United States Bankruptcy Court
Southern District of Mississippi

In re:
Mississippi Phosphates Corporation
Debtor

Case No. 14-51667-KMS
Chapter 11

CERTIFICATE OF NOTICE

District/off: 0538-6 User: wwatson Page 1 of 4 Date Rcvd: Jul 17, 2015
Form ID: pdf012 Total Noticed: 59

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Jul 19, 2015.

db +Mississippi Phosphates Corporation, 601 Industrial Road, Pascagoula, MS 39581-3233
3855828 +ALSTON & BIRD LLP, W SUGDEN, S BOYD, A BACKUS, ONE ATLANTIC CENTER, 1201 W PEACHTREE STREET, ATLANTA, GA 30309-3449
3906714 +Andrew C. Burrell, P.A., Shane Whitfield, Esq., RE: Jerry Shumock, 750 East Pass Road, Gulfport, MS 39507-3303
3964514 +BERKELEY RESEARCH GROUP, LLC, 104 WEST 40TH STREET, 16TH FL, NEW YORK, NY 10018-3641
3891519 +Blank Rome LLP, Alan Lee Smith Esq, RE: InnoPhos Holdings Inc, 130 N 18th Street, Philadelphia, PA 19103-2757
3891520 +Blank Rome LLP, Samuel H. Becker, RE: InnoPhos Holdings Inc, 130 N 18th Street, Philadelphia, PA 19103-2757
3894946 +Brian S. Hermann, Paul Weiss Rifkind Wharton Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019-6031
3894945 C Wells, Mississippi Department of Environmental, P.O. Box 2261, Jackson, MS 39225-2261
3855871 CATERPILLAR FINANCIAL SERVICES CORPORATION, PO BOX 730681, DALLAS, TX 75373-0681
3876687 +CITY OF MOSS POINT TAX COLLECTOR, 4320 McInnis Ave., MOSS POINT, MS 39563-2812
3876688 +CITY OF PASCAGOULA, CODE ENFORCEMENT, 4015 14TH STREET, PASCAGOULA, MS 39567-2405
3906716 +Capstone Advisory Group, LLC, Edwin N Ordway Jr, 104 West 40th Street, 16th Floor, New York, NY 10018-3641
3862696 +Central Maint. & Welding, Inc., c/o Brad deBeaubien, 101 East Kennedy Blvd., Ste. 2800, Tampa, FL 33602-5150
3855901 +DELBERT HOSEMANN, MISSISSIPPI SECRETARY OF STATE, 401 MISSISSIPPI STREET, JACKSON, MS 39201-1004
3964515 DUANE MORRIS LLP, WENDY M SIMKULAK, 30 S 17TH STREET, PHILADELPHIA, PA 19103-4196
3884002 +Devon J. Eggert, Freeborn & Peters LLP, 311 S. Wacker Drive, Suite 3000, Chicago, IL 60606-6679
3894949 +Diane Meyers, Paul Weiss Rifkind Wharton Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019-6031
3876747 +HORNE LLP, 1020 HIGHLAND COLONY PARKWAY, SUITE 400, RIDGELAND, MS 39157-2129
3903223 Heidelberg, Steinberger, Colmer & Burrow, P.A., Post Office Box 1407, Pascagoula, MS 39568-1407
3855608 +IRS, c/o Asst. U.S. Attorney, 1575 20th Avenue, 2nd Floor, Gulfport, MS 39501-2040
3855990 +JACKSON COUNTY ECONOMIC DEVELOPMENT FOUNDATION, PO BOX 1558, PASCAGOULA, MS 39568-1558
3876881 +JACKSON COUNTY MS CHANCERY CLERK, TERRY MILLER, P.O. BOX 998, PASCAGOULA, MS 39568-0998
3855991 JACKSON COUNTY PORT AUTHORITY, PO BOX 70, PORT OF PASCAGOULA, PASCAGOULA, MS 39568-0070
3876766 JACKSON COUNTY, MS AND, JACKSON COUNTY PORT COMMISSION, PO BOX 70, Pascagoula, MS 39568-0070
3855995 JOHN DEERE FINANCIAL, PO BOX 650215, DALLAS, TX 75265-0215
3855993 +Jackson County Tax Collector, JOE TUCKER, TAX COLLECTOR, PO BOX 998, PASCAGOULA, MS 39568-0998
3894938 Jonathan J. Nash, Deloitte Transactions/Business Analytics, 400 Wesl 15th Street, Suite 1700, Austin, TX 78701
3894943 +Julie Martinelli, Paul Weiss Rifkind Wharton Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019-6031
3906718 +Law Offices of Craig M Geno, PLLC, Craig M Geno, RE: Special Counsel to Debtors, 587 Highland Colony Parkway, Ridgeland, MS 39157-8784
3876795 +MDEQ, 515 E. AMITE ST, JACKSON, MS 39201-2709
3876800 +MILFAM I LP, 3300 South Dixie Highway, Suite 1-365, West Palm Beach, FL 33405-1987
3876802 MISSISSIPPI COURT COLLECTIONS, P.O. Box 1384, BRANDON, MS 39043-1384
3876803 +MISSISSIPPI DEPARTMENT OF REVENUE, 500 CLINTON CENTER DRIVE, CLINTON, MS 39056-5673
3876812 +MS DEPARTMENT OF TRANS., 401 NORTH WEST STREET, JACKSON, MS 39201-1010
3856053 MS DEPT OF ENVIRONMENTAL QUALITY, JENNIFER PARISH-MS DEPT OF ENVI QUALITY, P. O. Box 2339, Jackson, MS 39225-2339
3856055 MS STATE DEPT. OF HEALTH, BUREAU OF PUBLIC WATER SUPPLY, STE U-232, P. O. Box 1700, Jackson, MS 39215-1700
3876813 +MS STATE HIGHWAY DEPARTMENT, POST OFFICE BOX 958, JACKSON, MS 39205-0958
3856069 +OCP S.A., c/o Dianne Coffino, Covington & Burling, LLP, 620 Eighth Ave., New York, NY 10018-1572
3894951 +Patricia B. Fugee, One SeaGate, Suite 1700, Toledo, OH 43604-1504
3862691 +Premier Chemicals & Services, LLC, Francis Mayer, 4856 Revere Ave., Ste. A, Baton Rouge, LA 70808-3165
3964513 +REINTJES SERVICES INC, 6400 GLENWOOD #309, OVERLAND PARK, KS 66202-4014
3867810 +RICOH USA INC, ATTN: BANKRUPTCY TEAM, 3920 ARKWRIGHT RD. SUITE 400, MACON, GA 31210-1748
3894947 +Rob Lunsford, Pollan Dobbs, PLLC, 125 S. Congress St. Ste. 1208, Jackson, MS 39201-3313
3855611 +SEC, c/o Asst. U.S. Attorney, 501 E. Court Street, Ste. 4.430, Jackson, MS 39201-5025
3855609 +SEC, c/o Asst. U.S. Attorney, 1575 20th Avenue, 2nd Floor, Gulfport, MS 39501-2040
3894953 +STUW, LLC, ATTN: STUW, LLC, 777 THIRD AVE., NEW YORK, NY 10017-1407
3894948 +Steve Bryant, Locke Lord LLP, 601 Poydras St, Ste 2660, New Orleans, LA 70130-6032
3966567 +Tobey M. Daluz, Esquire, Leslie C. Heilman, Esquire, BALLARD SPAHR LLP, 919 N. Market Street, 11th Floor, Wilmington, DE 19801-3062
3894952 +Trevor R. Hoffmann, Haynes and Boone, LLP, 30 Rockefeller Plaza, 26th Floor, New York, NY 10112-0086
3856183 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, JOAN REDLEAF-RUBIN / REGION 4, SAM NUNN ATLANTA FEDERAL CENTER, 61 FORSYTH STREET, SW, ATLANTA, GA 30303-8960

