

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

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

**MOTION OF DEBTORS TO REJECT UNEXPIRED LEASE  
PURSUANT TO 11 U.S.C. §§ 105 AND 365 (WABASH BOILER)**

Mississippi Phosphates Corporation, et al., the Debtors and debtors-in-possession herein (the "*Debtors*"), by and through their attorneys, file this *Motion of Debtors to Reject Unexpired Lease pursuant to 11 U.S.C. §§ 105 and 365 (Wabash Boiler)* (the "*Motion*"). In support thereof, the Debtors state as follows:

**Introduction**

1. 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 trustee or examiner has been appointed in any of these Bankruptcy Cases.

<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*."

2. An Official Committee of Unsecured Creditors (the "*Committee*") was appointed by the United States Trustee in these Bankruptcy Cases on November 12, 2014 [Dkt. # 161], and the Committee has retained Burr & Forman LLP as its counsel.

3. 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.

4. 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.

#### Jurisdiction and Venue

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (M). Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409.

6. The Debtors file this Motion and request the relief sought herein pursuant to 11 U.S.C. §§ 105, 365(a) and Rules 6006(a) and 9014 of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*").

#### Background

7. On or about August 25, 2014, Wabash Power Equipment Company ("*Wabash*" or the "*Lessor*"), an Illinois corporation, entered into that certain Equipment Lease Contract (the "*Lease*") with Mississippi Phosphates Corporation for the lease of an auxiliary boiler and related

equipment (the "*Equipment*") more particularly described in Exhibit "A" to the Lease. A true and correct copy of the Lease is attached hereto and incorporated herein as **Exhibit "A"**.

8. The Equipment is on-site at the Debtors' facility located at 601 Industrial Drive, Pascagoula, Mississippi. MPC originally leased the Equipment as a reserve resource because of intermittent failures of MPC's two sulfuric acid plants. MPC required sulfuric acid (made from the two plants) and steam (generated from the two plants) for the manufacture of DAP, but now that DAP production has been idled, MPC no longer needs the Equipment for its production operations.

9. In the considered business judgment of the Debtors, the Lease is not necessary to maximize the value of the bankruptcy estates, and it is in the best interests of the Debtors and the bankruptcy estates for the Debtors to reject the Lease effective as of the Petition Date.

#### **Relief Requested**

10. The Debtors request entry of an order authorizing the Debtors to (i) reject the Lease effective as of the Petition Date; and (ii) grant the Debtors such other relief as is just and proper.

#### **Basis for Relief**

11. Section 365(a) of the Bankruptcy Code allows a debtor, subject to the bankruptcy court's approval, to reject any executory contract or unexpired lease. See *Stewart Title Guar. Co. v. Old Republic Nat'l Title Insurance Co.*, 83 F.3d 735, 741 (5th Cir. 1996). "This provision allows a [debtor] to relieve the bankruptcy estate of burdensome agreements which have not been completely performed." *Id.* (quoting *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994)). A debtor's decision to reject executory contracts or unexpired leases is subject to the business judgment test. See *Sharon Steel Corp. v. Nat'l Fuel Gas Distribution Corp.*, 872

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F.2d 36, 39-40 (3d Cir. 1989); *In re Food City, Inc.*, 94 B.R. 91, 93 (Bankr. W.D. Tex. 1988); *In re Transamerican Natural Gas Corp.*, 79 B.R. 663, 667 (Bankr. S.D. Tex. 1987).

12. The sole inquiry is whether the rejection will benefit these estates. *See In re Hawaii Dimensions, Inc.*, 47 B.R. 425, 427 (Bankr. D. Haw. 1985) (“[u]nder the business judgment test, a court should approve a debtor’s proposed rejection if such rejection will benefit the estate”).

13. In applying the “business judgment” standard, courts show great deference to a debtor’s decision to reject executory contracts. *See In re Summit Land Co.*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent extraordinary circumstances, court approval of debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”). As long as the decision to reject is a reasonable exercise of business judgment, courts should approve the rejection of an executory contract or unexpired lease. *See, e.g. NLRB v. Bildisco and Bildisco*, 465 U.S. 513, 523 (1984); *Group of Institutional Investors v. Chicago, M., S. P. & P. R. Co.*, 318 U.S. 523 (1943); *Sharon Steel*, 872 F.2d at 39-40.

