

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

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

**AMENDED MOTION OF THE DEBTORS FOR INTERIM AND FINAL ORDERS
(A) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR DISCONTINUING
SERVICES TO, OR DISCRIMINATING AGAINST, THE DEBTORS ON ACCOUNT OF
PRE-PETITION AMOUNTS DUE; (B) DETERMINING
THAT THE UTILITIES ARE ADEQUATELY ASSURED OF FUTURE PAYMENT;
(C) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS FOR
ADDITIONAL ASSURANCE; AND (D) PERMITTING UTILITY
COMPANIES TO OPT OUT OF THE PROCEDURES ESTABLISHED HEREIN**

Mississippi Phosphates Corporation, *et al.*, the Debtors and debtors-in-possession (collectively, the “**Debtors**”) in these jointly administered chapter 11 cases, by and through their undersigned attorneys, file this *Amended Motion of the Debtors for Interim and Final Orders: (A) Prohibiting Utilities from Altering, Refusing or Discontinuing Services to, or Discriminating Against, the Debtors on Account of Pre-Petition Amounts Due; (B) Determining that the Utilities are Adequately Assured of Future Payment; (C) Establishing Procedures for Determining Requests for Additional Assurance; and (D) Permitting Utility Companies to Opt Out of the Procedures Established Herein* (the “**Motion**”). In support hereof, the Debtors show as follows:

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**”) Case No. 14-51667-KMS, Ammonia Tank Subsidiary, Inc. (“**ATS**”) Case No. 14-51668 and Sulfuric Acid Tanks Subsidiary, Inc. (“**SATS**”) Case No. 14-51671.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief requested herein are Sections 105, 363, and 366, of the Bankruptcy Code.

BACKGROUND

3. On October 27, 2014 (the “*Petition Date*”), the Debtors filed their voluntary petitions for relief and thereby commenced these bankruptcy cases under chapter 11, title 11 of the United States Code (the “*Bankruptcy Code*”), in the United States Bankruptcy Court for the Southern District of Mississippi, Southern Division (the “*Court*”). Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are operating their business and managing the properties as debtors-in-possession. No trustees or examiners have been appointed, and no official committees of creditors or equity interest holders have yet been established.

4. MPC is a Delaware corporation with its principal place of business located at 601 Industrial Road, Pascagoula, Mississippi. MPC is a major United States producer and marketer of one of the most common types of phosphate fertilizer, diammonium phosphate (“*DAP*”). MPC’s production facilities are located on a deep-water channel in Pascagoula, Mississippi. As of the Petition Date, MPC employed 224 employees and 26 “nested” third-party contract employees. MPC’s production facilities currently yield approximately 600,000 to 650,000 tons of DAP annually.

5. ATS is a Delaware corporation with its principal place of business located at 601 Industrial Road, Pascagoula, Mississippi. ATS is a wholly owned subsidiary of MPC formed in

May 2010. ATS' facilities include an ammonia tank, which stores ammonia used in MPC's production of DAP.

6. SATS is a Delaware corporation with its principal place of business located at 601 Industrial Road, Pascagoula, Mississippi. SATS is a wholly owned subsidiary of MPC formed in May 2010. SATS' facilities include a sulfuric acid storage tank, which stores sulfuric acid used in MPC's production of DAP.

7. Additional information about the Debtors' businesses and the events leading up to the Petition Date can be found in that certain *Declaration of David N. Phelps in Support of the Debtor's Chapter 11 Petitions and First Day Motions* (the "***Phelps Declaration***") [Dkt. #13], which is incorporated herein by reference.

RELIEF REQUESTED

8. In connection with the operation of their businesses, the Debtors obtain electricity, natural gas, heat, sewer, water, television services, internet services, telephone services and/or similar services through accounts with various utility companies (the "***Utility Companies***"). The Utility Companies are identified by location on Exhibit "A" attached hereto and incorporated herein by reference.

