

3. On October 27, 2014 (the “**Petition Date**”), the Debtors filed their voluntary petitions for relief and thereby commenced these Bankruptcy Cases under 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 businesses and managing their properties as debtors-in-possession.

4. 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 Court has approved the Committee’s retention of Burr & Forman LLP as counsel for the Committee [Dkt. # 473].

5. On February 27, 2015, MPC received a letter (the “**February 27 Letter**”) from the United States Department of Justice, Environmental and Natural Resources Division (the “**DOJ**”) detailing a cooperative investigation (the “**DOJ Investigation**”) by the Environmental Crimes Section of the DOJ, the Criminal Investigation Division of the United States Environmental Protection Agency (the “**EPA**”), and the United States Attorney’s Office for the Southern District of Mississippi (the “**U.S. Attorney**”) (collectively, the “**Investigating Parties**”). The DOJ Investigation sought information from MPC regarding alleged violations of the Federal Water Pollution Control Act (“**Clean Water Act**”) by MPC.

6. The February 27 Letter invited MPC to pursue discussions with the Investigating Parties to resolve the DOJ Investigation in a manner that would avoid complicating the matters in the Bankruptcy Cases. In response to the February 27 Letter and the DOJ Investigation, MPC advised the Investigating Parties they would cooperate fully with the DOJ Investigation and have done so in all respects.

7. The DOJ Investigation sought to determine if MPC violations of the Clean Water Act that were not entirely mitigated by MPC’s asserted exigencies of different factors, including heavy rainfall.

8. Following extensive negotiations that have transpired over the past four months, MPC and the Investigating Parties reached a tentative agreement (the “**Plea Agreement**”) under

which MPC would plead to one felony violation of the Clean Water Act, 33 U.S.C. §1251 *et seq.* Specifically, MPC agreed to plead guilty to knowingly having discharged pollutants from its fertilizer manufacturing plant into Bayou Casotte, a water of the United States, as described in the Information, in violation of 33 U.S.C. §§ 1311(a) and 1319(c)(2)(A) and to pay, within its abilities and the constraints of the Bankruptcy Cases, the penalties and costs set forth in the Plea Agreement.²

9. Under the proposed Plea Agreement, MPC would not have the right: (i) to withdraw the plea; (ii) to plead not guilty and to persist in that plea; (iii) to have its guilt or innocence determined by a jury after it has considered the evidence presented at trial; (iv) to confront and cross-examine adverse witnesses; (v) to testify and to present evidence; (vi) and to compel the attendance and testimony of witnesses.

10. Under the proposed Plea Agreement, and in accordance with Federal Rule of Criminal Procedure 11(c)(1)(C), as just and equitable and appropriate punishment for the crimes set forth in the Information to which MPC has agreed to plead guilty: (a) MPC would deed in fee simple all title and interest unencumbered in the 320-acre parcel adjacent to its MPC facility in Jackson County, Mississippi, to the Mississippi Department of Marine Resources to become part of the Grand Bay National Estuarine Research Reserve, which property is more fully described as the Taxpayer Identification # 012100200.000 Mississippi Phosphates (3040), as shown on the property listing of the Jackson County, Mississippi Tax Assessor's Office, which is further identified as a rectangular parcel (shown in red on the attached color map, *see* Appendix A to the Plea Agreement), lying to the southeast of MPC's east gypsum stacks; and (b) MPC would pay a special assessment of \$400.00 per count as required in 18 U.S.C. § 3013(a)(2)(B), for a total of \$400.00, which payment would be made to the United States District Court, at the Clerk's Office, 2012 15th Street, Suite 403, Gulfport, MS 39501.

² The statutory maximum penalty for the Clean Water Act violation is the greater of the \$500,000.00 fine prescribed under 18 U.S.C. § 3571(c)(3) or the greater of twice the gain to the Debtors or twice the loss to another party resulting from the offense, as prescribed under 18 U.S.C. § 3571(d). Restitution also may be ordered where appropriate and a term of probation may be imposed as well that may include conditions and obligations.

11. The DOJ will: (i) recommend that the Court accept the MPC's plea of guilty; (ii) recommend that the District Court sentence MPC to a penalty appropriate for the offense it has committed while recognizing the limitations of its financial condition; and (iii) inform the United States Probation Office and the District Court of this Agreement, the nature and extent of MPC's activities with respect to this case and all other activities of MPC which the Investigating Parties or the Court deems relevant to sentencing.

