

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
)	
)	(Joint Administration Requested)
Debtors)	
)	

EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS PURSUANT TO
SECTIONS 105, 361, 362, 363, 364 AND 507 OF THE BANKRUPTCY CODE AND
FEDERAL RULES OF BANKRUPTCY PROCEDURE 2002, 4001 AND 9014
(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 (VI) SCHEDULING
A FINAL HEARING ON THE MOTION

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Mississippi Phosphates Corporation, *et al.*, the Debtors and debtors-in-possession (collectively, the “*Debtors*”) in these jointly administered chapter 11 cases, by and through their undersigned attorneys, in the above captioned cases (the “*Chapter 11 Cases*”), hereby file this *Emergency Motion for Interim and Final Orders Pursuant to Sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002, 4001 and 9014 (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 (VI) Scheduling a Final Hearing on the Motion* (the “*Motion*”) and in support of this Motion, the Debtors show as follows:

¹ The following affiliated Debtors have requested joint administration herein: Mississippi Phosphates Corporation (“*MPC*”), Ammonia Tank Subsidiary, Inc. (“*ATS*”) and Sulfuric Acid Tanks Subsidiary, Inc. (“*SATS*”).

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PROCEDURAL BACKGROUND

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

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. MPC’s production facilities currently yield approximately 600,000 to 650,000 tons of DAP annually.

4. ATS is a Delaware corporation with its principal place of business located at 601 Industrial Road, Pascagoula, Mississippi. ATS is a wholly owned subsidiary of MPC formed in May 2010. ATS’ facilities include an ammonia tank, which stores ammonia used in MPC’s production of DAP.

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

5. The statutory predicates for the relief requested herein are sections 105, 361, 362, 363, 364 and 507 of the Bankruptcy Code and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure.

6. 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.

FACTUAL BACKGROUND

A. Description of Business

7. MPC is a major United States producer and marketer of DAP, one of the most common types of phosphate fertilizer. DAP is MPC's primary product. To produce DAP, phosphate rock is combined with sulfuric acid to form phosphoric acid, which is then mixed with ammonia to produce DAP, a dry granular product. In its chemical composition, DAP is comprised of 46 percent phosphate and 18 percent nitrogen. Of the ammoniated phosphate produced in the United States, 98 percent is sold as fertilizer. Among other things, phosphate affects seed germination, it helps plants use water efficiently and protects plants against diseases. Thus, DAP plays an important role in improving crop quality, increasing crop yields and mitigating the effects of environmental stresses on plants.

8. As of the Petition Date, the Company employed 224 employees and approximately 26 "nested" third-party contract employees. MPC's production facilities are

located on a deep-water channel in Pascagoula, Mississippi, with direct access to the Gulf of Mexico. The Company's manufacturing facilities consist of two sulfuric acid plants, a phosphoric acid plant and a DAP granulation plant.

9. In 2013, MPC sold 618,000 tons of DAP at an average price of \$394 per ton. For the year ended December 31, 2013, the Company had net sales of \$246.5 million, operating loss of \$29.6 million, cash flow from operations of (\$29.6) million and EBITDA of (\$14.8) million. As of September 30, 2014 (year to date), MPC has (a) sold 343,582 tons of DAP at an average price of \$416 per ton, (b) sold 23,295 tons of monoammonium phosphate ("**MAP**") at an average price of \$475 per ton, and (c) had miscellaneous terminaling revenue of approximately \$1.4 million. Also, as of September 30, 2014 (year to date), the Company has net sales of \$155.6 million, pre-tax operating loss of \$33.9 million, cash used in operations of (\$22.9) million and EBITDA of (\$15.4) million.

10. During the course of these Chapter 11 Cases, the Debtors intend to intend to operate in in the ordinary course of business, including the manufacture and sale of DAP using its entire inventory of phosphate rock for that purpose.

B. Description of Debt

11. Before the Petition Date, each of the Debtors entered into that certain Amended and Restated Credit Agreement, dated as of September 4, 2013 (as amended, restated, supplemented or otherwise modified from time to time, the "**Pre-Petition Credit Agreement**"), among the Debtors, as borrowers, and Phosphate Holdings, Inc. as guarantor (the "**Guarantor**"),² the lenders from time to time party thereto (the "**Pre-Petition Lenders**") and STUW LLC, as administrative agent (the "**Agent**") for the Pre-Petition Lenders, pursuant to

² The Guarantor is the Debtors' ultimate corporate parent.

which, the Pre-Petition Lenders extended credit and loaned money to the Debtors on the terms set forth therein.

12. As of the Petition Date, over \$58 million in principal and interest obligations were outstanding under the Credit Agreement. The obligations under the Credit Agreement are secured by a first-priority, senior lien and security interest on certain real and personal property assets of each of the Debtors and the Guarantor pursuant to the Amended and Restated Pledge and Security Agreement, dated September 4, 2013 and related deeds of trust, lien filings, pledge agreements and other security instruments (each, as amended, restated, supplemented or otherwise modified from time to time), by the Debtors and the Guarantor, as grantors, in favor of Agent for the ratable benefit of the Pre-Petition Lenders.

RELIEF REQUESTED

13. By this Motion, the Debtors request entry of interim and final orders (the “**DIP Orders**”) authorizing them to borrow money from certain Pre-Petition Lenders (the “**DIP Lenders**”)³ under a revolving credit facility (the “**DIP Financing**”) in accordance with the Term Sheet attached hereto as **Exhibit A**⁴ embodying the terms of DIP Financing (the “**DIP Facility**”) and the DIP Orders. The following are the salient terms of the proposed DIP Financing and the proposed order granting this Motion on an interim basis (the “**Interim DIP Order**”):⁵

a. The Debtors obtain from the DIP Lenders loans and credit advances (the “**Loan Advances**”) in an aggregate principal sum of (i) up to \$5,000,000 upon entry of the Interim DIP Order and (ii) following the entry of the final order approving the Motion (the “**Final DIP Order**”), up to a total sum of \$5,000,000 plus accrued interest on the aggregate principal amount and fees and expenses on a revolving basis, to be used

³ A schedule of the DIP Lenders is attached to the Term Sheet.

⁴ To the extent required by the DIP Lenders, a definitive credit agreement governing the DIP Facility that incorporates the terms and conditions set forth in the Term Sheet, and is otherwise in form and substance acceptable to the DIP Lenders, will be prepared and executed by the parties.