9. While the Debtors have exercised their best efforts to list all of the Utility Companies and account numbers in Exhibit "A," it is possible that certain Utility Companies and/or account numbers may have been omitted from this list. The Debtors reserve the right to amend Exhibit "A" to add any Utility Companies and/or account numbers that were omitted therefrom and to request that the relief requested herein apply equally to all such entities and accounts. Furthermore, the relief requested herein shall apply to all of the Debtors' accounts with every Utility Company listed in Exhibit "A" regardless of whether or not such accounts are listed in Exhibit "A." In addition, the Debtors reserve the right to argue that any of the entities

now or hereafter listed in Exhibit “A” are not “utilities” within the meaning of Section 366(a) of the Bankruptcy Code.

10. Uninterrupted utility services are essential to ongoing operations and, consequently, to the Debtors’ ability to maximize the value of the bankruptcy estates. The Debtors’ operations simply cannot function without utility services. If the Utility Companies refuse or discontinue services for even a brief period, operations would be severely disrupted. The impact on business operations and revenue would be extremely harmful and would jeopardize the Debtors’ ability to maximize the value of the bankruptcy estates. Accordingly, it is critical that utility services continue uninterrupted.

11. Pursuant to Section 366 of the Bankruptcy Code, the Utility Companies may alter, refuse or discontinue service to a debtor if the utility does not receive from the debtor or the trustee adequate “assurance of payment” within thirty (30) days of the commencement of a chapter 11 case. Section 366(c)(1)(A) of the Bankruptcy Code defines the phrase “assurance of payment” to mean, among other things, a cash deposit or a bond.

12. Accordingly, the Debtors propose to categorize the Utilities into two (2) groups, and pay each Utility as follows:

A. Group “A” shall include those Utilities whose balance owed by the Debtors as of the Petition Date is less than Fifty Thousand Dollars (\$50,000.00). The Debtors shall pay the Utilities in Group A in the normal billing cycle the amount owed for any pre-petition utility services, and allow each Utility in Group “A” to retain any pre-petition deposits and/or bonds it may hold (“**Adequate Assurance Deposit**”) to secure payment of all postpetition services. Further, the Debtors agree to maintain the current billing and payment cycle in effect with all Utilities in Group “A” as of the Petition Date.

B. Group “B” shall include those Utilities whose balance owed by the Debtors as of the Petition Date is greater than or equal to Fifty Thousand Dollars (\$50,000.00). The Debtors are aware of only two (2) Utilities in this category: (1) Mississippi Power Company, and (2) Jackson County Port Authority.

- i. Mississippi Power Company. As adequate protection payments, the Debtors will pay the Mississippi Power Company pursuant to the following payment schedule:
 - (1) one payment of Four Hundred Five Thousand Dollars (\$405,000.00) on Monday, November 3, 2014 (this payment represents three (3) weekly payments for the usage or anticipated usage for the weeks beginning October 27, 2014, November 3, 2014 and November 10, 2014);
 - (2) beginning on Monday, November 10, 2014, the amount of \$135,000.00 for the anticipated usage during the week of November 17, 2014;
 - (3) Beginning Monday, November 17, and continuing weekly thereafter until December 15, 2015, a payment of \$135,000.00 per week; and
 - (4) Beginning Monday, December 15, and continuing weekly thereafter, a payment of the amount of the average amount of the previous three-week period.
- ii. Jackson County Port Authority. As adequate protection payments, the Debtors will pay the Jackson County Port Authority the amount of \$44,000.00 per month as follows:
 - (1) Forty Four Thousand Dollars (\$44,000.00) on Tuesday, November 4, 2014, and
 - (2) Continuing monthly thereafter, payments of Forty Four Thousand Dollars (\$44,000.00) per month.

13. The payment of all pre-petition utility charges as set forth herein for each Group A Utility in the normal and ordinary course of business and according to the regular billing cycle in effect as of the Petition Date, together with the adequate protection payments proposed to each Group B Utility, together with the Debtors' demonstrated ability to pay for future utility services in the ordinary course of business as reflected in the Approved Budget (collectively, the "***Proposed Adequate Assurance***"), constitutes sufficient adequate assurance of future payment to the Utility Companies to satisfy the requirements of Section 366 of the Bankruptcy Code.