12. Under the Plea Agreement, if the guilty plea is entered and MPC fulfills all of its obligations thereunder, the DOJ will not file any additional criminal charges against MPC, or any of MPC's current or former officers, employees, or directors, or against its parent company, Phosphate Holdings, Inc. ("**PHI**"), or any of PHI's current or former officers, employees, or directors, or against MPC's wholly owned subsidiaries, Ammonia Tank Subsidiary, Inc. and Sulfuric Acid Tanks Subsidiary, Inc. or any of PHI's current or former officers, employees, or directors for any acts or conduct disclosed by MPC or known by the United States as of the date of the Plea Agreement arising out of the Clean Water Act investigation referenced in paragraph 5 of this Motion.

13. Under the Plea Agreement, MPC and its officers agree to continue to provide truthful and complete information to federal authorities concerning all matters pertaining to the charges to which MPC has agreed to plead guilty and agree to cooperate fully with the Investigating Parties in providing assistance and truthful information and testimony in any investigation and prosecution the Investigating Parties undertake relating to the charges at issue in the Plea Agreement. Further, MPC acknowledges that the Plea Agreement does not protect MPC or any of its officers or employees from prosecution for perjury should an authorized representative of MPC testify untruthfully or make false statements nor does it protect these parties from prosecution for other crimes or offenses which the United States discovers by independent investigation. Further, should MPC fail to comply fully with the terms and conditions set forth herein, the Plea Agreement is voidable at the election of the United States, and MPC may be subject to prosecution as if the Plea Agreement had never been made.

Relief Requested

14. By this Motion, MPC respectfully requests entry of the proposed Order: (i) authorizing MPC to enter into and implement the proposed Plea Agreement in accordance with the intent of the parties; (ii) approving the terms of the proposed Plea Agreement; (iii) granting such other and further relief as the Court deems appropriate.

Basis for Relief

15. The proposed Plea Agreement between MPC and the DOJ represents a compromise and settlement of the DOJ Investigation and is, therefore, subject to approval by the Court under Bankruptcy Rule 9019(a). *See In re Adelphia Communications Corp.*, 327 B.R. 143 (Bankr. S.D.N.Y. 2005) (approving settlement agreement between the debtors and the DOJ); *In re WorldCom, Inc., et al.*, Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. May 4, 2004) (approving a settlement agreement between the debtors and the DOJ).

16. Settlements and compromises are “a normal part” of the chapter 11 process. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (citations omitted). Indeed, “compromises are favored in bankruptcy” because they minimize litigation and expedite the administration of a bankruptcy estate. *See In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996); *see also In re Key3Media Group, Inc.*, 2006 WL 2842462, at *3 (D. Del. 2006).

17. In exercising its discretion to approve a particular settlement, a bankruptcy court must determine that the proposed settlement is fair, reasonable, and in the best interests of the debtor’s estate. *See Martin*, 91 F.3d at 394; *In re Marvel Entm’t Group, Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (“[T]he ultimate inquiry [is] whether ‘the compromise is fair, reasonable, and in the interest of the estate.’”) (citation omitted).

18. The merits of a proposed compromise should be judged under the criteria set forth in *TMT Trailer*. *TMT Trailer* requires that a compromise must be “fair and equitable.” *TMT Trailer*, 390 U.S. at 424; *In re AWECO, Inc.*, 725 F.2d 293, 298 (5th Cir. 1984),

cert. denied, 469 U.S. 880 (1984). The terms “fair and equitable” mean that (i) senior interests are entitled to full priority over junior interests; and (ii) the settlement is reasonable in relation to the likely rewards of litigation. *In re Cajun Electric Power Coop.*, 119 F.3d 349, 355 (5th Cir. 1997); *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).

19. The proposed settlement need not be the best result that the debtor could have achieved, but only must fall “within the reasonable range of litigation possibilities.” *Key3Media Group*, 2006 WL 2842462, at *3; *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006) (citing *In re Penn Cent. Transp. Co.*, 596 F.2d 1102, 1114 (3d Cir. 1979)). A proposed settlement falls within the reasonable range of litigation possibilities if a proponent can demonstrate that the settlement does not fall “below the lowest point in the range of reasonableness.” *World Health Alternatives*, 344 B.R. at 396 (citations omitted); *See also In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986).

20. The standard by which bankruptcy courts evaluate the reasonableness of a proposed compromise and settlement is well established. This standard includes consideration of the following four factors: (i) the probabilities of ultimate success should the claim be litigated; (ii) the complexity, expense, and likely duration of litigating the claim; (iii) the difficulties of collecting a judgment rendered from such litigation; and (iv) all other factors relevant to a full and fair assessment of the wisdom of the compromise. *TMT Trailer*, 390 U.S. at 424.