⁵ All otherwise undefined terms have the meanings set forth in the Interim DIP Order. A copy of the Interim DIP Order is attached hereto as **Exhibit B**.

exclusively to (W) fund working capital, required and approved capital expenses and general corporate purposes relating to post-petition operations, including the production and sale of DAP in the ordinary course of business and maintenance of water treatment costs of the east gypsum disposal facility and treatment for water and leachate, as well as expenses related to a sales process for the Debtors' assets,⁶ and (X) pay, up to the budgeted amount for the fees, costs, expenses, and disbursements of professionals retained by the Debtors and the Committee, each as approved by the Court, and bankruptcy related charges limited by the amounts set forth in the budget approved by the Lenders (the "**Approved Budget**")⁷ including United States Trustee and Clerk Fees. Such Loan Advances will be subject to the timing and details of, and to be used in accordance with, the Approved Budget.

b. That the obligations of the Debtors under the DIP Facility (i) be secured by a first-priority priming lien on any and all assets of the Debtors that secure the obligations under the Pre-Petition Credit Agreement pursuant to section 364(d) subject to the Carve Out (defined below) and amounts required to be paid by Debtors to the United States Trustee during the respective terms of the DIP Orders, (ii) pursuant to section 364(c)(1) of the Bankruptcy Code, be entitled to exclusive superpriority administrative expense status in the Chapter 11 Cases, (iii) pursuant to section 364(c)(2) of the Bankruptcy Code, be secured by a first-priority perfected security interest in all of Debtors' and the Guarantor's unencumbered assets, including all real and personal property, whether now owned or hereafter acquired, including the proceeds of Avoidance Actions, and (iv) pursuant to section 364(c)(3) of the Bankruptcy Code, be secured by a perfected junior lien on any specific property of Debtors and the Guarantor that is subject to valid, perfected and non-avoidable liens (other than liens arising under the Pre-Petition Credit Agreement).

c. The Interim DIP Order provides for the Debtors to stipulate to the liens and claims of the Pre-Petition Lenders and a sixty (60) day period for parties-in-interest to challenge the Debtors' stipulations. If no challenge is filed, the Debtors' stipulations will be binding on the bankruptcy estates. Additionally, upon entry of the Final DIP Order, any right or claim that could be asserted by any party in interest in the case to surcharge the DIP Lenders or their collateral under section 506(c) of the Bankruptcy Code, or otherwise, shall be waived by the Debtors for the estates and barred pursuant to the Final DIP Order.

d. Under Bankruptcy Rule 4001, an interim hearing (the "**Interim Hearing**") be held before this Court to consider entry of the Interim DIP Order approving the post-petition financing facility on an interim basis and authorizing the Debtors to obtain, on an interim basis, under the DIP Facility, a sum not to exceed \$5,000,000 pursuant to the terms and conditions of the Interim DIP Order,⁸ and further requesting a setting for a final hearing on this Motion (the "**Final Hearing**") and

⁶ The Debtors anticipate filing a motion to establish certain sales procedures and to authorize the sale of substantially all of the Debtors' assets.

⁷ A copy of the Approved Budget is attached hereto as **Exhibit C**.

⁸ To the extent there is a conflict between the Term Sheet and the Interim DIP Order, the Interim DIP Order shall control.

establishing notice procedures for the Final Hearing, wherein the Court will consider entry of the Final DIP Order authorizing the DIP Financing.

e. That the Court authorizes the use of the cash collateral of the Pre-Petition Lenders pursuant to the DIP Orders and section 363(c) of the Code and approves the agreed adequate protection for the use of the Pre-Petition Lenders' cash collateral.

V. AUTHORITIES AND ARGUMENT

A. Debtor-in-Possession Financing

(i) Senior Lien on Collateral of Pre-Petition Lenders

14. Section 364(d) of the Bankruptcy Code provides that a debtor may obtain post-petition financing by granting a lien on property of the estate that is senior or equal to liens that already exist on such property, so long as the debtor provides adequate protection of the previous lienholders' interest in such property. Section 364(d) of the Bankruptcy Code provides:

(d)(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if —

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

15. The Debtors satisfy the requirements of section 364(d) of the Bankruptcy Code because (a) the Debtors are unable to obtain credit otherwise,⁹ (b) the Pre-Petition Lenders are adequately protected and consent to a section 364(d) priming lien, and (c) the proposed DIP Financing is in the best interest of the bankruptcy estates. The Debtors seek to grant a senior lien upon the collateral of the Pre-Petition Lenders, subject to the Carve Out (as defined below).

⁹ As reflected in the Phelps Declaration, David Phelps was retained as the Chief Restructuring Officer for the Debtor. Based on his experience as a CRO and his knowledge of the financial marketplace for DIP Loans, the Debtors would not be able to obtain as favorable terms for a DIP Loan as that offered by the DIP Lenders, especially in the limited time available.

As will be demonstrated below, the Pre-Petition Lenders will be provided additional adequate protection during both the interim period and the entirety of the Chapter 11 Cases.

16. In the Debtors' business judgment, the DIP Facility represents the best financing option to effectuate these purposes and advance the Debtors' reorganization efforts. The terms of the DIP Facility neither (a) tilt the conduct of the Chapter 11 Cases and prejudice the powers and rights that the Bankruptcy Code confers for the benefit of all creditors, nor (b) prevent motions by parties-in-interest from being decided on their merits.

17. The superpriority claims and Liens granted to the DIP Lenders or the DIP Agent under the DIP Orders shall be subject to the Carve-Out for (a) the unpaid fees of the Clerk of the Court and the United States Trustee; (b) the fees and expenses incurred by any Chapter 7 trustee and any professionals retained by such trustee, in an aggregate amount not to exceed \$50,000; (c) to the extent provided in the Approved Budget and allowed by final order (which cannot exceed such budgeted amounts), all unpaid fees and expenses of Chapter 11 professionals retained by the Debtors or the Committee, which are incurred at any time on or before the first business day following a Termination Event, whether allowed by the Court prior to or after the Termination Event; and (d) after the first business day following a Termination Event, to the extent allowed by a final order, the payment of reasonable fees of such Chapter 11 professionals referenced in clause (c) above, *pro rata*, in an aggregate amount not to exceed \$200,000 (the "*Carve Out*").

18. The Carve Out is fair, reasonable, and appropriate. In this regard, the Carve Out will ensure that the Debtors and the Committee are able to obtain the assistance of counsel, thereby promoting the collective rights and expectations of parties-in-interest.

19. Likewise, the various fees and charges required under the DIP Facility are reasonable and appropriate under the circumstances. Indeed, courts routinely authorize similar

lender incentives that extend beyond the specific liens and rights specified in section 364 of the Bankruptcy Code.

(ii) Additional Liens on Unencumbered Assets or Second Liens

20. Pursuant to section 364(c) of the Bankruptcy Code, a debtor may also, in the exercise of its business judgment, incur secured debts on the unencumbered assets of the debtor or junior liens on encumbered assets, if the debtor has been unable to obtain unsecured credit and the borrowing is in the best interests of the estates. Section 364(c) of the Bankruptcy Code provides:

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt-

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

21. The Debtors have been unable to procure the required funds in the form of unsecured credit with an administrative priority. Accordingly, under the circumstances, the Debtors should be authorized to enter into a secured financing arrangement under section 364(c) of the Bankruptcy Code.

22. Having determined that financing was available only under sections 364(c) and (d) of the Bankruptcy Code, the Debtors negotiated the DIP Facility at arm's-length and pursuant to their business judgment, which is to be accorded great weight so long as it does not run afoul of the provision of and policies underlying the Bankruptcy Code. *See, e.g., Bray v. Shenandoah Federal Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986)(approving debtor-in-possession financing necessary to sustain seasonal business); *In re*

Ames Dep't Stores, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (with respect to post-petition credit, courts "permit debtors in possession to exercise their basic business judgment consistent with their fiduciary duties.").