3856182 +UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, C/O UNITED STATES ATTORNEY'S OFFICE, 501 EAST COURT STREET, SUITE 4.430, JACKSON, MS 39201-5025
3856187 +UNITED STATES SECURITIES AND EXCHANGE COM, C/O UNITED STATES ATTORNEY'S OFFICE, 501 EAST COURT STREET, SUITE 4.430, JACKSON, MS 39201-5025
3856190 +US FUSION, LLC, 2324 S. Commerce Avenue, GONZALES, LA 70737-5729
3894955 +W. Jarrett Little, Lentz & Little, P.A., PO Box 927, Gulfport, MS 39502-0927
3856211 WILLIAM S. SUGDEN, ATTORNEY FOR IOC, ALSTON & BYRD, ONE ATLANTIC CENTER, 1201 WEST PEACHTREE ST., ATLANTA, GA 30309-3424

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
3855900 +E-mail/Text: david.usry@usdoj.gov Jul 17 2015 19:45:23 DAVID N USRY, ASSISTANT UNITED STATES ATTORNEY, 501 EAST COURT STREET SUITE 4-430, JACKSON, MS 39201-5022
3855610 +E-mail/Text: david.usry@usdoj.gov Jul 17 2015 19:45:23 IRS, c/o Asst. U.S. Attorney, 501 E. Court Street, Ste. 4.430, Jackson, MS 39201-5025
3891523 E-mail/Text: BANKRUPTCY.OAC.TAXCOM@DOR.MS.GOV Jul 17 2015 19:45:16 MS State Tax Commission, Bankruptcy Section, P. O. Box 22808, Jackson, MS 39225-2808
3855605 E-mail/Text: atlreorg@sec.gov Jul 17 2015 19:45:14 U.S. Securities and Exchange Commission, Office of Reorganization, 950 East Paces Ferry Road, Suite 900, Atlanta, GA 30326-1382
TOTAL: 4

***** BYPASSED RECIPIENTS *****
NONE. TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Jul 19, 2015 Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on July 17, 2015 at the address(es) listed below:

Alan Lee Smith on behalf of Creditor C.E. McCraw asmith@bakerdonelson.com
Allison Cecile Carroll on behalf of Creditor United States of America on behalf of its Agency the Internal Revenue Service allison.c.carroll@usdoj.gov, southern.taxcivil@usdoj.gov
Amy Lassitter St. Pe' on behalf of Creditor City Electric Supply Co. astpe@dwwattorneys.com, kwilkinson@dwwattorneys.com
Andrew R. Wilson on behalf of Creditor Blue Cross & Blue Shield of Mississippi awilson@blswlaw.com, sdaniels@blswlaw.com
BMC Group, Inc. ecfservice@bmcgroup.com
Bess M. Parrish Creswell on behalf of Creditor Committee Official Committee of Unsecured Creditors of Mississippi Phosphates Corporation bcreswell@burr.com, mtomes@burr.com;khoffmann@burr.com;dmeek@burr.com;mstinson@burr.com
Bess M. Parrish Creswell on behalf of Financial Advisor Capstone Advisory Group LLC bcreswell@burr.com, mtomes@burr.com;khoffmann@burr.com;dmeek@burr.com;mstinson@burr.com
Carey L. Menasco on behalf of Creditor Committee Premier Chemicals & Services, LLC clmenasco@liskow.com, gletman@liskow.com
Carey L. Menasco on behalf of Creditor Committee Shrieve Chemical clmenasco@liskow.com, gletman@liskow.com
Carter S Dobbs, III on behalf of Creditor Gregory McCloud cdobbs@pollandobbs.com, la1@pollandobbs.com
Christopher James Steiskal, Sr. on behalf of U.S. Trustee United States Trustee christopher.j.steiskal@usdoj.gov, lois.e.walker@usdoj.gov;sarita.dukes@usdoj.gov;anita.f.benson@usdoj.gov
Christopher R. Maddux on behalf of Debtor Mississippi Phosphates Corporation chris.maddux@butlersnow.com, vj.money@butlersnow.com;velvet.johnson@butlersnow.com;ecf.notices@butlersnow.com
Christopher R. Maddux on behalf of Debtor Sulfuric Acid Tanks Subsidiary, Inc. chris.maddux@butlersnow.com, vj.money@butlersnow.com;velvet.johnson@butlersnow.com;ecf.notices@butlersnow.com
Christopher R. Maddux on behalf of Debtor Ammonia Tank Subsidiary, Inc. chris.maddux@butlersnow.com, vj.money@butlersnow.com;velvet.johnson@butlersnow.com;ecf.notices@butlersnow.com
Corby Davin Boldissar on behalf of Creditor Brock Services, LLC nobankecf@lockelord.com
David Wheeler on behalf of Interested Party Phosphate Holdings, Inc. david@wheelerattys.com