14. Rule 6006(a) of the Bankruptcy Rules provides that a proceeding to assume, reject, or assign an executory contract, unexpired lease, other than as part of a plan is governed by Bankruptcy Rule 9014, and relief is, therefore, obtained by motion.

15. Rule 6006(c) provides for the Court to set a hearing on notice to the other party to the contract or lease, to parties in interest as the Court may direct and to the United States Trustee.

**WHEREFORE**, the Debtors respectfully request entry of an Order (i) approving the rejection of the Lease; and (ii) granting the Debtors such other relief as the Court deems just and proper.

THIS the 29th day of December 2014.

Respectfully submitted,

MISSISSIPPI PHOSPHATES CORPORATION, *ET AL.*

By: /s/ Thomas M. Hewitt

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)

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BUTLER SNOW LLP

1020 Highland Colony Parkway, Suite 1400  
Ridgeland, MS 39157

Telephone: (601) 985-4504

Fax: (601) 985-4500

[Steve.Rosenblatt@butlersnow.com](mailto:Steve.Rosenblatt@butlersnow.com)

[Chris.Maddux@butlersnow.com](mailto:Chris.Maddux@butlersnow.com)

[Paul.Murphy@butlersnow.com](mailto:Paul.Murphy@butlersnow.com)

[Mitch.Carrington@butlersnow.com](mailto:Mitch.Carrington@butlersnow.com)

[Thomas.Hewitt@butlersnow.com](mailto: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 on the following persons:

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

Christopher J. Steiskal, Sr., Esq.  
Office of the United States Trustee  
501 East Court Street  
Suite 6-430  
Jackson, MS 39201  
[Christopher.J.Steiskal@usdoj.gov](mailto:Christopher.J.Steiskal@usdoj.gov)

David N. Usry, Esq.  
Assistant United States Attorney  
501 East Court Street  
Suite 4-430  
Jackson, MS 39201  
[David.Usry@usdoj.gov](mailto:David.Usry@usdoj.gov)

Dianne Coffino, Esq.  
Covington & Burling, LLP  
The New York Times Building  
620 Eighth Avenue  
New York, NY 10018  
[dcoffino@cov.com](mailto:dcoffino@cov.com)  
Attorney for OCP S.A.

James W. O'Mara, Esq.  
Phelps Dunbar  
4270 I-55 North  
Jackson, MS 39211  
[jim.omara@phelps.com](mailto:jim.omara@phelps.com)  
Attorney for Trammo, Inc.

Premier Chemicals & Services, LLC  
Francis Mayer  
4856 Revere Ave., Suite A  
Baton Rouge, LA 70808  
[francis@premierchemicals.net](mailto:francis@premierchemicals.net)

Carey L. Menasco, Esq.  
Liskow & Lewis  
One Shell Square  
701 Poydras Street, Suite 5000  
New Orleans, LA 70139  
[clmenasco@liskow.com](mailto:clmenasco@liskow.com)  
Attorney for Shrieve Chemical

Hugo S. "Brad" deBeaubien, Esq.  
Shumaker, Loop & Kendrick, LLP  
Bank of America Plaza  
101 East Kennedy Blvd., Suite 2800  
Tampa, FL 33602  
[bdebeaubien@slk-law.com](mailto:bdebeaubien@slk-law.com)  
Attorney for Central Maint. & Welding, Inc.

Paul J. Delcambre, Jr., Esq.  
Balch & Bingham, LLP  
1310 Twenty Fifth Avenue  
Gulfport, MS 39501-1931  
[pdelcambre@balch.com](mailto:pdelcambre@balch.com)  
Attorney for Mississippi Power Company

James A. McCullough, II, Esq.  
Brunini, Grantham, Grower & Hewes, PLLC  
P. O. Drawer 119  
Jackson, MS 39205  
[jmccullough@brunini.com](mailto:jmccullough@brunini.com)  
Attorney Hydrovac Industrial Services, Inc.