23. In satisfying the standards of section 364(c) and (d) of the Bankruptcy Code, a debtor need not seek credit from every available source, but should make a reasonable effort to seek other sources of credit available of the type set forth in sections 364(a) and (b) of the Bankruptcy Code. *In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) ("the statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable"). Instead, the debtor's efforts are to be considered on a case by case basis, particularly "[g]iven the 'time is of the essence' nature of this type of financing." *In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987). In *In re Sky Valley, Inc.*, 100 B.R. 107, 112-13 (Bankr. N.D. Ga. 1988), the Court stated that "it would be unrealistic and unnecessary to require [d]ebtors to conduct such an exhaustive search for financing" where the business suffered from financial stress, had little or no unencumbered property, and the primary property was subject to numerous liens, and thus the debtors' approach of only four lenders was sufficient under such circumstances.

24. The DIP Financing is clearly for the benefit of the Debtors' bankruptcy estates and creditors. The DIP Financing is critical to maintaining the Debtors' operations and ensuring compliance with the Debtors' environmental obligations¹⁰ and, thus, preserving and enhancing the Debtors' going concern value. As evidenced by the Approved Budget, use of cash collateral alone is insufficient to pay even the normal operating expenses. With the additional liquidity

¹⁰ As described in Section VI of the Phelps Declaration, the Debtors' production facility is subject to extensive state and federal environmental, health and safety statutes and regulations. Specifically, the Mississippi Department of Environmental Quality permit to operate the East gypsum disposal facility is conditioned upon the requirement that the Debtors provide financial assurance for payment of the closure, post-closure care and related water treatment costs of the East gypsum disposal facility and also upon treatment for water and leachate as a part of the ongoing operations.

provided by the DIP Financing, the Debtors will be able to obtain goods and services in connection with maintaining ongoing operations on normal credit terms, thereby permitting them to generate revenues, pay their employees, and operate their businesses for the benefit of all parties-in-interest while pursuing an orderly sale process.

25. The terms and conditions of the DIP Facility are fair and reasonable and were negotiated by the parties in good faith and at arm's-length. Accordingly, the DIP Lenders should be accorded the benefits of section 364(e) of the Bankruptcy Code in respect of the DIP Facility.

B. The Court Should Authorize the Use of Cash Collateral

26. In addition to the need for debtor-in-possession financing, the Debtors' other pressing concern is the need for use of cash collateral of the Pre-Petition Lenders. The Debtors require use of the cash collateral to be able to satisfy payroll and employee benefits, pay severance taxes, and pay vendors to ensure a continued supply of services and materials essential to the Debtors' continued viability. If unable to use the cash collateral, the Debtors would be unable to operate their business.

27. Section 363(c)(2) of the Bankruptcy Code provides that the Debtors may not use, sell, or lease cash collateral unless "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). Here, each of the Pre-Petition Lenders has consented to the use of cash collateral under the terms of the proposed Interim DIP Order.

28. Accordingly, based upon the foregoing, the Debtors respectfully request that the Court authorize the Debtors to use cash collateral in accordance with the terms set forth in the Interim DIP Order.

C. Approval of Adequate Protection

29. Under section 361 of the Bankruptcy Code, when adequate protection is required under section 363 of the Bankruptcy Code to protect against any diminution in value of an interest of an entity in property, a debtor may provide additional or replacement liens to the pre-petition secured creditor. 11 U.S.C. § 361(2). The Pre-Petition Lenders have agreed to the Debtors' use of cash collateral in exchange for a superpriority claim, junior to the superpriority claim of the DIP Lenders (to the extent of a diminution in the value of their collateral) and the other terms of the Interim DIP Order.

30. As a further condition to the Pre-Petition Lenders' agreement to the Debtors' use of cash collateral and, in certain of their capacities as DIP Lenders, to make the DIP Advances, the Pre-Petition Lenders have required, and the Debtors have agreed to stipulate to the validity, enforceability, priority and extent of the Pre-Petition Lenders' pre-petition claims and liens and the absences of any defenses or affirmative claims that would otherwise reduce the enforceability or amount of the Pre-Petition Indebtedness. *See* Interim DIP Order, at 11. Pursuant to the DIP Facility and the Interim Order, the Committee, or any other party-in-interest to these Chapter 11 Cases predetermined by the Court to have standing to do so, shall have sixty (60) days from the entry of the Interim DIP Order (or such later date established by the Court or agreed to by the Pre-Petition Lenders, the "**Challenge Period**") to investigate and file an adversary proceeding or contested matter (a) challenging or objecting to the validity, perfection, enforceability, or priority of the Agent's and Pre-Petition Lenders' security interests in and liens on the Pre-Petition Collateral or the amount and allowance of the Pre-Petition Indebtedness, or (b) otherwise asserting any claims or causes of action against the Agent or Pre-Petition Lenders (any action under (a) or (b), a "**Challenge**"). If no such Challenge is timely filed by the end of

the Challenge Period, the Debtors' stipulations shall be binding and the Pre-Petition Lenders' claims, liens and security interests shall be deemed allowed as provided in the DIP Orders.

31. Based on the reservation of rights in favor of the Committee, and all other parties-in-interest that are predetermined to have standing to investigate and pursue a Challenge pursuant to paragraph 21 of the Interim DIP Order, the requirement of the Debtors' stipulations is fair and reasonable and should be approved.

E. Approval of Modification of the Automatic Stay

32. Section 362 of the Bankruptcy Code provides for an automatic stay upon the filing of a bankruptcy petition. The DIP Facility contemplates that the DIP Lenders shall have a first-priority lien on the Pre-Petition Collateral and on the unencumbered assets of the Debtors and the Interim Order provides for the exercise of remedies upon an Event of Default. To the extent necessary, the DIP Lenders should be granted relief from the automatic stay to perfect such interests and the Court should modify the automatic stay to permit the DIP Lenders to exercise remedies upon an Event of Default.

33. Stay modification provisions of this kind are ordinary and standard features of post-petition debtor-in-possession financing facilities and, in the Debtors' business judgment, are reasonable under the present circumstances. Accordingly, the Debtors respectfully request that the Court authorize the modification of the automatic stay in accordance with the terms set forth in the Interim DIP Order.

F. The Interim Approval Should Be Granted

34. Bankruptcy Rule 4001(c) provides that a final hearing on a motion to obtain credit pursuant to section 364 may not be commenced earlier than 15 days after service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited

hearing on the motion and authorize obtaining credit to the extent necessary to avoid immediate and irreparable harm to the debtor's estate.

35. On an interim basis, the Debtors request that this Court authorize the Debtors to borrow and use up to \$5,000,000. The Debtors must have the interim relief requested in order to operate their businesses, including, the production and sale of DAP in the ordinary course of business. Absent the interim relief, the Debtors will be unable to meet their payroll obligations and operations will cease. The Debtors have inadequate cash collateral to operate and pay necessary expenses of the Chapter 11 Cases and to move forward with a sale process absent the proposed DIP Financing being approved on an interim emergency basis. As a result, the Debtors need the interim DIP Financing to avoid immediate and irreparable harm to the Debtors' bankruptcy estates. Absent the interim DIP Financing, the Debtors' businesses will simply shut down, the Debtors will be unable to comply with their environmental obligations and their 224 employees and approximately 26 "nested third party contract employees will have to be terminated.