14. Any Utility that does not timely object to this Motion will be deemed to find the Proposed Adequate Assurance satisfactory to it and will be forbidden from discontinuing, altering or refusing service on account of any unpaid pre-petition charges, or requiring additional assurance of payment (other than the Proposed Adequate Assurance). The Interim Order will be deemed the Final Order with respect to any Utility that does not timely file and serve an objection to this Motion.

15. As noted above, Section 366(c) of the Bankruptcy Code requires the Debtors to provide Utility Companies within thirty (30) days of the Petition Date with “adequate assurance of payment for utility service that is satisfactory to the utility.” 11 U.S.C. § 366(c)(2). Thereafter, any such adequate assurance provided by the Debtors may be modified by the Court after notice and a hearing under Section 366(c)(3)(A) of the Bankruptcy Code. Although the Debtors believe that the proposed Adequate Assurance Procedures are reasonable, a Utility might disagree. If any Utility objects, the Court will schedule a hearing and issue a ruling on whether the proposed adequate assurance offered by the Debtors to such Utility is sufficient.

FINAL HEARING DATE

16. The Debtors request that the Court schedule the Final Hearing on any such objections within twenty-five (25) days after the Petition Date.

AUTHORITY FOR THE REQUESTED RELIEF

17. The policy underlying Section 366 of the Bankruptcy Code is to protect Debtors from utility service cut-offs upon the filing of a bankruptcy case, while at the same time providing utility companies with adequate “assurance of payment” for postpetition utility service. *See* H.R. REP. NO. 95-595, at 350 (1978), reprinted in 1978 U.S.C.A.N. 5963, 6306. Section 366(c)(1) of the Bankruptcy Code defines “assurance of payment” to mean several enumerated forms of security (*e.g.*, cash deposits, letters of credit, pre-payment for utility

service) while excluding from the definition certain other forms of security (*e.g.*, administrative expense priority for utilities claim). In addition, Section 366(c)(3)(B) of the Bankruptcy Code provides that a Court may not consider certain facts (*e.g.*, the Debtors' pre-petition history of making timely payments to a utility) in making a determination of adequate assurance payment.

18. While Section 366(c) of the Bankruptcy Code clarifies what does and does not constitute "assurance of payment" and what can be considered in determining whether such assurance is adequate, Congress, in enacting that section, did not divest the Court of its power to determine what amount, if any, is necessary to provide adequate assurance of payment to a Utility. Moreover, Section 366(c) of the Bankruptcy Code not only fails to establish a minimum amount of adequate "assurance of payment" but explicitly empowers the Court to determine the appropriate level of adequate assurance required in each case. *See* 11 U.S.C. § 366(c)(3)(A) ("on request of a party in interest and after noticing a hearing, the Court may order modification of the amount of an assurance of payment . . .").

19. The Debtors submit that, given the foregoing, entry of the proposed Interim Order is consistent with, and fully satisfies, the requirements of Section 366 of the Bankruptcy Code.

NOTICE

20. Notice of this Motion has been provided via facsimile, overnight delivery service, electronic transmission or same-day messenger service to (i) the Office of the United States Trustee; (ii) the Debtors' twenty (20) largest unsecured creditors listed in the Debtors' consolidated list of creditors; (iii) each Utility; and (iv) all other persons requesting notices through the Court's CM/ECF System. In light of the nature of the relief requested the Debtors submit that no further notice is required.

WHEREFORE, the Debtors respectfully request that the Court:

A. Enter the Interim Order granting the relief requested herein, which shall become a Final Order as to any Utility Company that does not timely file an objection; and

B. Grant such other and more general relief as the Court deems just.

THIS, the 4th day of November, 2014.