Derek F. Meek, Esq.  
Marc P. Solomon, Esq.  
Bess M. Parrish Creswell, Esq.  
Burr & Forman LLP  
420 North 20th Street, Suite 3400  
Birmingham, AL 35203  
[dmeek@burr.com](mailto:dmeek@burr.com)  
[msolomon@burr.com](mailto:msolomon@burr.com)  
[bcreswell@burr.com](mailto:bcreswell@burr.com)  
Attorneys for Official Committee of Unsecured Creditors

SO CERTIFIED, this the 29th day of December 2014.

/s/Thomas M. Hewitt  
THOMAS M. HEWITT

# **wabash**

**Wabash Power Equipment Company**

444 Carpenter Avenue, P.O. Box 127, Wheeling, IL 60090-0127  
Phone 847-541-5600 FAX 847-541-1079 Toll Free 800-504-2900  
WEB Site: www.wabashpower.com

## Wabash Power Equipment Company

### Equipment Lease Contract

This Equipment Lease Contract is entered into by and between Wabash Power Equipment Company, an Illinois corporation, located at 444 Carpenter Avenue, Wheeling, Illinois ("Lessor") and Company Name Mississippi Phosphates Corp. (Lessee) located at 601 Industrial Road, Pascagoula, MS 39568 this 25<sup>th</sup> day of August, 2014 (Effective Date).

*25<sup>th</sup> ne*  
Pursuant to the terms and conditions of this Lease, as hereinafter delineated, Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, the personal property in the form of the equipment described herein and set forth on the equipment schedule attached hereto as Exhibit A, which shall also include all ancillary parts, replacement or other, substitutions, accessories, correlative services or any other personal property incorporated with, affixed to or otherwise made part of that being leased, herein after referred to as the "Equipment".

Unless otherwise expressly provided for to the contrary hereunder, this Lease is non-cancelable for the term of this Lease, set forth on Exhibit A, and upon execution of this Lease and as of the Effective Date, Lessee acknowledges and agrees that Lessee is legally bound by the terms and conditions of this Lease, which set forth Lessee's exclusive rights and remedies related to this transaction.

### Terms and Conditions of Lease

#### 1. Definitions

- a) "Lease" shall mean this Equipment Lease Contract, and all amendments thereto, as well as all schedules, exhibits, and all documents incorporated by reference and attached hereto.
- b) "Equipment" shall mean all those items of equipment leased to Lessee pursuant to this Lease as described in the attached Exhibit A or other attached schedules, including, but not limited to, all alterations, modifications, additions, attachments, or ancillary parts, replacement or other, incorporated into the leased equipment, all of which shall remain tangible personal property.
- c) "Term" shall mean the period of time pursuant to which this Lease is in effect pursuant to which Lessee shall be entitled to lease this Equipment.



The term of this Lease is set forth on Exhibit A hereto.

d) "Rental Payment" or "Rent" shall mean the agreed to monetary rental payment owed by Lessee to Lessor as material consideration to lease the Equipment under the terms and conditions of this Lease, as specifically listed on Exhibit A.

