

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**IN RE: MISSISSIPPI PHOSPHATES
 CORPORATION, *et al.*¹**

CASE NO. 14-51667-KMS

DEBTOR(S)

**CHAPTER 11
(Jointly Administered)**

**UNITED STATES TRUSTEE’S RESPONSE TO DEBTORS’ MOTION FOR RELIEF
FROM CERTAIN UNITED STATES TRUSTEE CHAPTER 11 OPERATING
GUIDELINES**

COMES NOW Henry G. Hobbs, Jr., Acting United States Trustee for Region 5 (“UST”), by and through undersigned counsel, and files this Response to the Debtors’ Motion for Relief from Certain United States Trustee Chapter 11 Operating Guidelines (DKT. #725) in the above styled and numbered cause, and in support thereof respectfully submits the following:

1. The UST, in furtherance of his statutory duties under 28 U.S.C. § 586 and the Bankruptcy Code, has issued his *Chapter 11 Operating Guidelines and Reporting Requirements* (“OGRR-11”). The OGRR-11 establish instructions for debtors-in-possession and chapter 11 trustees, and they assist the UST in his supervision and monitoring of the administration of chapter 11 cases.

2. In their Motion, the Debtors request that the Court waive the UST OGRR-11 requirement that requires a debtor to maintain appropriate types and amounts of insurance on its assets during the bankruptcy case. The certain OGRR-11 Guideline that the Debtors request the

¹ 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-KMS, Ammonia Tank Subsidiary, Inc. (“ATS”), Case No. 14-51668-KMS, and Sulfuric Acid Tanks Subsidiary, Inc. (“SATS”), Case No. 14-51671-KMS. These chapter 11 cases are sometimes referred to herein as the “Bankruptcy Cases.”

Court to waive is the requirement of casualty insurance on all tangible assets (the “Insurance Guideline”).²

3. While the OGRR-11 does not have the force of law or rules, the UST submits that the OGRR-11 essentially incorporates the duties of a debtor-in-possession under 11 U.S.C. §§ 1106 and 1107 which subsume the duties of a trustee under § 704. Specifically, § 704(a)(2) charges the debtor with being “accountable for all property received.” Additionally, implicit in the ability of the debtor to operate under § 1108 is the obligation to do so prudently and to safeguard assets.

4. The burden of proof is on the Debtors to establish cause that a waiver of the Insurance Guideline is warranted.

5. The UST requests that the Court hold an evidentiary hearing to determine the merits of the Debtors’ request to waive the Insurance Guideline.

6. A waiver of the Insurance Guideline is highly unusual in an unconfirmed bankruptcy case in which the Debtors have expressed the desire to sell their assets at auction. To date, no sale has closed. And recently, the dates for the bid deadline, auction, and final sale hearing have been reset to July 24, 2015, July 31, 2015, and August 6, 2015, respectively. DKT. #761.

7. The UST avers that there may be an increased risk to the Debtors’ assets during this time of year because hurricane season officially begins June 1, 2015, and ends November 30, 2015. See “Hurricane Season Dates,” at <http://www.nhc.noaa.gov/?atlc>.

8. The Debtors state that the Lenders “agreed to waive the requirement that the Debtors maintain property and casualty insurance on their collateral.” Debtor’s Motion, at ¶ 10.

² The OGRR-11’s specific text is, “If the debtor has tangible assets susceptible to casualty loss (fire, weather, theft, vandalism, etc.), casualty insurance must be maintained at an amount at least equal to the replacement value of the property.” OGRR-11, Sec. II, Part D.2.(a) (the “Insurance Guideline”).

The Debtors have informed the UST that the Lenders have waived default on the loan if the Debtors cease providing insurance on their assets. The UST requests that the Debtors provide evidentiary support at the hearing regarding the Lenders' waiver.

WHEREFORE, PREMISES CONSIDERED, the United States Trustee prays that the Court deny the Debtors' Motion for Relief from Certain United States Trustee Chapter 11 Operating Guidelines, or in the alternative, grant such relief as the Court deems appropriate. The United States Trustee further prays for all general and equitable relief to which entitled.

RESPECTFULLY SUBMITTED, this the 21st day of May, 2015.

HENRY G. HOBBS, JR.
Acting United States Trustee
Region 5, Judicial Districts of
Louisiana and Mississippi

By: /s/Christopher J. Steiskal, Sr.
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served this day on the below named individual(s) via first class U.S. Mail at the address listed below, or by Notice of Electronic Filing via the email address on file with the Court's CM/ECF system:

Steven W. Rosenblatt
Christopher R. Maddux
Robert A. Byrd

Derek F. Meek
Bess M. Parrish Creswell

DATED, this the 21st day of May, 2015.

/s/Christopher J. Steiskal, Sr.
CHRISTOPHER J. STEISKAL, SR.