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system (continued)

Dean Sterling Kidd on behalf of Creditor Caterpillar Financial Services Corporation skidd@bakerdonelson.com
Douglas C. Noble on behalf of Creditor Interoceanic Corporation dnoble@mmqnlaw.com, hbreland@mmqnlaw.com
Douglas Scott Draper on behalf of Interested Party Phosphate Holdings, Inc. ddraper@hellerdraper.com, kfritscher@hellerdraper.com;lwright@hellerdraper.com
Grover C Monroe, II on behalf of Creditor Committee Premier Chemicals & Services, LLC gcmonroe@dunbarmonroe.com, slambert@dunbarmonroe.com;mbrown@dunbarmonroe.com
Grover C Monroe, II on behalf of Creditor Committee Shrieve Chemical gcmonroe@dunbarmonroe.com, slambert@dunbarmonroe.com;mbrown@dunbarmonroe.com
Hovey Slayton Dabney, Jr. on behalf of Interested Party Phosphate Holdings, Inc. sdabney@hellerdraper.com, cnobles@hellerdraper.com
J Mitchell Carrington on behalf of Debtor Sulfuric Acid Tanks Subsidiary, Inc. Mitch.Carrington@butlersnow.com, ecf.notices@butlersnow.com,velvet.johnson@butlersnow.com
J Mitchell Carrington on behalf of Debtor Ammonia Tank Subsidiary, Inc. Mitch.Carrington@butlersnow.com, ecf.notices@butlersnow.com,velvet.johnson@butlersnow.com
J Mitchell Carrington on behalf of Debtor Mississippi Phosphates Corporation Mitch.Carrington@butlersnow.com, ecf.notices@butlersnow.com,velvet.johnson@butlersnow.com
James A. McCullough, II on behalf of Creditor Hydrovac Industrial Services, Inc. jmccullough@brunini.com, dgarmon@brunini.com
James A. McCullough, II on behalf of Interested Party BP Energy Company jmccullough@brunini.com, dgarmon@brunini.com
James Lawson Hester on behalf of Creditor E. I. du Pont de Nemours and Company lhester@wyattfirm.com, cmohon@wyattfirm.com;slancaster@wyattfirm.com
James Lawson Hester on behalf of Creditor The Chemours Company, LLC lhester@wyattfirm.com, cmohon@wyattfirm.com;slancaster@wyattfirm.com
James S Carr on behalf of Interested Party BP Energy Company KDWBankruptcyDepartment@KelleyDrye.com
James W. O'Mara on behalf of Creditor Committee Trammo, Inc. omaraj@phelps.com, jo.bankruptcy.ecf@phelps.com;donaldg@phelps.com
James W. O'Mara on behalf of Interested Party Trammo, Inc., f/k/a Transammonia, Inc. omaraj@phelps.com, jo.bankruptcy.ecf@phelps.com;donaldg@phelps.com
James W. O'Mara on behalf of Creditor Mississippi Ammonia Leasing, Inc. omaraj@phelps.com, jo.bankruptcy.ecf@phelps.com;donaldg@phelps.com
James W. O'Mara on behalf of Creditor Trammo, Inc. omaraj@phelps.com, jo.bankruptcy.ecf@phelps.com;donaldg@phelps.com
Jerome C Hafter on behalf of Interested Party Trammo, Inc., f/k/a Transammonia, Inc. hafterj@phelps.com, spellt@phelps.com
Joel L. Blackledge on behalf of Creditor KRISTOFER STEEL joel@blackledgelawfirm.com
Jonathan E Sholtis on behalf of Creditor Jerry Don Scudder, Jr. jsholtis@dshfirm.com, lconner@dshfirm.com
Karl Fingerhood on behalf of Interested Party US Dept. Of Justice, Env. Enf. Sec karl.fingerhood@usdoj.gov, kenneth.long@usdoj.gov
Karl Fingerhood on behalf of Interested Party Mississippi Department of Environmental Quality karl.fingerhood@usdoj.gov, kenneth.long@usdoj.gov
Karl D. Burrer on behalf of Creditor STUW LLC, as Administrative Agent karl.burrer@haynesboone.com, ishmael.kamara@haynesboone.com
Kasee S. Heisterhagen on behalf of Creditor Committee Official Committee of Unsecured Creditors of Mississippi Phosphates Corporation kheisterhagen@burr.com, severett@burr.com
Kenneth Gordon Long on behalf of Interested Party Mississippi Department of Environmental Quality Kenneth.long@usdoj.gov, efile_ees@usdoj.gov
Kenneth Gordon Long on behalf of Interested Party US Dept. Of Justice, Env. Enf. Sec Kenneth.long@usdoj.gov, efile_ees@usdoj.gov
Lacey Elizabeth Rochester on behalf of Creditor Committee Shrieve Chemical lrochester@liskow.com, lprice@liskow.com
Lacey Elizabeth Rochester on behalf of Creditor Committee Premier Chemicals & Services, LLC lrochester@liskow.com, lprice@liskow.com
Lawrence B. Voit on behalf of Creditor SPI/Mobile Pulley Works, Inc. lvoit@silvervoit.com
Lawrence B. Voit on behalf of Creditor Ranger Environmental Services, LLC lvoit@silvervoit.com
Lawrence B. Voit on behalf of Creditor Nicholas Insulation Services, Inc. lvoit@silvervoit.com
Lenard M. Parkins on behalf of Creditor STUW LLC, as Administrative Agent lenard.parkins@haynesboone.com
Leslie C. Heilman on behalf of Creditor The Chemours Company, LLC heilmanl@ballardspahr.com
Leslie C. Heilman on behalf of Creditor E. I. du Pont de Nemours and Company heilmanl@ballardspahr.com
Lloyd H Randolph on behalf of Interested Party United States on behalf of Federal Communications Comm'n lloyd.randolph@usdoj.gov, janice.murray@usdoj.gov
Marc. P. Solomon on behalf of Creditor Committee Official Committee of Unsecured Creditors of Mississippi Phosphates Corporation msolomon@burr.com
Marcus M. Wilson on behalf of Creditor Blue Cross & Blue Shield of Mississippi mwilson@blswlaw.com, sdaniels@blswlaw.com
Matthew Ward McDade on behalf of Creditor APRM, Inc. d/b/a Plant Maintenance Services mmcdade@balch.com, bmarshall@balch.com;smhollis@balch.com
Matthew Ward McDade on behalf of Creditor Mississippi Power Company mmcdade@balch.com, bmarshall@balch.com;smhollis@balch.com
Matthew Ward McDade on behalf of Creditor VIP International, Inc. mmcdade@balch.com, bmarshall@balch.com;smhollis@balch.com