2. During the Term of this Lease and in consideration for Lessee's obligations set forth herein, including the Rental Payment, Lessee is given the right to lease the Equipment and shall be provided the exclusive right to control, possess, use, and/or operate the Equipment consistent with the terms and conditions of this Lease. Lessee shall only possess, control, store, use and/or operate the Equipment at the facility location designated on Exhibit A, and except for the orderly return shipment of the Equipment to Lessor, under no circumstances shall Lessee transport, move, or relocate the Equipment to another location without the prior express written approval of Lessor.
3. Lessee acknowledges and agrees that notwithstanding Lessee's right to possess, store, operate, use and/or control the Equipment pursuant to this Lease, the Equipment is, and shall at all times be, and remain, the sole property of Lessor and by taking possession and control of the Equipment, Lessee shall have no ownership right, title or interest in the Equipment. Lessor shall be permitted to evidence its sole and exclusive ownership in and title to the Equipment by labeling the Equipment as its own and Lessee will not alter, remove, or deface such identification labels.
4. The Term of this Lease shall commence upon the Equipment being delivered and made available to Lessee's designated common carrier for shipment to Lessee's location, and any and all risk of loss and liability for the Equipment shall pass to and be assumed by Lessee FOB Point of Shipment upon the Equipment being delivered to Lessee's common carrier and shall continue until the Equipment is returned to Lessor's designated facility, regardless of whether Lessor coordinates and assists with the scheduling and arrangement of such transportation. In the event that the Lease states that Lessor shall coordinate and assist with the scheduling and arrangement of such transportation to and from Lessee's designated location, Lessor shall arrange for the delivery of the Equipment to Lessee's location, and upon written notice from Lessee, shall arrange for the removal of the Equipment from Lessee's location for return transport to Lessor's facility. Any and all freight expenses, costs, tariffs, taxes, duties, or other charges associated with the transport of the Equipment to and from Lessee's location shall be at Lessee's sole and exclusive expense.
5. Prior to shipment, Lessee shall have the right to inspect the Equipment where Lessor stores the Equipment prior to delivery for shipping. Lessee acknowledges and agrees that upon shipment of the Equipment by delivery to Lessee's common carrier, Lessee will be deemed to be in possession of the Equipment and acknowledges that the Equipment is in a condition satisfactory to Lessee at the

commencement of the term of this Lease. Lessee agrees that the Equipment is the sole and exclusive property of Lessor, regardless of whether such Equipment is affixed, attached to or located on real property. Lessor, at its sole expense, shall return the Equipment to Lessor upon the expiration or early termination of this

Equipment, as well as all expenses and costs to repair or replace damaged Equipment, except to the extent that such damage to the Equipment is exclusively the result of ordinary wear and tear or defectively manufactured Equipment, for which Lessor shall be responsible for the cost of replacement parts only, labor charges and cost of freight excluded.

9. As material consideration for leasing the Equipment, Lessee shall make all Rental Payments for the Term of this Lease in consecutive monthly payments in the amount set forth on Exhibit A. The first monthly payment shall be due and payable upon delivery of the Equipment by Lessor to Lessee's common carrier at point of origin, with monthly payments due on the anniversary date of the commencement of the Term. In the event Lessee fails to duly pay any part of any Rental Payment or any other amounts owed to Lessor under the terms and conditions of this Lease, Lessee shall pay interest on such delinquent payments or amounts accruing at an annualized rate of eighteen percent (18%) per year accruing daily for all outstanding balances until cured. In the event the Equipment is returned by Lessee to Lessor or repossessed by Lessor, upon the expiration or early termination of this Lease, with damage to the Equipment, including but not limited to missing components or parts, in addition to recovering all costs and expenses associated with the repair or replacement of the damaged Equipment, Lessor shall be entitled to continued Rental Payments until the Equipment is repaired or replaced. Where Lessor is responsible for any damage to the Equipment and Lessee experiences a loss of use of the Equipment while the Equipment is being repaired or replaced, Lessor shall extend the length of the Term of this Lease by an equal number of days that Lessee could not benefit from the use of the Equipment.

10. As security for the Lessee's prompt and full payment of the rent due under this Lease, as well as to ensure Lessee's full performance of any and all of its obligations under this Lease, Lessee shall provide Lessor with a security deposit in the amount set forth on Exhibit A, which shall be paid to Lessor upon execution of this Lease. Lessor shall return such security deposit upon the expiration or early termination of this Lease, provided Lessee is not in default of this Lease and has fulfilled all of its obligations under this Lease.