36. The Debtors request, pursuant to Bankruptcy Rule 4001(c), that the Court authorize the Debtors, from and after the entry of the Interim DIP Order, until an order is entered following the Final Hearing on the Motion, to obtain credit under the DIP Facility. This will enable the Debtors to maintain ongoing operations and the means by which they may avoid immediate and irreparable harm and prejudice to their bankruptcy estates and all parties-in-interest, pending the Final Hearing.

VI. NOTICE

A. Notice With Respect to Interim Hearing on the Motion

37. Notice of this Motion has been given by facsimile, electronic mail and/or overnight delivery to the following parties, or in lieu thereof, to their counsel: (a) the DIP

Lenders' Agent and its counsel; (b) the United States Trustee; (c) the holders of the twenty (20) largest unsecured claims against the Debtors; (d) certain governmental entities, counsel and parties-in-interest; and (e) the Agent and its counsel. The Debtors submit that, under the circumstances, no further notice of the hearing on the interim financing is necessary and request that any further notice be dispensed with and waived.

B. Notice with Respect to Final Hearing on the Motion

38. The Debtors respectfully request that the Court set a final hearing date on the Motion for November 17, 2014 and authorize the Debtors to serve a copy of this Motion and the Interim DIP Order which fixes the time and date for filing objections to this Motion, by first class mail upon (a) counsel to the Committee (if a Committee has been appointed and counsel for the Committee has been selected); (b) the United States Trustee; (c) all parties who have filed requests for notice under Bankruptcy Rule 2002; (d) the holders of the twenty (20) largest unsecured claims against the Debtors; (e) the Agent for the DIP Lenders and its counsel; (f) the Agent and its counsel; (g) all parties who have asserted liens on assets of the Debtors; and (viii) all other parties ordered by the Court. The Debtors request that the Court deem such notice of the final hearing to be sufficient notice under Bankruptcy Rule 4001.

VII. PRAYER

WHEREFORE, the Debtors respectfully request that the Court enter the Interim DIP Order (a) authorizing, on an interim basis, the Debtors' to borrow up to \$5,000,000 under the DIP Facility from the DIP Lenders on a superpriority secured and administrative claim basis and to use the Pre-Petition and DIP Lenders' cash collateral pursuant to sections 363 and 364 of the Bankruptcy Code; (b) scheduling the Final Hearing on this Motion for approval of the DIP Facility; (c) authorizing, on a final basis, the Debtors' to borrow up to \$5,000,000 or additional amounts that may be authorized by the DIP Lenders not to exceed \$5,000,000 under the DIP

Facility from the DIP Lenders; and (d) for such other and further relief to which the Debtors may be justly entitled.

THIS, the 27th day of October, 2014.

By: s/ Stephen W. Rosenblatt

Stephen W. Rosenblatt (MB # 5676)

Christopher R. Maddux (MB # 100501)

J. Mitchell Carrington (MB # 104228)

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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:

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

SO CERTIFIED, this the 27th day of October 2014.

/s/ Stephen W. Rosenblatt
STEPHEN W. ROSENBLATT

**Summary of Indicative Terms and Conditions for
Proposed Debtor-in-Possession Financing**

This Term Sheet sets forth the material terms of a debtor-in-possession financing facility (the “**DIP Facility**”) to be provided by the lenders set forth on *Annex A* attached hereto (collectively, the “**DIP Lenders**”) to Mississippi Phosphates Corporation, Ammonia Tank Subsidiary, Inc., and Sulfuric Acid Tank Subsidiary, Inc. (collectively, the “**Debtors**”) in their chapter 11 bankruptcy cases (the “**Chapter 11 Cases**”) currently pending in the United States Bankruptcy Court for the Southern District of Mississippi, Gulfport Division (the “**Bankruptcy Court**”) jointly administered under case no. 14-51667-KMS.

Borrowers:	Each of the Debtors
Guarantor:	Phosphate Holdings, Inc.
DIP Agent:	STUW LLC, solely in its capacity as administrative agent for the DIP Lenders. The DIP Agent shall take direction from the DIP Lenders in accordance with the Pre-Petition Credit Agreement (as defined below). The DIP Agent shall be entitled to the protections (including rights to indemnification from the DIP Lenders), rights and remedies thereunder until definitive documentation for the DIP Facility is executed in accordance with the terms hereof.
Loan Parties:	Borrowers and Guarantor
DIP Lenders:	The DIP Lenders and assignees or designees thereof
Petition Date:	October 27, 2014
Pre-Petition Lenders:	The “Lenders” under and as defined in the Pre-Petition Credit Agreement. The Pre-Petition Lenders as of the Petition Date are set forth on <i>Annex B</i> attached hereto.
Agent:	STUW LLC, solely in its capacity as administrative agent for the Pre-Petition Lenders.
Loan Advances:	<p>Pursuant to the terms and conditions of this Term Sheet and the DIP Orders (as defined below), the DIP Lenders shall make advances (the “Loan Advances”) to the Borrowers in an aggregate amount up to \$5,000,000 to fund certain administrative and operational costs of the Chapter 11 Cases, with such Loan Advances subject to the timing and details of, and to be used in accordance, with the Approved Budget (as defined below) prepared by the Debtors and the Use of Proceeds section hereof.</p> <p>An amount up to \$5,000,000, to the extent approved by the Bankruptcy Court in an interim order (the “Interim DIP Order”) and otherwise subject to the timing and details of the Approved Budget, shall be available during the period from the first business day after the entry of the Interim DIP Order by the Bankruptcy Court through the date of entry of a final order by the Bankruptcy Court approving the DIP Facility (the “Final DIP Order,” and together with the Interim DIP Order, the “DIP Orders”). The DIP Orders shall be in form and substance satisfactory to the DIP Agent and DIP Lenders.</p> <p>The remainder of Loan Advances shall be available after entry of the Final</p>

EXHIBIT

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	<p>DIP Order.</p> <p>Upon entry of the Interim DIP Order, the Borrowers shall open a new deposit account or designate an existing deposit account at a bank acceptable to the DIP Agent and DIP Lenders, in which the proceeds of the Loan Advances, but no other estate funds or property, shall be held and from which disbursements in accordance with the Approved Budget, but no other disbursements, shall be made.</p> <p>All Loan Advances shall be deemed to be the DIP Agent's cash collateral, which shall be used with the consent of the DIP Agent and DIP Lenders pursuant to the terms of this Term Sheet, the Approved Budget and the Final DIP Order.</p>
Maturity Date:	<p>The Borrowers shall be obligated to repay the advances under the DIP Facility in full, including accrued interest thereon and related costs and expenses (collectively, the "DIP Obligations"), on the date (the "Maturity Date") that is the first to occur of: (a) April 30, 2015, or such later date as the DIP Lenders may agree in their sole and absolute discretion; (b) the closing of a sale of substantially all assets of the Debtors; (c) the consummation of a plan of reorganization; and (d) the occurrence of a Termination Event (as defined below).</p> <p>Following the occurrence of the Maturity Date, the DIP Lenders shall not be obligated to fund further Loan Advances under the DIP Facility.</p>
DIP Agent's Fees and Expenses:	<p>All post-petition fees and expenses of the DIP Agent (including, without limitation, the fees and expenses of any legal counsel, consultants, accounting firms, auditors, financial advisors or other advisors and professionals retained by the DIP Agent from time to time) incurred in connection with the Chapter 11 Cases or incurred in connection with the negotiation and formulation of the DIP Facility (only from and after the Petition Date) and enforcement of rights and remedies under the DIP Facility (the "DIP Agent's Fees and Expenses") shall be paid by the DIP Lenders and shall increase the DIP Obligations; <i>provided</i>, however, that the DIP Agent's Fees and Expenses shall not reduce the amount of Loan Advances available to the Debtors. The DIP Agent shall provide summary invoices of the DIP Agent's Fees and Expenses to the Debtors within five (5) days of receipt of invoiced fees and expenses.</p>
Credit Bid:	<p>The DIP Agent, on behalf of the DIP Lenders, shall be authorized by the Bankruptcy Court, as part of each of the DIP Orders, to credit bid all or any portion of the DIP Obligations, in addition to any other amounts owing to the DIP Agent and DIP Lenders, as part of any bid submitted in a sale of the Debtors' assets pursuant to section 363(k) of the Bankruptcy Code or included as part of any plan of reorganization subject to confirmation under section 1129(b)(2)(A)(iii) of the Bankruptcy Code.</p>
Termination Events:	<p>The occurrence of any of the following shall constitute a "Termination Event" under the DIP Orders:</p> <ul style="list-style-type: none"> a) appointment of a chapter 11 trustee or examiner with expanded powers for any of the Debtors; b) dismissal or conversion of any of the Chapter 11 Cases;