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system (continued)

Matthew Ward McDade on behalf of Creditor Scott Company, LLC mmcdade@balch.com, bmarshall@balch.com;smhollis@balch.com
Michael D Watson, Jr on behalf of Creditor International Welding & Fabrication, Inc. michael@watsonlegal.ms
Michael T Fackler on behalf of Creditor Bastech, LLC mfackler@milamhoward.com, hdurham@milamhoward.com
Paul J. Delcambre, Jr on behalf of Creditor Mississippi Power Company pdelcambre@balch.com, dbeal@balch.com;smhollis@balch.com
Paul S. Murphy on behalf of Debtor Sulfuric Acid Tanks Subsidiary, Inc. paul.murphy@butlersnow.com, kitty.logan@butlersnow.com;ecf.notices@butlersnow.com
Paul S. Murphy on behalf of Debtor Ammonia Tank Subsidiary, Inc. paul.murphy@butlersnow.com, kitty.logan@butlersnow.com;ecf.notices@butlersnow.com
Paul S. Murphy on behalf of Debtor Mississippi Phosphates Corporation paul.murphy@butlersnow.com, kitty.logan@butlersnow.com;ecf.notices@butlersnow.com
Philip K. Jones, Jr on behalf of Creditor Committee Shrieve Chemical pkjones@liskow.com, dleblanc@liskow.com
Richard A. Montague, Jr. on behalf of Creditor Trammo, Inc. montagur@phelps.com, colleen.wheeler@phelps.com
Richard A. Montague, Jr. on behalf of Interested Party Trammo, Inc., f/k/a Transammonia, Inc. montagur@phelps.com, colleen.wheeler@phelps.com
Richard Mark Gaal on behalf of Creditor Flexicrew Staffing, Inc. , pholder@mcdowellknight.com;aminor@mcdowellknight.com
Robert Alan Byrd on behalf of Creditor STUW LLC, as Administrative Agent rab@byrdwiser.com, wrs@byrdwiser.com;WandaRitaStanovich@gmail.com;grega@gcss.com
Robert Alan Byrd on behalf of Plaintiff STUW LLC, as Administrative Agent rab@byrdwiser.com, wrs@byrdwiser.com;WandaRitaStanovich@gmail.com;grega@gcss.com
Robert Ball McGinley, Jr. on behalf of Creditor Flexicrew Staffing, Inc. rmcginley@mcdowellknight.com, rgaal@mcdowellknight.com;aminor@mcdowellknight.com;ssmith@mcdowellknight.com;mkrscourtdocs@gmail.com
Roger Adam Kirk on behalf of Creditor Brock Services, LLC akirk@gorekilpatrick.com
Roy Hendee Furrh on behalf of Interested Party Mississippi Department of Environmental Quality roy_furrh@deq.state.ms.us, royhfurrh@aol.com
Roy Hendee Furrh on behalf of Interested Party US Dept. Of Justice, Env. Enf. Sec roy_furrh@deq.state.ms.us, royhfurrh@aol.com
Shane Whitfield on behalf of Creditor Jerry Shumock shane@andrewburrell.com, kristina@andrewburrell.com
Sheryl W. Bey on behalf of Creditor ACE American Insurance Company, et al sbey@bakerdonelson.com, mmathews@bakerdonelson.com;sgreer@bakerdonelson.com;mbufkin@bakerdonelson.com
Stephen W. Rosenblatt on behalf of Debtor Ammonia Tank Subsidiary, Inc. Steve.Rosenblatt@butlersnow.com, velvet.johnson@butlersnow.com;VJ.Money@butlersnow.com;ecf.notices@butlersnow.com
Stephen W. Rosenblatt on behalf of Debtor Mississippi Phosphates Corporation Steve.Rosenblatt@butlersnow.com, velvet.johnson@butlersnow.com;VJ.Money@butlersnow.com;ecf.notices@butlersnow.com
Stephen W. Rosenblatt on behalf of Debtor Sulfuric Acid Tanks Subsidiary, Inc. Steve.Rosenblatt@butlersnow.com, velvet.johnson@butlersnow.com;VJ.Money@butlersnow.com;ecf.notices@butlersnow.com
Ted Lampton on behalf of Interested Party Mississippi Department of Environmental Quality ted_Lampton@deq.state.ms.us
Ted Lampton on behalf of Interested Party US Dept. Of Justice, Env. Enf. Sec ted_Lampton@deq.state.ms.us
Thomas A McKnight, Jr. on behalf of Creditor McCain Engineering Co., Inc. tmcknight@wallacejordan.com, rrogers@wallacejordan.com
Thomas J Butler on behalf of Creditor Alabama Electric Motor Services, LLC d/b/a TMC Electric Motor Services tbutler@maynardcooper.com
Thomas M Hewitt on behalf of Debtor Mississippi Phosphates Corporation thomas.hewitt@butlersnow.com, ecf.notices@butlersnow.com,velvet.johnson@butlersnow.com
Thomas M Hewitt on behalf of Claims Agent BMC Group, Inc. thomas.hewitt@butlersnow.com, ecf.notices@butlersnow.com,velvet.johnson@butlersnow.com
Thomas M Hewitt on behalf of Debtor Ammonia Tank Subsidiary, Inc. thomas.hewitt@butlersnow.com, ecf.notices@butlersnow.com,velvet.johnson@butlersnow.com
Thomas M Hewitt on behalf of Debtor Sulfuric Acid Tanks Subsidiary, Inc. thomas.hewitt@butlersnow.com, ecf.notices@butlersnow.com,velvet.johnson@butlersnow.com
United States Trustee USTPRegion05.JA.ECF@usdoj.gov
William H Patrick, III on behalf of Interested Party Phosphate Holdings, Inc. wpatrick@hellerdraper.com, kfritscher@hellerdraper.com
William J. Little, Jr. on behalf of Creditor HC2 Holding Inc. ecf@lentzlittle.com
William L Smith on behalf of Creditor Robert E Jones bsmith@balch.com, bbryant@balch.com
William Lee Watt on behalf of Creditor Nicholas Insulation Services, Inc. lwatt@gibbswhitwell.com, akelly@gibbswhitwell.com
William P. Wessler on behalf of Creditor Jackson County Port Authority wwessler@cableone.net
William P. Wessler on behalf of Creditor Bastech, LLC wwessler@cableone.net