21. Under these factors, MPC submits that the proposed Plea Agreement represents a fair and reasonable compromise that falls well within the range of reasonableness. Because the proposed Plea Agreement with the DOJ satisfies the *TMT Trailer* standard for approval of a settlement, MPC should be authorized to enter into the Plea Agreement pursuant to Bankruptcy Rule 9019.

A. The Probability of Success in Litigation

22. The failure to resolve the pending DOJ Investigation could jeopardize the success of these Bankruptcy Cases. As an initial matter, a criminal indictment: (i) may constitute an “Event of Default” under their debtor-in-possession (“*DIP*”) financing, providing the lenders

with the right to accelerate repayment of the borrowings thereunder; and (ii) could severely diminish the quality of bids received by the Debtors in the proposed sale.

23. Even if the DOJ continued its investigation rather than immediately seeking an indictment, the success of these Bankruptcy Cases could be jeopardized insofar as the pendency of a criminal investigation may hamper the Debtors' sale efforts and chill bidding. Because either scenario would be detrimental to all parties in interest, MPC believes a settlement of the DOJ's claims is in the best interests of the bankruptcy estates.

24. Furthermore, if MPC were found guilty, it would face the prospect of significantly greater governmental fines. After lengthy negotiations between MPC and the DOJ concerning an appropriate settlement amount, the Investigating Parties agreed to take into account, among other things, MPC's current ability to pay, and MPC's acceptance of responsibility. One factor influencing the Investigating Parties' assessment of MPC's acceptance of responsibility is MPC's entry of a plea of guilty. If the proposed Plea Agreement is not approved, MPC may lose the benefit of the Investigating Parties' current position regarding the proposed restitution and the proposed payment.

25. Moreover, any criminal fine assessed by a court against MPC may not be dischargeable in these Bankruptcy Cases. Section 3613(e) of title 18 of the United States Code (the "*Criminal Code*") provides that a bankruptcy discharge does not affect a debtor's liability for criminal fines. Since a criminal fine may not be dischargeable, the DOJ could argue that the Debtors' proposed sale under section 363(f) of the Bankruptcy Code is inappropriate under the circumstances.

26. Given the serious nature of the DOJ's claims and the potential consequences an indictment or conviction would have in these Bankruptcy Cases, the Debtors assert that settlement in these circumstances is appropriate.

B. The Difficulties Encountered in Collections

27. The Debtors are operating at the present time using income from its ammonia terminalling operations with Mississippi Ammonia Leasing, Inc. and funding from their DIP

Lenders pursuant to an approved DIP Budget. Those sources of income are insufficient to sustain the operations of the Debtors on a long-term basis. If resolution of DOJ's claims is delayed, those claims may become uncollectible.

28. Further, the claims of the DOJ are subject to other claims in the Bankruptcy Cases which have priority over the claims of the DOJ. This also would jeopardize the collection by the DOJ of any claims. Accordingly, the Debtors believe entry into the proposed Plea Agreement is appropriate under the circumstances.

C. The Complexity, Expense and Inconvenience of Litigation and the Attendant Delay

29. Any continuation of the DOJ proceedings necessarily will be complex, given the breadth of the DOJ Investigation. Even if MPC was ultimately successful in defending against the DOJ's claims, it may be forced to expend substantial resources in the process, especially if it took months, if not years, for the DOJ to complete its investigation and prosecution of MPC. Indeed, before the Bankruptcy Cases were filed, MPC have already spent many hours conducting an internal investigation, interviewing witnesses, and produced a substantial amount of documents and material in response to the DOJ Investigation.

30. Moreover, if MPC were convicted, the financial consequences could be significant. If the Plea Agreement is not approved, the DOJ may seek a fine significantly higher than the money judgment provided for in the proposed Plea Agreement. Pursuant to section 3613(c) of the Criminal Code, "a fine imposed pursuant to the provisions . . . of this title . . . is a lien in favor of the United States on all property and rights to property of the person fined as if the liability of the person fined were a liability for a tax assessed under the Internal Revenue Code of 1986. . . ." In other words, without a settlement, MPC risk the imposition of a substantial fine, secured by all of MPC's assets (even though that lien may be junior and subordinate to the liens and security interests of the Lenders). Under the proposed Plea Agreement, however, MPC will achieve certainty with respect to the amount of the judgment and the source of payment. This ultimately benefits MPC's unsecured creditors, who would be

junior to any liens imposed under Section 3613 of the Criminal Code. Accordingly, MPC submit that the proposed Plea Agreement is fair and reasonable.