11. With respect to Lessee's lease possession, storage, transport, and

CONDITION, QUALITY OR CAPACITY OF THE EQUIPMENT, MATERIALS, ANCILLARY SERVICES OR WORKMANSHIP PROVIDED UNDER THIS LEASE. LESSEE HEREBY ACKNOWLEDGES AND AGREES THAT ALL SUCH RISK ARISING OUT OF, RELATED TO OR IN CONNECTION WITH THE SHIPPING, INSTALLATION, STORAGE, OPERATION AND/OR POSSESSION OF THE EQUIPMENT SHALL BE BORNE BY LESSEE, AT ITS SOLE RISK AND EXPENSE, EXCEPT WHERE EXPRESSLY AGREED TO IN THIS LEASE TO THE CONTRARY.

13. Lessee, at its sole cost and expense, shall maintain insurance coverage with carriers acceptable to Lessor for all insurable risks in such amounts and type of coverages required by Lessor. Such insurance coverage, and the terms thereof, shall be set forth on Exhibit A. In no event shall the "All Risk" loss or damage insurance protecting the Equipment from fire, theft, and comprehensive all risk damage, listing Lessor as primary loss payee, be in an amount less than the Replacement Value of the Equipment as set forth on Exhibit A. Lessee shall also maintain comprehensive general liability insurance in an amount satisfactory to Lessor and which provides, at a minimum, \$5 million dollars per occurrence, and in the aggregate, of coverage, and an endorsement listing Lessor on such policies as an additional insured. All such insurance shall be primary to any other insurance maintained by Lessor, and the policies shall provide that such policies will not be cancelled or altered without at least (30) days prior notice to Lessor. Lessee shall deliver to Lessor evidence, satisfactory to Lessor, of all such insurance coverage and Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make a claim for, to receive payment of, and to execute and endorse all documents, checks or drafts for loss or damage under any insurance policy covering the Equipment. Lessor shall have the right, in addition to any other rights or remedies under this Lease, to purchase insurance to protect and preserve its interest in the Equipment, if it is determined that Lessee is not in compliance with the insurance requirement herein. In such event, Lessee agrees to immediately reimburse Lessor for the cost and expense of such insurance coverage.

14. LESSOR SHALL NOT BE RESPONSIBLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR LOSSES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR PRODUCTION RESULTING FROM THE SHIPMENT, INSTALLATION, OPERATION, USE OR STORAGE OF EQUIPMENT FURNISHED BY THE LESSOR UNDER THIS LEASE. IN THE EVENT THAT LESSOR PROVIDES A WRITTEN WARRANTY UNDER THIS LEASE, AND UNLESS OTHERWISE PROVIDED FOR BY THE EXPRESS TERMS AND CONDITIONS OF SUCH WARRANTY, LESSEE'S SOLE AND EXCLUSIVE REMEDY SHALL BE THE REPAIR OR REPLACEMENT OF THE EQUIPMENT, OR REPAIR OR REPLACEMENT OF THE EQUIPMENT OR WORK DUE TO DEFECTS OR ORDINARY WEAR OR TEAR, AND SUCH REPAIR OR REPLACEMENT SHALL ONLY BE PERFORMED BY LESSOR, OR ITS AUTHORIZED REPRESENTATIVE, EXCEPT IF LESSOR AGREES IN

WRITING TO ALLOW LESSEE TO REPAIR OR REPLACE SUCH EQUIPMENT. IF LESSOR FAILS OR REFUSES TO REPAIR OR REPLACE SUCH EQUIPMENT WHEN RESPONSIBLE TO DO SO UNDER THIS LEASE, THEN LESSEE'S SOLE AND EXCLUSIVE REMEDY SHALL BE THE TERMINATION OF THIS LEASE AND REFUND OF RENTAL PAYMENTS PAID BY LESSEE FOR THE PERIOD WHEN THE EQUIPMENT WAS INOPERABLE.