TOTAL: 94

SO ORDERED,

Judge Katharine M. Samson
United States Bankruptcy Judge
Date Signed: July 17, 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

IN RE:	)	
	)	
MISSISSIPPI PHOSPHATES CORPORATION, *et al.*	)	**CASE NO. 14-51667-KMS**
	)	**CHAPTER 11**
	)	
DEBTORS	)	**Jointly Administered**
	)	

ORDER GRANTING MOTION FOR APPROVAL OF FOURTH AMENDED PROPOSED BUDGET FOR PROPOSED FINANCING AND USE OF CASH COLLATERAL

THIS MATTER came on for hearing on July 2, 2015 ("Hearing"), on the Motion of the Debtors for Approval of Fourth Amended Proposed Budget for Proposed Financing and Use of Cash Collateral (Dkt. No. 826) filed by Mississippi Phosphates Corporation, *et al.*,[1] the Debtors and debtors-in-possession ("Debtors" or "MPC") in the above styled case; the Objection to Debtors' Motion for Approval of Fourth Amended Proposed Budget for Proposed Financing and Use of Cash Collateral (Dkt. No. 843) filed by the Official Committee of Unsecured Creditors[2] ("Committee"); and the Response and Objection of Mississippi Department of Environmental

[1] *See* footnote 1 to the Motion of the Debtors for Approval of Fourth Amended Proposed Budget for Proposed Financing and Use of Cash Collateral for a description of the consolidated debtors. (Dkt. No. 826).

[2] The Committee was appointed by the United States Trustee pursuant to the Notice of Appointment of Chapter 11 Unsecured Creditor's Committee filed November 12, 2014. (Dkt. No. 161).

Quality to Debtors' Motion for Approval of Fourth Amended Proposed Budget for Proposed Financing and Use of Cash Collateral (Dkt. No. 845) filed by the Mississippi Department of Environmental Quality ("MDEQ"). At the Hearing the Court approved an extension of the budget to July 19, 2015 and took the matter under advisement. Having reviewed the pleadings, arguments of counsel and applicable law, the Court finds that the objection of the Committee should be overruled. The objection of MDEQ has been resolved by stipulation. (Dkt. No. 900). Accordingly, the Motion of the Debtors for Approval of Fourth Amended Proposed Budget for Proposed Financing and Use of Cash Collateral, as modified by the stipulation with MDEQ, should be granted.