	<ul style="list-style-type: none"> c) entry of an order reversing, staying, vacating, or otherwise modifying in any material respect the terms of the DIP Orders; d) failure of a Final DIP Order to be entered within 30 days after entry of the Interim DIP Order; e) request by the Debtors for authorization to obtain post-petition loans or other financial accommodations (i) pursuant to Bankruptcy Code section 364(d), or (ii) that seeks to grant or acknowledge a super-priority claim senior to the super-priority claims of the DIP Lenders pursuant to Bankruptcy Code section 364(c) or otherwise (other than from or with the consent of the DIP Lenders); f) violation of this Term Sheet, the terms of the DIP Orders, or the provisions of final documentation evidencing the DIP Facility; g) granting of relief from the automatic stay to permit any creditor to take action with respect to the Loan Parties' assets; h) filing of a plan by, or on behalf of, the Debtors not acceptable in form and substance to the DIP Lenders; i) sale or other disposition of any property or assets of the Debtors outside the ordinary course of business without the prior written consent of the DIP Lenders; j) termination or expiration of the Debtors' exclusivity periods provided in section 1121(c) and (d) of the Bankruptcy Code; k) filing of any contested matter or adversary proceeding by any party or party-in-interest in the Chapter 11 Cases challenging the claims, Liens, priority or rights of the DIP Agent, DIP Lenders, Agent or Pre-Petition Lenders, including any challenge to rights of the DIP Agent, DIP Lenders, Agent or Pre-Petition Lenders to credit bid the full amounts of their respective claims; l) any action (including, without limitation, any regulatory or other enforcement action) by any federal or state governmental or regulatory agency or authority that has a material adverse effect on the Debtors' operations in the DIP Agent's and DIP Lenders' sole discretion; m) default by the Guarantor under the guaranty agreement executed by it; n) failure of Debtors to timely comply with or otherwise satisfy the Sale Milestones (as defined below); o) failure of the Debtors to repay in full all then-outstanding Loan Advances, and accrued and unpaid interest thereon, by November 30, 2014; p) failure of the Debtors to timely execute and deliver definitive documentation evidencing the DIP Facility in form and substance satisfaction to the DIP Agent and DIP Lenders; or q) any variance (negative to the Approved Budget) of more than 10% in any line item of the Approved Budget (subject to carryover rights
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	<p>provided below).</p> <p>A Termination Event shall only be triggered after at least two (2) business days' written notice from the DIP Agent, on behalf of the DIP Lenders, to the Debtors.</p>
Use of Proceeds and Cash Collateral /Approved Budget:	<p>Proceeds of Loan Advances and cash collateral shall be used exclusively for funding the Debtors' environmental remediation obligations and administrative and operational expenses in the ordinary course business in the Chapter 11 Cases as set forth in a budget in form and substance acceptable to the DIP Lenders annexed to the Interim DIP Order, as such budget may be amended from time to time as provided in the DIP Orders and in form and substance acceptable to the DIP Lenders (the "Approved Budget"). The Borrowers shall not be permitted variances (negative to the Approved Budget) from the receipts and expenses set forth in the Approved Budget in amounts greater than ten percent (10%) for specific line items, provided, however, the Borrowers shall be permitted to carry forward any unused portion of Loan Advances attributable to particular line items (including amounts previously carried forward) in any week to pay the same line item during the next succeeding three weeks. No more than \$50,000 of the DIP Facility may be used in connection with the investigation, discovery proceedings or initiation or prosecution of any claims, causes of action, objections or other litigation against the DIP Agent, DIP Lenders, Agent or Pre-Petition Lenders, or with respect to the DIP Obligations or the Pre-Petition Indebtedness (as defined below). For the avoidance of doubt, all budgets presented by the Debtors to support the use of cash collateral or Loan Advances must be approved by the DIP Lenders.</p>
Minimum Loan Advances; Timing:	<p>Loan Advances shall occur no more frequently than twice a month and shall be in a minimum amount of \$500,000 (unless less than \$500,000 remains to be funded under the DIP Facility); <i>provided</i>, that the DIP Lenders, in their sole discretion, may provide Loan Advances in an aggregate amount of less than \$100,000 upon request by the Debtors. Each request shall specify the use of proceeds and otherwise be in form and substance satisfactory to the DIP Lenders.</p>
Reporting Requirements:	<p>The Borrowers shall deliver the following to the DIP Agent on Tuesday, November 4, 2014 and every other Tuesday thereafter: (a) a variance report detailing: (i) the actual cash expenditures for the prior month and a comparison to the Approved Budget for that month; (ii) the actual cumulative cash expenditures for all of the prior months since the entry of the Interim DIP Order as compared to the Approved Budget for such months; and (iii) a narrative explanation of the variances between the actual monthly expenditures and the budgeted monthly expenditures; and (b) an updated monthly cash flow forecast for the then-remaining period of the Approved Budget (collectively, the "Budget Reports"). The Budget Reports shall be subject to the DIP Lenders' review and approval.</p>
Excess Cash Flow Sweep; Prepayments:	<p>The Debtors shall prepay in full all then-outstanding Loan Advances, and accrued and unpaid interest thereon, on or before November 30, 2014. After November 30, 2014, to the extent the Debtors' ending cash balance on the last business day of each week equals or exceeds \$1,500,000, then all cash in excess of \$1,000,000 shall be swept on the next business day to repay Loan</p>