- 15. AS SET FORTH HEREIN, LESSEE ASSUMES ALL RISK OF LOSS AND LIABILITY, WHETHER COVERED BY INSURANCE OR NOT, ASSOCIATED WITH ITS CONTROL, POSSESSION, STORAGE, TRANSPORT, AND/OR OPERATION OF THE EQUIPMENT; AND LESSEE FURTHER AGREES TO INDEMNIFY, DEFEND AND HOLD LESSOR, ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AFFILIATES, AND/OR SUBSIDIARIES HARMLESS FROM ANY AND ALL THIRD PARTY LOSSES, DAMAGES, CLAIMS, DEMANDS, LAWSUITS, LIENS, FINES, COSTS AND EXPENSES, INCLUDING ATTORNEY'S FEES AND EXPERT WITNESS COSTS, AND/OR LIABILITIES ("LIABILITIES") ARISING FROM, RELATED TO, OR IN CONNECTION WITH THIS LEASE, INCLUDING, WITHOUT LIMITATION, THE SHIPMENT, LOADING, UNLOADING, USE, OPERATION, POSSESSION, INSTALLATION AND/OR STORAGE OF THE EQUIPMENT BY LESSEE UNDER THIS LEASE. ~~INCLUDING~~ LIABILITIES ARISING FROM LESSOR'S NEGLIGENCE OR FAULT.

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- 16. If Lessee fails to perform any of its obligations under this Lease, Lessor can deem Lessee to be in default under this Lease. An event of default shall include, among other things, (a) Lessee's failure to make Rental Payment(s) or any other amount owed Lessor under this Lease when due, (b) Lessee's failure to perform any obligation herein and such failure to perform remains uncured for five (5) days after Notice of default is received, (c) Lessee becomes insolvent or gives Lessor reasonable belief that Lessee can no longer fulfill its obligations, (d) Lessee applies for or consents to the appointment of a receiver, trustee, or liquidator for all of or a substantial part of the assets of Lessee, or a receiver, trustee, or liquidator is appointed without the application or consent of Lessee, or (e) a petition is filed for or against Lessee under the Bankruptcy Code, or any other solvency law. If Lessee is in default under this Lease, then Lessor shall have the right to exercise any and all of its cumulative remedies under this Lease and/or any and all remedies Lessor may have at law or in equity. In the event that Lessee is in default of any of its obligations under this Lease, Lessor may also, without limitation, terminate this Lease. Upon such termination, Lessee shall permit Lessor immediate access to Lessee's facility where the Equipment is located in order to permit Lessor to repossess and remove the Equipment from Lessee's facility, including disconnection and separation of the Equipment from any other real or personal property and to take all action necessary and permitted by law to recover such Equipment, without further legal process or liability. Upon its

default. Lessee expressly waives all of its rights to further use or possession of the Equipment and all claims for injuries or damages caused by such repossession. These rights and remedies are cumulative and in addition to any other remedies available to Lessor under this Lease or at law or in equity.

17. Miscellaneous Terms and Conditions

- a) Entire Agreement. This Lease and all exhibits, amendments or additions thereto including all executed schedules and related documents annexed hereto, contain and constitute the complete agreement between Lessor and Lessee with respect to the matters contained herein and supersede all other prior agreements, whether written or oral, with respect to the matters contained herein, and all prior agreements, promises, conversations or representations relating to this Lease are merged and integrated into this Lease. No modification, amendment, alteration, or other change to this Lease shall be effective unless consented to in writing by each of the parties hereto.
- b) Severability. Any provision in this Lease which is, in whole or in part, found to be invalid or unenforceable in any jurisdiction, shall, for the purposes of that jurisdiction, be severed accordingly, without affecting the remaining provisions of this Lease or affecting the validity or enforceability of that provision in any other jurisdiction.
- c) Waiver. Failure or forbearance by Lessor to exercise any of its rights or remedies under this Lease shall not constitute a waiver of such rights or remedies. Lessor shall not be deemed to have waived or forborne any right or remedy resulting from such failure to perform unless it has made such waiver specifically in writing.
- d) Choice of law, Venue. This Lease shall be governed by, and enforced, construed, interpreted and applied in accordance with the laws of the State of Illinois, without regard to any conflict of law rules, including the Illinois Commercial Code regarding leases to the extent applicable. The terms and conditions of the Lease are intended to supersede and limit any inconsistent, contrary, or supplemental rights or obligations set forth in the Illinois Commercial Code. Except as may be necessary to recover possession of the Equipment where it is located, the federal and state courts with jurisdiction over Cook County, Illinois shall have exclusive jurisdiction over all disputes, claims, actions or lawsuits relating to, arising out of, or in connection with this Lease. Each party agrees and consents to submit to the personal jurisdiction of the aforementioned courts.