Jurisdiction

The Court has jurisdiction of the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

Factual and Procedural Background

1. The Debtors filed their voluntary petition for relief under Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code")[3] in the United States Bankruptcy Court for the Southern District of Mississippi on October 27, 2014. The Debtors are operating as debtors-in-possession pursuant to authority granted under §§ 1107(a) and 1108.[4]

2. On October 19, 2014, an Interim Order Under Sections 105, 361, 362, 364 and 507 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002, 4001 and 9014

[3] "Bankruptcy Code" or "Code" refers to the Bankruptcy Code located at Title 11 of the United States Code. All Code sections hereinafter will refer to the Bankruptcy Code unless specifically noted otherwise.

[4] MPC was a major producer and marketer of diammonium phosphate ("DAP") fertilizer at the time of the Petition. (Dkt. Nos. 501 at 4, 818 at 9). The manufacturing facilities, located in Pascagoula, Mississippi, "consisted of two sulfuric acid plants, a phosphoric acid plant and a DAP granulation plant." (*Id.*).

(I) Authorizing the Debtors to Incur Post-Petition Senior Secured Superpriority Indebtedness; (II) Authorizing Use of Cash Collateral; (III) Granting Post-Petition Priming and Senior Priority Security Interests and Superpriority Claims; (IV) Granting Adequate Protection; (V) Modifying the Automatic Stay; and (V) Scheduling a Final Hearing on the Motion was entered allowing interim financing and use of cash collateral in accordance with an approved budget. (Dkt. No. 66).

3. Orders granting the Debtors' motions for renewal and extension of the interim order were subsequently entered. (Dkt. Nos. 575, 717, 802). The third extension order entered on June 15, 2015 ("Third DIP Extension Order"), provided that "the Interim DIP Order is renewed and extended until July 31, 2015…." (Dkt. No. 802 at 3).[5]

4. The Fourth Amended Term Sheet and the Third Amended Approved Budget for interim financing and use of cash collateral through July 5, 2015 were attached to and approved by the Third DIP Extension Order. (Dkt. No. 802 at 4, 11).

5. On June 25, 2015, the Motion of the Debtors for Approval of Fourth Amended Proposed Budget for Proposed Financing and Use of Cash Collateral ("Motion") was filed. (Dkt. No. 826). The Debtors "request that the Fourth Amended Proposed Budget for interim financing and use of cash collateral through July 31, 2015," be substituted (in lieu of exhibits to prior motions) and approved. (Dkt. No. 826 at 4, ¶ 10).[6] At the Hearing, Debtors' counsel requested

[5] The Committee states that this extension order "was short-term in nature and allowed for the continued operation and funding of expenses during negotiations between the Debtors, the Mississippi Department of Environmental Quality, the Environmental Protection Agency, and the Senior Lenders regarding a possible global settlement of the bankruptcy estate's potential environmental liabilities." (Dkt. No. 843 at 1-2).

[6] The Debtors note in the Motion that the Committee and Government entities have not agreed to the Fourth Amended Proposed Budget but that Lenders have agreed to the proposed budget. (Dkt. No. 826 at 4, ¶ 11).

approval through August 2, 2015.[7] Exhibit A to the Motion is the proposed budget through that date. (Dkt. No. 826, Ex. A).

6. The Motion was noticed for hearing on July 2, 2015 with a response deadline of July 1, 2015. (Dkt. No. 829). Timely objections were filed by the Committee and by MDEQ. (Dkt. Nos. 843, 845).

7. The Committee objects that the line item proposed in the Fourth Amended Proposed Budget for payment of fees and expenses of the Committee is insufficient to cover the costs that will "necessarily be incurred by the Committee in serving the unsecured creditors." (Dkt. No. 843 at 2). The Committee states that the $120,000.00 allotment in the budget to "UCC Professionals" would bring the total for the Committee's professionals to $600,000.00 and that "[i]t is the Committee's understanding that it is the intent of the Debtors and Lenders to limit the budgeted amount to 'UCC Professionals' over the course of this entire bankruptcy (which is projected to extend beyond August 2, 2015) to $600,000.00." (*Id.*). The Committee argues that the fees and expenses proposed "are simply not enough to cover the actual fees and expenses already incurred, let alone future fees and expenses." (Dkt. No. 843 at 3, ¶ 5). The Committee concedes that it agreed[8] to accept a total of $600,000.00 through May 31, 2015 for "Creditor Costs," but argues that the Debtors should provide for additional costs that would be incurred by the Committee if they wish to extend the budget beyond that date.[9] The Committee further

[7] This date corresponds with a scheduled auction of Debtors' assets on July 31, 2015, and subsequent hearing on approval of the sale, and with late July hearings on the Debtors' motions for approval of settlements among parties. (Dkt. Nos. 501, 818, 761, 790, 872).

[8] The agreement regarding costs was negotiated as part of the comprehensive Agreement on Definitive Settlement Terms and filed as an exhibit to the Motion of the Debtors Pursuant to §§ 105 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019 for an Order Approving Settlement Among the Debtors, the Committee, the Lender Parties and PHI filed by MPC on February 18, 2015. (Dkt. No. 843 at 3; Dkt. No. 501, Ex. A).

[9] (*Id.* at ¶ 6). The Committee states that the "bankruptcy case has extended far past the original May 31, 2015 proposed date and currently is not expected to reach a conclusion until roughly October 2015." (Dkt. No. 843 at 3).

contends that "[t]he Committee professionals have substantial responsibilities remaining to be completed in this case, including but not limited to, prosecuting the Settlement Agreement; analyzing and overseeing the settlement of the estate's environmental liabilities; overseeing any sales of assets that might be pursued in this case; and handling all avoidance actions and litigation relating to directors and officers that may be needed." (*Id* at ¶ 7.). The Committee argues that the Debtors "should not be permitted to take advantage of chapter 11 protections by paying other fees and expenses, including the fees and expenses of their own professionals, over and against paying the fees and expenses incurred by the Committee," and urges the Court that the Debtors and Lenders are under no obligation to finance the costs of the case but that "to the extent they want to continue to obtain the benefits of chapter 11, these costs must be provided for."[10] The Committee requests the Court to direct the Debtors to increase the line item in the budget to cover the Committee's costs through the conclusion of the case. (Dkt. No. 843 at 4, ¶ 9.).