	Advances.
Additional Advances:	Subject to conditions in definitive documentation for the DIP Facility (including, without limitation, accuracy of representations and warranties, no events of default, and other customary funding conditions), repaid Loan Advances may be re-borrowed by the Debtors (a) solely to the extent permitted in the Approved Budget to effect the wind down of the Debtors' operations, including, without limitation, amounts needed to cover costs and expenses (including amounts payable to Allen Engineering and other environmental consultants) associated with the Debtors' ongoing requirements to address environmental issues, which include, without limitation, the maintenance of the east gypsum disposal facility and the Debtors' water treatment process, and (b) in increments of no more than \$1,000,000 after November 30, 2014, but only if the Debtors' ending cash balance on the last business day of any week after such date is less than \$1,000,000.
Reporting Obligations of the Debtors; Access to Books and Records:	In addition to the Debtors' reporting obligations in connection with the Approved Budget, the Loan Parties shall permit the DIP Lenders unfettered access to the Debtors' properties and their books and records during regular business hours on one (1) business day's notice. The DIP Lenders' access to the Debtors' books and records shall not be deemed to be a waiver of the attorney-client privilege by the Debtors with respect to any books and records subject to the attorney-client privilege or other applicable privilege.
Conditions to Funding:	As a condition to funding, the Debtors shall obtain interim and final orders from the Court, acceptable in form and substance to the DIP Agent and DIP Lenders, (a) authorizing the payment of employee pre-petition wages and benefits, (b) authorizing the provision of adequate assurance of utility providers, and (c) approving this Term Sheet.
Sale Milestones:	Subject to the Bankruptcy Court's schedule and availability, the Debtors shall be required to comply with the following (the " Sale Milestones "): <ul style="list-style-type: none"> a) On or before November 3, 2014 (the "Initial Deadline"), the Debtors shall file and properly serve a motion seeking entry of an order (the "Sale Procedures Order") approving procedures for the sale of substantially all of the Debtors' assets, which shall permit (i) the Pre-Petition Lenders to credit bid the full amount of their aggregate allowed claims, and (ii) the DIP Lenders to credit bid the full amount of the aggregate DIP Obligations. b) On or before the date that is not later than thirty (30) days after the Initial Deadline, the Bankruptcy Court will have entered the Sale Procedures Order. c) On or before the date that is not later than ninety (90) days after the Initial Deadline, the Debtors shall have held the auction. d) On or before the date that is not later than one hundred five (105) days after the Initial Deadline, the Bankruptcy Court will have entered an order approving the sale of assets, the results of the auction and the winning bid received at the auction. e) On or before the date that is (x) not later than one hundred ten

	<p>(110) days after the Initial Deadline, if a waiver of the stay set forth in Bankruptcy Rule 6004 is obtained, or (y) not later than one hundred twenty-five (125) days after the Initial Deadline, if such a waiver is not obtained, the Debtors shall have closed and consummated the sale.</p> <p>Notwithstanding anything to the contrary herein, the DIP Lenders may extend any of the foregoing deadlines, and the Bankruptcy Court may set dates with respect to the Sale Milestones beyond the outer dates specified above to accommodate its schedule. To the extent the Bankruptcy Court makes such an extension, the Sale Milestones shall be automatically extended to reflect the Bankruptcy Court's extension.</p>
First-Priority Lien:	<p>The DIP Obligations shall be secured by a first-priority priming Lien senior to all other Liens on all of the Debtors' assets now owned or hereafter acquired and the proceeds therefrom pursuant to section 364(d) of the Bankruptcy Code. The DIP Obligations shall be secured by a first-priority Lien on all of the Guarantor's assets under applicable state law. Proceeds from the sale of assets shall be applied to repayment of outstanding Loan Advances and other DIP Obligations.</p>
Superpriority Claim:	<p>To ensure repayment of the DIP Obligations, the DIP Agent, for the benefit of the DIP Lenders, shall receive and be entitled to, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim against the Debtors' bankruptcy estates over all other costs and expenses of the kinds specified in, or ordered pursuant to, Bankruptcy Code sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, or any other Bankruptcy Code provision, and which allowed superpriority global administrative expense claim shall not be subject to objection or reclassification or subordination by the Debtors or any other party.</p>
Adequate Protection	<p>To the extent of any diminution in value of the Agent and Pre-Petition Lenders' collateral, the Agent, on behalf of the Pre-Petition Lenders, shall be granted:</p> <ul style="list-style-type: none"> a) allowed superpriority administrative expenses claims against the Debtors as provided in section 507(b) of the Bankruptcy Code that shall only be subordinate and subject to (i) the Carve Out and (ii) the DIP Agent's and DIP Lenders' superpriority Claims; and b) a valid, perfected replacement security interest in and lien on all of the Debtors' assets (effective and perfected upon the date of this Interim Order and without the necessity of the execution by the Debtors of security agreements, pledge agreements, mortgages, financing statements or other agreements), subject and subordinate only to the Liens securing the DIP Obligations and the Carve Out.
Bankruptcy Code Section 506(c) Waiver:	<p>No super priority or administrative expense claim incurred by the Debtors or any other party in the case shall be charged, surcharged or assessed against or recovered from the assets that secure the DIP Obligations or Pre-Petition Indebtedness, or any proceeds therefrom, pursuant to the provisions of Bankruptcy Code section 506(c) or otherwise.</p>
Interest Rate:	<p>The Loan Advances shall accrue interest at a variable rate per annum equal to seven percent (7.00%) per annum. At all times while a default exists, interest</p>

	shall accrue at a rate per annum equal to nine percent (9.00%).
Lien on Unused Loan Advances:	The DIP Agent, on behalf of the DIP Lenders, shall be granted a valid, properly perfected, first priority senior Lien on all unused Loan Advances, without the need for any deposit account control agreement or other evidence of perfection, and upon the occurrence of the Maturity Date, the DIP Agent and DIP Lenders shall be entitled to immediate repayment of all such unused Loan Advances.
Carve Out:	The super priority claims and Liens granted to the DIP Lenders or the DIP Agent under the DIP Orders shall be subject to the Carve Out (as defined in the DIP Orders) for (a) the unpaid fees of the Clerk of the Court and the U.S. Trustee; (b) the fees and expenses incurred by any Chapter 7 trustee and any professionals retained by such trustee, in an aggregate amount not to exceed \$50,000; (c) to the extent provided in the Approved Budget and allowed by final order (which cannot exceed such budgeted amounts), all unpaid fees and expenses of Chapter 11 professionals retained by the Debtors or the Official Committee of Unsecured Creditors (the " Committee "), which are incurred at any time on or before the first business day following a Termination Event, whether allowed by the Court prior to or after the Termination Event; and (d) after the first business day following a Termination Event, to the extent allowed by a final order, the payment of reasonable fees of such Chapter 11 professionals referenced in <i>clause (c)</i> above, pro rata, in an aggregate amount not to exceed \$200,000. Nothing herein shall impose an obligation on the DIP Lenders to advance any amounts to pay the Carve Out.
Documentation:	If required by the DIP Agent and DIP Lenders upon approval in the Final DIP Order, the DIP Facility shall be evidenced by definitive documentation in form and substance acceptable to the DIP Agent and DIP Lenders in their sole and absolute discretion. Such executed documentation, which shall supersede this Term Sheet, shall include representations, warranties and covenants customary for facilities of this type.
Governing Law:	New York, except as governed by the Bankruptcy Code, or except as governed by applicable local or state law as required for perfection of Liens in favor of the DIP Lenders.
Loan Parties' Stipulations; Challenge Period:	The Loan Parties shall stipulate in the DIP Orders that the claims and obligations under that certain Amended and Restated Credit Agreement, dated September 4, 2013 (the " Pre-Petition Credit Agreement "), among the Borrowers, the Guarantor, the Agent, and the Pre-Petition Lenders, plus interest and fees owing thereon as of the Petition Date (collectively, the " Pre-Petition Indebtedness "), are valid, enforceable and existing, and that all Liens, claims and interests held by the Agent and the Pre-Petition Lenders to secure the Pre-Petition Indebtedness are valid, existing, and properly perfected first priority Liens, and shall be subject to a sixty (60) day review period from the date of the Interim DIP Order for the Committee or any other party in interest first determined to have standing to conduct a review thereof (the " Challenge Period "). If, prior to the end of the Challenge Period, no adversary proceeding or contested matter is actually and timely filed by the Committee (or such other person determined to have standing to do so) that challenges the Pre-Petition Indebtedness or Liens securing such