31. The Lenders have not yet indicated whether they will release their liens on the 320-acre parcel, however, or whether they will permit the Debtors to use approximately \$10,000 in the DIP Budget to pay outstanding ad valorem taxes on the 320-acre tract that is to be transferred as restitution if this plea agreement is approved and entered into with the Government. The 320-acre parcel would also have to be removed from the property covered by the Stipulation and Settlement Agreement, which was attached as Exhibit “A” to that certain *Motion of the Debtors Pursuant to §§ 105 and 363 of Bankruptcy Code and Federal Rule of Bankruptcy Procedure 9019 for and Order Approving Settlement Among the Debtors, Phosphate Holdings, Inc., the Lender Parties and the Environmental Agencies* [Dkt. # 864] filed on June 22, 2015. Accordingly, the Lenders’ consent on both these points will be necessary for the Debtors to proceed with the plea agreement.

D. The Paramount Interests of Creditors

32. If the proposed Plea Agreement were not approved by the Court, MPC’s creditors would be negatively affected in several ways. First, MPC’s creditors ultimately would bear the costs and expenses of any ongoing investigation by the DOJ. Second, without the Plea Agreement, if the Debtors were to be assessed with a hefty criminal fine, any distributions to MPC’s unsecured creditors would be reduced significantly. Third, with the DOJ Investigation pending, MPC’s ability to realize value in the sale process may be limited by adverse publicity and by the uncertainty caused by an ongoing investigation. The proposed Plea Agreement is therefore in the best interests of MPC’s creditors.

33. In sum, the Debtors have determined, exercising their business judgment, that the proposed Plea Agreement is fair, equitable, and reasonable. Moreover, the timely resolution of the DOJ claims is in the best interests of MPC’s estate and its creditors. Accordingly, MPC respectfully requests that the Court authorize its entry into the proposed Plea Agreement pursuant to Bankruptcy Rule 9019.

WHEREFORE, for the reasons set forth herein, MPC respectfully request that the Court enter the order, substantially in the form attached hereto as **Exhibit A**.

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Dated: July 13, 2015.

Respectfully submitted,

MISSISSIPPI PHOSPHATES CORPORATION, *et al.*

By: /s/ Thomas M. Hewitt

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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 persons who are registered users of the CM/ECF System for the Bankruptcy Cases, as well as all persons and entities listed on the Shortened Service List approved by the Court in the Bankruptcy Cases.³

SO CERTIFIED, this the 13th day of July, 2015.

/s/ Thomas M. Hewitt

THOMAS M. HEWITT

³ On January 26, 2015, the Court entered its *Order Approving Motion of the Debtors to Establish Limited Service List* [Dkt. # 425]. The “**Shortened Service List**” is those parties specified in that Order, as the Shortened Service List may be updated and amended from month to month.

Exhibit A

Proposed Order

**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)	Jointly Administered

**ORDER GRANTING MOTION OF MISSISSIPPI PHOSPHATES CORPORATION
FOR ENTRY OF AN ORDER APPROVING SETTLEMENT WITH THE
UNITED STATES DEPARTMENT OF JUSTICE AND
FOR AUTHORITY TO ENTER INTO AND PERFORM
PURSUANT TO PROPOSED PLEA AGREEMENT**

[Dkt. # ____]

This matter came before the Court on the *Motion of Mississippi Phosphates Corporation for Entry of an Order Approving Settlement with the United States Department of Justice and for*

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

Authority to Enter into and Perform Pursuant to Proposed Plea Agreement (the “**Motion**”)² [Dkt. # ____] filed herein by Mississippi Phosphates Corporation, one of the Debtors and debtors-in-possession. The Court, having considered the Motion and the premises, finds that the Motion is well-taken and should be granted.

The Court, therefore, finds as follows:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory bases for the relief requested herein are Sections 105(a) and 363(b) of the Bankruptcy Code, and Rule 9019 of the Bankruptcy Rules.

2. The Motion should be granted in all respects.

IT IS, THEREFORE, ORDERED that the Motion is **GRANTED** as set forth in this Order.

IT IS FURTHER ORDERED that MPC is authorized to enter into the Plea Agreement described in the Motion.

IT IS FURTHER ORDERED that the terms of the proposed Plea Agreement as described in the Motion are approved.

IT IS FURTHER ORDERED that MPC is authorized to enter into any and all documents and to take such action as is necessary to effectuate the Plea Agreement as described in the Motion.

###END OF ORDER###

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

ORDER PREPARED AND SUBMITTED BY:

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