8. MDEQ did not object to the amount of Lender financing provided but opposes the allocation of funds in the proposed budget. "MDEQ's objection is that the required financial assurance for closure and post-closure care of the East Stack[11] at the MPC Facility as listed in the

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Through May 31, 2015, the Committee has incurred fees and expenses of $570,381.79 for counsel and $202,000.00 for its financial advisor. (Dkt. No. 843 at 2). At the Hearing, counsel for the Committee estimated that the Committee would incur a total of $850,000.00 in fees and expenses by October. Debtors' counsel noted that the budgeted fees for the Committee had been increased to $600,000.00 but that the Lenders would not approve a greater amount. He also argued that the Committee had other sources of recovery from claims or actions that may be pursued including avoidance litigation.

[10] (Dkt. No. 843 at 3-4, ¶ 8). At the Hearing, counsel for the Committee reiterated an argument made in opposition to the Debtor's initial DIP motion (Dkt. No. 14) that if one desires the benefits of Chapter 11, the associated costs and expenses including those of the Committee must be paid. At the request of the parties, the issue of whether the secured creditor was required to carve out the fees of the Committee was not decided by the Court because of ongoing negotiations among the parties.

[11] The East Stack is a reference to the east phosphygypsum disposal facility. (Dkt. No. 818 at 13, Dkt. No. 174-1 at 2). A solid waste management permit issued by the State of Mississippi allows for the disposal of phosphogypsum. The permit requires financial assurance for closure and post-closure of the East Stack. (Dkt. No. 845-2 at 2). The

Debtors' budget is not proposed to be funded." (Dkt. No. 845 at 1, ¶ 1). Financial assurance for closure and post-closure care is required pursuant to the solid waste management permit granted to the Debtors, their agreement with MDEQ and applicable law.[12]

> "MPC maintains financial assurance in the form of a trust fund at Regions Bank to assure closure and /or post-closure care of the landfill at its facility in Pascagoula, Mississippi. The sole beneficiary of the trust fund is MDEQ, and its purpose is to assure payment for the costs of closure and/or post-closure care of the East Gyp Stack covered by the Trust Agreement in the event that MPC fails to do so, whether as a result of bankruptcy or for any other reason. The Trust Fund value currently stands at approximately $11,100,000. MPC's current estimate for the costs associated with closure and post-closure at the facility is approximately $80,000,000, and the actual costs could potentially exceed this amount."

(Dkt. No. 845 at 2, ¶ 3). MPC and MDEQ agreed that payments of $199,000.00[13] would be made each quarter to the Trust Fund. (*Id.*). MDEQ asserts that although the December 2014 financial assurance payment was funded, MPC failed to make the March and June 2015 quarterly

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Debtors also maintain the "closed West Gypsum Stack" that "ceased receiving phosphogypsum in 2002 and closure was completed in 2005." (Dkt. No. 174 at 5).

[12] (Dkt. No. 845 at 2, ¶ 3). As cited by MDEQ, *see* State of Mississippi Solid Waste Management Permit SW0300040452 issued by the Mississippi Environmental Quality Permit Board (Dkt. No. 845-2, Section E(1)(f)(6)) ("Documentation or proof of establishment of an adequate financial assurance mechanism for closure and post-closure costs shall be submitted to the Department."); Mississippi Commission on Environmental Quality Agreed Order, (Dkt. No. 174-2 at 1) (approving financial assurance mechanism of quarterly payments into trust fund to comply with conditions of waste management permit for MPC's east gypsum stack); Miss Code Ann. § 17-17-27 (providing that commission shall exercise supervision over management of solid wastes and shall adopt rules and regulations including standards for financial responsibility to cover liability for closure and post-closure of site and perpetual care of hazardous waste landfill); Miss. Admin. Code 11-4:1.4(F) (providing requirements for financial assurance by owner for closure and post-closure care of landfill). *See also Safety-Kleen*, *Inc. (Pinewood) v. Wyche,* 274 F. 3d 846, 856-57, 866 (4th Cir. 2001) (court upheld state's right to shut down debtor's operations in the absence of financial assurance); *In re Mattiace Indus., Inc.*, 74 B.R. 44 (Bankr. E.D.N.Y. 1987) (court dismissed case for, among other things, failure to comply with environmental laws); *Cf. In re Commonwealth Oil Refining Co.*, 805 F. 2d 1175, 1186 (5th Cir. 1986) (automatic stay did not apply to EPA enforcement action).

[13] MDEQ notes that MPC has made quarterly payments of $200,000.00 into the trust fund since 2002. (Dkt. No. 845 at 2).

trust fund payments as required, and that $398,000.00 is overdue.[14] (*Id* at ¶ 4.). MDEQ further asserts that the required payment is excepted from provisions of the automatic stay. (Dkt. No. 845 at 5; 11 U.S.C. § 362(b)(4)). Debtors' counsel argued that from the Debtors' perspective, payment of financial assurance was more an issue of timing as to when it would be paid rather than if it would be paid, and that it was part of the proposed settlement agreement that any sale or disposition of assets must be in compliance with state and federal requirements for financial assurance. Debtors' counsel noted that the Lenders would not agree to inclusion of the financial assurance payments in the proposed budget.[15] Debtors' counsel further asserted that both Debtors and Lenders have been attuned to environmental issues and that the Debtors have maintained environmental controls throughout the Chapter 11 case.[16]

9. At the Hearing, the Court approved an extension of the budget through July 19, 2015, but took the objections of MDEQ and the Committee under advisement. (Dkt. No. 854).