	indebtedness, then the Pre-Petition Lenders shall be deemed to have allowed secured claims in the aggregate of the amount of \$58,197,393 consisting of \$57,549,956 in principal and \$647,437 in interest (plus costs expenses and fees recoverable under the pre-petition credit documents) as of the Petition Date for all purposes in the Chapter 11 Cases and any subsequent Chapter 7 cases, and shall be entitled to credit bid the full amount of their aggregate Pre-Petition Indebtedness and claims at any sale of assets in the Chapter 11 Cases pursuant to sections 363(k) or 1129 of the Bankruptcy Code. The Debtors and other Loan Parties shall not be entitled to assert a challenge to the claims, interests or Liens (or priority thereof) held or asserted by Prepetition Lenders or the Agent, on their behalf.
Approval of Bankruptcy Court:	This Term Sheet is subject to the approval of the Bankruptcy Court.

Signature page follows.

ACCEPTED AND AGREED:

PHOSPHATES HOLDINGS, INC.

By: _____

Name: Robert P. Kerley
Title: Chief Financial Officer

MISSISSIPPI PHOSPHATES CORPORATION

By: _____

Name: Robert P. Kerley
Title: Chief Financial Officer

AMMONIA TANK SUBSIDIARY, INC.

By: _____

Name: Robert P. Kerley
Title: Chief Financial Officer

SULFURIC ACID TANKS SUBSIDIARY, INC.

By: _____

Name: Robert P. Kerley
Title: Chief Financial Officer

STUW LLC,

solely in its capacity as administrative agent for the DIP Lenders

By: _____

Name:
Title:

ANNEX A

DIP Lenders and Commitments

<u>DIP Lender</u>	<u>Commitment</u>
Hudson Bay Fund LP	\$475,143.25
Hudson Bay Intermediate Fund Ltd.	\$1,457,103.43
Hudson Bay Master Fund Ltd.	\$144,267.79
Broadbill Partners, LP	\$103,825.72
Broadbill Partners II, LP	\$25,956.43
MILFAM I L.P.	\$350,717.45
IFC Acquisition Group LLC	\$259,564.31
Pine River Master Fund Ltd.	\$476,544.44
Pine River Credit Relative Value Master Fund Ltd.	\$238,355.62
Pine River Fixed Income Master Fund Ltd.	\$428,839.96
Pine River Deerwood Fund Ltd.	\$47,704.48
LMA SPC for and on behalf of the MAP 89 Segregated Account	\$476,544.44
Virtus Capital LP	\$515,432.66

ANNEX B

Pre-Petition Lenders

Hudson Bay Fund LP
Hudson Bay Intermediate Fund Ltd.
Hudson Bay Master Fund Ltd.
Wilfred Global Opportunity Fund LP
IFC Acquisition Group LLC
Broadbill Partners, LP
Broadbill Partners II, LP
MILFAM I L.P.
MILFAM II L.P.
Lloyd I. Miller Trust A-1
Lloyd I. Miller Trust A-2
Virtus Capital LP
Virtus DB Recover LP
Virtus KG Fund LP
Virtus Angels Fund, LP
Virtus TK LLC
Pine River Master Fund Ltd.
Pine River Credit Relative Value Master Fund Ltd.
Pine River Fixed Income Master Fund Ltd.
Pine River Deerwood Fund Ltd.
LMA SPC for and on behalf of the MAP 89 Segregated Portfolio

moved on October 27, 2014 (the "Motion") for interim and final orders seeking:

(a) authorization for the Debtors to obtain up to \$5,000,000 in principal amount of post-petition financing under a revolving loan credit facility (the "DIP Financing"), on the terms and conditions set forth in this Order, the term sheet attached as Exhibit "A" (the "Term Sheet") the documentation setting forth the terms of the DIP Financing (as amended, supplemented or otherwise modified, the "DIP Facility");² and together with all agreements, documents and instruments delivered in connection with the DIP Financing, the "DIP Loan Documents"), among the Debtors, STUW LLC, as agent (the "DIP Agent"), and the lenders identified therein (the "DIP Lenders");

(b) authorization for the Debtors to execute and deliver the DIP Facility and the DIP Loan Documents (when finalized in a form acceptable to the DIP Agent and DIP Lenders) and to perform such other and further acts as may be necessary or appropriate in connection therewith;

(c) authorization for the Debtors to grant the DIP Agent and DIP Lenders liens on and security interests in all of the Debtors' assets as provided herein and in the DIP Loan Documents and to grant the DIP Lenders superpriority administrative expense claims;

(d) authorization for the Debtors to use "Cash Collateral" (within the meaning of section 363(a) of the Bankruptcy Code) and provide adequate protection to the Pre-Petition Lenders (as defined below);

(e) to schedule, pursuant to Bankruptcy Rule 4001, an interim hearing (the "Interim Hearing") on the Motion to be held before this Court to consider entry of the proposed interim order (this "Order") authorizing the Debtors to borrow up to an aggregate principal amount of

² Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Term Sheet setting forth the terms of the DIP Facility. To the extent required by the DIP Lenders, a definitive credit agreement governing the DIP Facility that incorporates the terms and conditions set forth in the Term Sheet, and is otherwise in form and substance acceptable to the DIP Lenders, will be prepared.

\$5,000,000 under this Order and the DIP Facility until entry of the Final DIP Order (as defined below); and

(f) to schedule, pursuant to Bankruptcy Rule 4001, a final hearing (the "Final Hearing") for this Court to consider entry of a final order (the "Final DIP Order") authorizing, on a final basis, the DIP Financing and all relief requested in the Motion.

Upon the record presented at the Interim Hearing and after due deliberation, for good and sufficient cause,

IT IS HEREBY FOUND, DETERMINED, ORDERED, ADJUDGED, AND DECREED THAT:³

1. Disposition. The Motion is granted on an interim basis on the terms set forth in this Order. Any objections to the interim relief sought in the Motion that have not previously been resolved or withdrawn, including any reservations of rights therein, are hereby overruled on their merits. This Order shall be valid, binding on all parties-in-interest, and fully effective immediately upon entry. The term of this Order and the DIP Loan Documents authorized hereunder shall expire, and the loans made pursuant to this Order, the DIP Facility, and the DIP Loan Documents will mature and, together with all interest thereon and any other obligations accruing under the DIP Facility, will become due and payable (unless such loans and other obligations become due and payable earlier pursuant to the terms of the DIP Loan Documents and this Order by way of acceleration or otherwise) thirty (30) days from the date this Order is entered if the Final DIP Order has not been entered by the Court prior to such date.

