEEN ALLOWED BY THE COURT PRIOR TO THE AUCTION, THE DEBTORS SHALL, SUBJECT TO THE CONSENT OF THE AGENT AND DIP AGENT, MODIFY THESE PROCEDURES AND DEADLINES AFTER THE DETERMINATION IS MADE BY THE COURT REGARDING THE ALLOWANCE OF SUCH CLAIMS.

All Qualified Bidders, and all such Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court to enter an order or orders, which

shall be binding in all respects, in any way related to the Debtors and the Sellers Assets, and have waived any right to a jury trial in connection with any disputes relating to the Debtors, the Cases, the Sales and Bidding Procedures, the Auction, or the construction and enforcement of any Bidder APA.

**EXHIBIT "2"**

**ASSUMPTION PROCEDURES**

The Assumption Procedures are as follows:

1. **Cure Motion.** The Debtors will file and serve the Cure Motion attached hereto as **Exhibit A** (the "***Cure Motion***") on all the counterparties to each of the Debtors' Contracts and Leases (the "***Contract Parties***") on or before **Friday, February 20, 2015**. The Cure Motion shall substantially sets forth the procedures for determining the monetary amounts of any defaults under any of the Debtors' executory contracts or unexpired leases.

2. **Content of the Cure Motion.** The Cure Motion will include the following information: (i) the title of the Contract or Lease to be assumed; (ii) the name of the counterparty to the Contract or Lease; (iii) any applicable cure amounts, whether arising pre-petition or post-petition (as such amounts may be amended from time to time through the filing of an amended Cure Motion, the "***Cure Amount***"); and (iv) the deadline by which any such Contract Party must object to the assumption or assignment of such Contract or Lease.

3. **Objections.** Objections to the proposed Cure Amount and adequate assurance of future performance obligations to the Contract Parties must: (i) be in writing; (ii) set forth the nature of the objector's claims against or interests in the bankruptcy estates (if different than reflected in the Cure Motion); (iii) the basis for the objection; (iv) comply with all applicable bankruptcy rules and orders of this Court; and (v) be filed with the Court and served upon the Debtors, the DIP Agent, the Committee and the United States Trustee. Objections to the Proposed Cure Amount must be filed by the later of **5:00 p.m. (prevailing Central Time) on Monday, March 16, 2015** (the "***Cure Amount Objection Deadline***"). If a party does not object to the Cure Amount, such party shall be deemed to have agreed to the Cure Amount. Any objections to the adequate assurance of future performance obligations to the Contract Parties must be filed and served by no later than **Monday, May 18, 2015 at 5:00 p.m. (prevailing Central Time)**. If any validly filed objection is not consensually resolved, the Court may adjudicate such objection at such date and time as may be fixed by the Court or at the Sale Hearing.

4. **Effects of Objecting to a Cure Motion.** A properly filed and served objection to a Cure Motion will reserve such objecting party's rights against the Debtors with respect to the specific objections stated therein, but will not constitute an objection to any of the remaining relief requested in the Cure Motion.

5. **Reservation of Rights.** The determination whether a Contract or Lease is to be assumed and assigned is subject to a subsequent decision by the Prevailing Purchaser(s) under any transaction with the Debtors. Consequently, the listing of a Contract or Lease in the Cure Motion is not an indication of whether the Contract or Lease will be assumed or assigned. The Debtors reserve the right to modify and amend the Cure Motion at any time prior to the closing

of any such transaction(s). The listing of any Contract or Lease on any Cure Motion does not constitute an admission by the Debtors that such Contract or Lease is an executory contract or unexpired lease or that the Debtors have any liability thereunder.

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**Exhibit A to Assumption Procedures**

*Cure Motion [Dkt. # 513]*

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