- e) Notice. A notice, consent, or approval of a party, ("Notice") shall be delivered in writing via mail, courier or facsimile, and if meant for:

Lessor, deliver to:  
Wabash Power Equipment Company  
444 Carpenter Avenue  
PO Box 427  
Wheeling IL 60090  
847-541-5600 (phone)  
847-541-1279 (fax)

Lessee, deliver to:  
Mississippi Phosphates Corp.  
601 Industrial Road  
Pascagoula, MS 39568

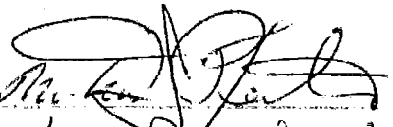
Any Notice shall be deemed properly given if either mailed, sent by courier or faxed (if provided by a fax transmission slip) to the address appointed for this purpose as outlined in this Section 4.11. Notices mailed shall be delivered by registered mail, or equivalent, with signature receipt required. Notices sent by courier or faxed and verified by transmission slip, shall be deemed delivered the day delivered by courier, or faxed, if delivered or received by fax during or before 5:00 pm local time, and the following day, if delivered or received after 5:00 pm local time. The designation of the Party to be so notified and the address or fax number of such party may be changed at any time by any Party by Notice.

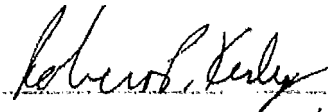
- f) Attorneys' Fees. In the event that Lessor is required to undertake any legal action, including the initiation of formal legal proceedings in relation to or arising out of this lease, Lessor shall be entitled to recover any and all of its reasonable attorneys' fees incurred.
- g) Interest on Amounts due. Any amounts properly due and payable to Lessor pursuant to this Lease and remaining unpaid after the due date shall bear interest thereafter, such interest to accrue from day to day at the rate of plus eighteen percent (18%), or the legal maximum, from and including the date such amount is due until but excluding the day upon which the amount due actually is received.
- h) No Assignment or Sublease. Under no circumstances shall Lessee attempt to assign or sublease this Lease, without the prior express written consent of Lessor.

In Witness Whereof, the parties have executed this Lease, as of the date set forth above.

Wabash Power Equipment Company

Mississippi Phosphates Corp.

By   
Title Vice President  
Date 8/26/14

By   
Title Chief Financial Officer  
Date 8-26-14



# **wabash**

**Wabash Power Equipment Company**

444 Carpenter Avenue, P.O. Box 497, Wheeling, IL 60090-0497  
Phone: (815) 471-5600 FAX: (815) 471-1279 Toll Free: (800) 754-2000  
CLE SITE: [www.wabashpower.com](http://www.wabashpower.com)

## EXHIBIT "A"

### Description of Equipment:

One (1) New 82 500#/hr., Nebraska Package Watertube Boiler, Model NOS-2A-67  
350 psig DP Type "O" Design. Built in accordance with ASME Code and bearing N.D. and H.S.B. Stampings. Equipped with a Natcom Low NOx fully automatic burner for gas/#2 oil firing, forced draft fan with 100HP TEFC motor 3/60/480V with starter, Fireye E100 Microprocessor flame monitor system, Siemens Microprocessor combustion and single element feedwater control system and all relating boiler valve trim, regulators and controls. Burner and controls are metal housed with an extended rainhood cover. All integrally mounted on a drop-deck, triple-axle trailer.

Including the following:

- One (1) FGR System
- One (1) Non Return Valve
- One (1) Stub Stack
- One (1) Economizer
- One (1) Set Structural Steel Supports

This lease is effective when signed by both parties and shall continue until the expiration of 6 months.