10. As the Court was preparing to upload its initial decision in this matter, the Lenders submitted a stipulation resolving the objection of MDEQ. (Dkt. No. 900). Consequently, this order only addresses the objection of the Committee.

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[14] MDEQ argues that MPC should pay overdue trust fund payments from sources including funds from the cancellation of property and casualty premiums ($179,828.00), ongoing ammonia terminaling operations with Trammo ($724,000.00), and other refunds ($349,859.00). (Dkt. No. 845 at 3). The Debtor argues that these sources are already included in the proposed budget. MDEQ also expresses concern over high professional fees during bankruptcy in the face of failure to make or budget financial assurance payments required under statute, regulation and the waste management permit (noting fees and expenses over $2.3 million for Debtors' counsel). (Dkt. No. 834 at 4).

[15] The Debtors have not had sufficient funds to operate the business facilities and maintain necessary environmental controls or to fund the Chapter 11 case without post-petition financing from the Lenders.

[16] The Court notes that MPC recently filed a motion to enter into a settlement and plea agreement with United States Department of Justice in which MPC has agreed to plead guilty to "knowingly having discharged pollutants from its fertilizer manufacturing plant into Bayou Casotte …" as part of the proposed settlement. (Dkt. No. 870 at 3). The motion does not address whether the discharge occurred pre- or post-petition.

Analysis

The Debtors have been operating under an interim debtor-in-possession financing and cash collateral arrangement since October of 2014. (Dkt. No. 66) The interim financing order has been extended on several occasions while the parties have been negotiating various issues. No final order has been entered. However, the Court was advised that the Committee, the Lenders and the Debtors had agreed to increase the carve out for the Committee from the originally proposed amount of $142,000.00 (Dkt. No. 14-4 at 1-2) to $600,000.00 which the Committee asserts is for services through May 31, 2015. This amount is part of the proposed settlement set for hearing on July 21, 2015. (Dkt. No. 501-1 at 5, ¶ 4(C)(ii)). The Committee now requests the Court to direct the Debtors to increase the line item in the proposed budget for the Committee's professionals to an amount that would cover all the costs through the conclusion of the case.

"In general, interim compensation can only be paid to professionals out of a secured creditors' cash collateral if the debtor has authority to use the cash collateral; if the secured creditor specifically consents to the payment, such as through a carve-out; or if the secured party is benefited by the professionals work… ." Collier on Bankruptcy ¶ 331.02[5][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Although the Bankruptcy Code does not address carve outs, such agreements are commonly included in cash collateral and debtor-in-possession financing arrangements. *In re Cal. Webbing Indus., Inc.*, 370 B.R. 480, 483-84 (Bankr. D.R.I. 2007); *see Unsecured Creditors' Comm. v. Jones Truck Lines, Inc.*, 156 B.R. 608, 614 (W.D. Ark. 1992) (no requirement of carve out in bankruptcy law); *see also* Collier, at ¶ 331.02[5][b] ("[T]he chief method under which professionals receive interim compensation is by specific

agreement from secured and superpriority creditors in either debtor in possession financing or cash collateral orders. This is commonly called a 'carve-out.'").[17]

In this case, the Lenders, after negotiations with Debtors and the Committee, agreed to a $600,000.00 carve out for the Committee's professionals. The parties acknowledge that the Lenders are undersecured; and, there has been no showing that adequate protection is available to protect the Lenders if an increase in the proposed budget is ordered by the Court. *See* 11 U.S.C. § 363(c)(2) (debtor may not use cash collateral unless secured creditor consents or the court authorizes use). In the absence of an agreement or proof of adequate protection, the Court declines to require the Lenders to increase the amount of the carve out for the Committee's professionals. *See In re Beltline Indus., L.P.*, 476 B.R. 917, 923-25 (Bankr. N.D. Tex. 2012) (court declined to impose carve out over objection of secured creditor where there was no proof of adequate protection);[18] *see generally TNB Fin., Inc. v. Parker Interests (In re Grimland, Inc.)*, 243 F. 3d 228, 232-33 (5th Cir. 2001) (estate, not secured creditor, has obligation to pay administrative expenses). Consequently, the Court finds that the Committee's objection to the Debtors' Motion should be overruled.

Conclusion

IT IS THEREFORE ORDERED AND ADJUDGED that the Committee's objection to the Debtors' Motion is overruled; and accordingly,

[17] While the parties may negotiate for protection through a carve out, some courts have permitted secured creditors "to dictate the allocation of the proceeds of its collateral." *Richard B. Levin, Almost All You Ever Wanted to Know About Carve Out,* 76 Am. Bankr.L.J. 445, 450 (2002); *In re Hotel Syracuse, Inc.,* 275 B.R. 679, 683 (Bankr. N.D.N.Y. 2002) (court rejected assertion that to permit secured creditor to carve out fees exclusively for Debtor's counsel without similar provisions for Committee's counsel violated priority scheme); *In re Lavelle Aircraft Co.*, No. MISC. 95-108, 1995 WL 334325, at *2 (E.D. Pa. June 2, 1995) (court approved carve out for debtor's counsel only).

[18] *But see* 11 U.S.C. § 1129(a)(9) (plan cannot be confirmed unless administrative claims for professional fees are paid in full or claimant agrees to different treatment of such claim).

IT IS FURTHER ORDERED AND AJUDGED that the Motion of the Debtors for Approval of Fourth Amended Proposed Budget for Proposed Financing and Use of Cash Collateral, as modified per the stipulation with MDEQ (Dkt. No. 900), is **GRANTED.**

##END OF ORDER##