Respectfully submitted,

MISSISSIPPI PHOSPHATES CORPORATION, *et al.*

By: /s/ Paul S. Murphy

Stephen W. Rosenblatt (Miss. Bar No. 5676)

Christopher R. Maddux (Miss. Bar No. 100501)

Paul S. Murphy (Miss. Bar No. 101396)

J. Mitchell Carrington (Miss. Bar No. 104228)

Thomas M. Hewitt (Miss. Bar No. 104589)

BUTLER SNOW LLP

1020 Highland Colony Parkway, Suite 1400

Ridgeland, MS 39157

Telephone: (601) 985-4504

Fax: (601) 985-4500

Steve.Rosenblatt@butlersnow.com

Chris.Maddux@butlersnow.com

Paul.Murphy@butlersnow.com

Mitch.Carrington@butlersnow.com

Thomas.Hewitt@butlersnow.com

ATTORNEYS FOR THE DEBTORS

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 and was separately served by e-mail or regular mail on the following:

David N. Usry
Assistant United States Attorney
501 East Court Street
Suite 4-430
Jackson, MS 39201
David.Usry@usdoj.gov

Office of the United States Trustee
501 East Court Street
Suite 6-430
Jackson, MS 39201
USTPRegion05.AB.ECF@usdoj.gov

Christopher J. Steiskal, Sr.
Office of the United States Trustee
501 East Court Street
Suite 6-430
Jackson, MS 39201
Christopher.J.Steiskal@usdoj.gov

Each Utility on the Utility List attached as Exhibit "A" hereto.

The 20 Largest Unsecured Creditors identified on the attached Exhibit "B" hereto.

SO CERTIFIED, this the 4th day of November, 2014.

/s/ Paul S. Murphy
PAUL S. MURPHY

Exhibit "A"

Utility Companies

Mississippi Phosphates Corp
Utilities Vendors

<u>Vendor</u>	<u>AKA</u>	<u>Remit To:</u>				<u>Account Number</u>	
GROUP A							
AT&T Atlanta		P.O. Box 105262	Atlanta	GA	30348-5262	228 762 5349 350 0595	Telecom
AT&T Business		P.O. Box 5019	Carol Stream	IL	60197-5019	831-000-1883 237	Telecom
AT&T Annex		P.O. Box 105503	Atlanta	GA	30348-5503	228 M56-5316 756	Telecom
C*Spire		P.O. Box 519	Meadville	MS	39653-0519	0031249543	Telecom
Cable One		P.O. Box 9001092	Louisville	KY	40290-1092	23421-134405-01-0	Cable
DirecTV		P.O. Box 60036	Los Angeles	CA	90060-0036	010633003	Satellite
Pascagoula Utilities		P.O. Drawer 908	Pascagoula	MS	39568-0908	0502623001	Water/Sewer
WastePro	Delta Sanitation	P.O. Box 669	Ocean Springs	MS	39566	006612	Sanitation
Verizon Wireless		P.O. Box 660108	Dallas	TX	75266-0108	422382590-00001	Telecom
GROUP B							
Jackson County Port Authority	Port of Pascagoula	P.O. Box 70	Pascagoula	MS	39568-0070	Mississippi Phosphates	Treated Water
Mississippi Power Company		P.O. Box 4275	Gulfport	MS	39502-4275	SB55834-08007	Electric

Exhibit “B”

Twenty Largest Unsecured Creditors

ButlerSnow 23315953v1

B4 (Official Form 4) (12/07)

**United States Bankruptcy Court
Southern District of Mississippi**

In re **Mississippi Phosphates Corporation**

Debtor(s)