The monthly rental rate is: \$32,500.00 Per Month

The amount of the security deposit is: \$32,500.00

Rental payments are due on or before the first day of the rental period

Equipment at all times will be located at: Mississippi Phosphates Corp,  
601 Industrial Road  
Pascagoula, MS 39568

Replacement value of the equipment: \$1,450,000.00

This boiler is new and must be chemically boiled out by Lessee

Lessee agrees to pay Lessor as rental for said equipment the sum of:  
ONE HUNDRED NINETY FIVE THOUSAND AND NO/100 DOLLARS (\$195,000.00)

Inspection Fee upon the return of the above equipment from rental is \$1,500.00 which is to be borne by the Lessee

Lessee to provide deaerated and proper feedwater treatment

Lessee will be charged \$1,500.00 if the manuals are not returned within 5 working days of receipt of the equipment by Lessor. This amount will be taken from any security deposit received by Lessor.

Lessee shall have the option to continue renting the equipment on a month-to-month basis after the initial rental period, at the sum of Thirty Two Thousand Five Hundred and No/100 Dollars (\$32,500.00), payable on or before the first day of each renewal period. No pro-rations allowed. The terms and conditions of this lease will apply for each renewal period.

Rental commences upon shipment of the equipment via common carrier and will terminate at the end of the lease period following receipt back at a designated Wabash Power Equipment Co. warehouse facility.

IN WITNESS WHEREOF, the parties have executed this Equipment Lease Contract, in duplicate, as of the 26<sup>th</sup> day of August, 2014

*26<sup>th</sup> M*  
*SWJ*

ATTEST:

*Margaret Beth Carter*

MISSISSIPPI PHOSPHATES CORP.

By *Robert Kerley*

Title *Unit Financial Officer*

Date *8-26-14*

ATTEST:

\_\_\_\_\_

WABASH POWER EQUIPMENT

By *[Signature]*

Title *Vice President*

Date *8/26/14*

## WABASH POWER EQUIPMENT COMPANY

### DOMESTIC SUPERVISION and SERVICE RATES

BASE RATE	SERVICE PERSON	\$ 185.00 / HOUR
BASE RATE	TECHNICIAN	\$ 225.00 / HOUR

DAILY MINIMUM CHARGED WHETHER ON JOB SITE OR NOT EXCEPT  
 WHEN TRAVEL HOURS ARE INVOLVED THEN ACTUAL HOURS ARE  
 CHARGED

IF ON SITE HOURS ARE LESS THAN THE DAILY MINIMUM HOURS THE DIFFERENCE IS CHARGED AT  
 THE DAILY MINIMUM RATE

TRAVEL TIME CHARGED FROM RESIDENCES TO / FROM JOB SITE OR LODGING

MAXIMUM TIME INCLUDING TRAVEL 18 CONSECUTIVE DAYS AFTER WHICH RETURN TRIP HOME FOR  
 48 HOURS REQUIRED.

<b>MONDAY THRU FRIDAY</b>	8 Hours / day minimum charge	BASE RATE
ON SITE	between 6:00 am and 6:00 pm over 8 hours or between 6:00 pm and 6:00 am	BASE RATE 1.5 X BASE RATE
TRAVEL		BASE RATE
<b>SATURDAY</b>	6 Hours / day minimum charge	BASE RATE
ON SITE	between 6:00 am and 6:00 pm over 8 hours or between 6:00 pm and 6:00 am	1.5 X BASE RATE 2 X BASE RATE
TRAVEL		1.5 X BASE RATE
<b>SUNDAY &amp; HOLIDAYS</b>	6 Hours / day minimum charge	BASE RATE
ON SITE		2 X BASE RATE
TRAVEL		2 X BASE RATE
<b>AIR TRAVEL AUTO RENTAL, LODGING,</b>		ACTUAL COST +15%
TOTAL FLIGHT DURATION LESS THAN 5 HOURS COACH CLASS		
TOTAL FLIGHT DURATION MORE THAN 5 HOURS BUSINESS / FIRST CLASS		
<b>LIVING EXPENSE</b>		\$ 75.00 / DAY
<b>PRIVATE AUTO MILEAGE</b>		PREVAILING RATE