Case No. **14-51667-KMS**

Chapter **11**

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS - AMENDED

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
OCP Office Cherifien Des Ocpangle Route D'el Jadida De La Grand Ceinture Casablanca, Morocco	OCP Office Cherifien Des Ocpangle Route D'el Jadida De La Grand Ceinture Casablanca, Morocco			4,830,253.50
Transammonia, Inc. 320 Park Ave 10th Floor New York, NY 10022	Transammonia, Inc. 320 Park Ave 10th Floor New York, NY 10022			1,967,000.00
Oxbow Sulphur Inc. 1450 Lake Robbins Dr. Ste 500 The Woodlands, TX 77380	Oxbow Sulphur Inc. 1450 Lake Robbins Dr. Ste 500 The Woodlands, TX 77380			1,741,326.46
Premier Chemicals 4664 James Ave Ste 125 Baton Rouge, LA 70808	Premier Chemicals 4664 James Ave Ste 125 Baton Rouge, LA 70808			1,455,651.75
Shrieve Chemical P. O. Box 671515 Dallas, TX 75267-1667	Shrieve Chemical P. O. Box 671515 Dallas, TX 75267-1667			1,167,705.95
Central Maintenance & Weld 2620 Keysville Road Lithia, FL 33547	Central Maintenance & Weld 2620 Keysville Road Lithia, FL 33547			1,126,778.51
MS Power Company P. O. Box 4275 Gulfport, MS 39502-4275	MS Power Company P. O. Box 4275 Gulfport, MS 39502-4275			1,060,528.25
Hydrovac Industrial Ser. P. O. Box 83006 Chicago, IL 60691-3010	Hydrovac Industrial Ser. P. O. Box 83006 Chicago, IL 60691-3010		Unliquidated Disputed	975,105.72
Int'l Welding & Fabricatio 11401 Hwy 63 Moss Point, MS 39562	Int'l Welding & Fabricatio 11401 Hwy 63 Moss Point, MS 39562			886,166.16
Unimin Lime P. O. Box 181 Calera, AL 35040	Unimin Lime P. O. Box 181 Calera, AL 35040			877,322.96
Envir. Acid Solutions 24838 NC Hwy 33 East Aurora, NC 27806	Envir. Acid Solutions 24838 NC Hwy 33 East Aurora, NC 27806			666,920.17

B4 (Official Form 4) (12/07) - Cont.

In re Mississippi Phosphates Corporation

Debtor(s)

Case No. 14-51667-KMS

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS - AMENDED

(Continuation Sheet)

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
Duponte Sulfur Prod. 586 Hwy 44 La Place, LA 70068	Duponte Sulfur Prod. 586 Hwy 44 La Place, LA 70068			629,045.00
Carrier Rental Systems 6282 Hwy 73 Geismar, LA 70734	Carrier Rental Systems 6282 Hwy 73 Geismar, LA 70734			492,440.40
Jackson Cty Port Auth. P. O. Box 70 Pascagoula, MS 39568-0070	Jackson Cty Port Auth. P. O. Box 70 Pascagoula, MS 39568-0070			423,721.27
BP Energy Co. 209 Public Square Cleveland, OH 44114-2375	BP Energy Co. 209 Public Square Cleveland, OH 44114-2375			378,150.91
Plant Maintenance Ser. 37110 Hwy 30 Geismar, LA 70734	Plant Maintenance Ser. 37110 Hwy 30 Geismar, LA 70734			352,135.92
RPW, Inc. P. O. Box 2151 Pascagoula, MS 39569	RPW, Inc. P. O. Box 2151 Pascagoula, MS 39569			284,301.76
Brock Services LTD P. O. Box 8406 Dallas, TX 75284-0640	Brock Services LTD P. O. Box 8406 Dallas, TX 75284-0640			239,968.71
VIP International 6638 Pecue Lane Baton Rouge, LA 70817-4400	VIP International 6638 Pecue Lane Baton Rouge, LA 70817-4400			236,406.26
Flexicrew 3517 Laughlin Drive Mobile, AL 36693	Flexicrew 3517 Laughlin Drive Mobile, AL 36693			229,594.85

**DECLARATION UNDER PENALTY OF PERJURY
ON BEHALF OF A CORPORATION OR PARTNERSHIP**

I, the CFO of the corporation named as the debtor in this case, declare under penalty of perjury that I have read the foregoing list and that it is true and correct to the best of my information and belief.

Date October 29, 2014

Signature /s/ Robert Kerley
Robert Kerley
CFO

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C. §§ 152 and 3571.