2. Jurisdiction; Venue. The Court has jurisdiction over the Chapter 11 Cases, the parties, and the Debtors' property pursuant to 28 U.S.C. §1334. This is a core proceeding

³ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

pursuant to 28 U.S.C. §157(b). Venue of the Chapter 11 Cases is proper under 28 U.S.C. §§ 1408 and 1409.

3. Notice. Notice of the Motion, the relief requested and the Interim Hearing was served by the Debtors on (a) counsel to the Committee (if a Committee has been appointed and counsel for the Committee has been selected); (b) the United States Trustee; (c) all parties who have filed requests for notice under Bankruptcy Rule 2002; (d) the holders of the twenty (20) largest unsecured claims against the Debtors; (e) the Agent for the DIP Lenders and its counsel; (f) the Agent and its counsel; and (g) all parties who have asserted liens on assets of the Debtors. The Debtors request that the Court deem such notice of the final hearing to be sufficient notice under Bankruptcy Rule 4001. Under the circumstances, the notice given by the Debtors of the Motion, the relief requested and the Interim Hearing constitutes due and sufficient notice, and no further notice of the relief sought at the Interim Hearing and the relief granted by this Order is necessary or required.

4. Purpose and Necessity of Financing and Use of Cash Collateral.

(a) The Debtors require the interim financing and use of Cash Collateral described in the Motion to fund, among other things, the Debtors' cash requirements, working capital, required and approved capital expenses and general corporate purposes relating to post-petition operations, including the production and sale of DAP in the ordinary course of business and to fund maintenance of water treatment costs of the east gypsum disposal facility and treatment for water and leachate, as well as expenses related to a sales process for the Debtors' assets consistent with the terms set forth in this Order and the Approved Budget (defined below), and the DIP Loan Documents, and for other purposes permitted by the DIP Loan Documents.

(b) The Debtors are unable to obtain adequate unsecured credit allowable under

section 503 of the Bankruptcy Code as an administrative expense or other financing under section 364(c) or (d) of the Bankruptcy Code on equal or more favorable terms than those set forth in the DIP Facility and the other DIP Loan Documents within the time frame required by their needs to avoid immediate and irreparable harm. The Debtors are unable to obtain financing on a post-petition basis without the Debtors granting the Superpriority Claims (as defined below) and the DIP Liens (as defined below).

5. Good Cause. The Debtors' ability to obtain sufficient working capital and liquidity under the DIP Loan Documents is vital to the Debtors' estates and their creditors, so that the Debtors can continue to operate their businesses in the ordinary course, including preserving the jobs of their employees, meeting environmental obligations and maximizing the value of their assets. The Debtors' estates, creditors, and employees will be immediately and irreparably harmed if this Order is not entered. Consummation of the DIP Financing in accordance with this Order and the DIP Loan Documents is in the best interests of the Debtors' estates, creditors, and employees. Good cause thus has been shown for the interim relief sought in the Motion.

6. Good Faith; Fair Consideration. The terms of the DIP Loan Documents, including the interest rates and fees applicable thereto, are more favorable to the Debtors than those available from alternative sources. Based upon the record before the Court, the DIP Loan Documents have been negotiated in good faith and at arm's-length among the Debtors, the DIP Agent, and DIP Lenders. Any DIP Loans and other financial accommodations made to the Debtors by the DIP Agent and DIP Lenders pursuant to this Order and the DIP Facility or other DIP Loan Documents shall be deemed to have been extended by the DIP Agent and DIP Lenders in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and the DIP Agent

and DIP Lenders shall be entitled to all protections afforded under section 364(e). The terms of the DIP Facility provided under the DIP Loan Documents are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and/or fair consideration.

7. Immediate Entry of Order. The Debtors have requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). The permission granted herein to enter into the DIP Loan Documents and to obtain funds thereunder is necessary to avoid immediate and irreparable harm to the Debtors. This Court concludes that entry of this Order is in the best interests of the Debtors' respective estates and creditors as its implementation will, among other things, allow for access to the financing necessary for the continued flow of supplies and services to the Debtors necessary to sustain the operation of the Debtors' businesses, to maximize the value of the Debtors' assets, to meet the Debtors' environmental obligations and further enhance the Debtors' prospects for a successful restructuring.

8. Authorization to Use Cash Collateral. The Debtors are authorized to use Cash Collateral during the period from the Petition Date through and including the Maturity Date, in accordance with the terms, conditions, and limitations set forth in the Budget approved by the DIP Agent (the "Approved Budget")⁴ and otherwise pursuant and subject to the terms and conditions of the DIP Loan Documents, section 363(c) of the Bankruptcy Code and this Order.

9. Interim Borrowing. Subject to the terms and conditions of this Order and the DIP Loan Documents, including without limitation, the covenants and Approved Budget as specified in the DIP Loan Documents, the Debtors are authorized to borrow up to \$5,000,000 in advances from the DIP Lenders in accordance with the Approved Budget and the DIP Facility pending entry of the Final DIP Order. For the avoidance of doubt, the Loan Advances under this Order

⁴ A copy of the Approved Budget is attached as Exhibit "B".

shall be made in accordance with the terms and provisions of the Term Sheet. Notwithstanding anything in this Order to the contrary, the Debtors shall use the proceeds of the DIP Financing solely in accordance with the covenants, formulae, Approved Budget and other terms and conditions set forth in the DIP Loan Documents and this Order. Neither the DIP Agent nor the DIP Lenders shall have any obligation with respect to the proceeds of the DIP Financing, nor shall any of them be obligated to ensure or monitor the Debtors' compliance with any such covenants, formulae, Approved Budget or other terms and conditions, or be obligated to pay any expenses incurred or authorized to be incurred pursuant to the DIP Loan Documents. The Approved Budget and any modifications to, or amendment or update of, the Approved Budget shall be in form and substance acceptable to and approved by the DIP Agent, and may be amended or modified without the need for further approval by this Court only with the written consent of the DIP Agent. The DIP Agent's consent to any budget shall not be construed as a commitment to continue to provide the DIP Financing after the occurrence of an Event of Default (as defined below) or beyond the Maturity Date, regardless of whether the aggregate funds described in the Approved Budget have been expended. None of the DIP Lenders shall have any obligation to make any loan or advance under the DIP Loan Documents, unless all of the conditions precedent to the making of such extension of credit under the applicable DIP Loan Documents and this Order have been satisfied in full or waived in writing or otherwise provided for in the DIP Loan Documents.

10. Superpriority Claim and DIP Liens.

(a) Except as provided in this Order with respect to the Carve Out, the DIP Agent and DIP Lenders are hereby granted, and all of the obligations of the Debtors under the DIP Facility, this Order and the DIP Loan Documents (collectively, the "DIP Obligations") shall and hereby

do constitute, an allowed superpriority administrative expense claim against each Debtor (the “Superpriority Claims”) pursuant to section 364(c)(1) of the Bankruptcy Code, having priority over any and all administrative expense claims, adequate protection claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including without limitation, all claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 and any other provision of the Bankruptcy Code or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment. The Superpriority Claims shall be payable from and have recourse to all pre-petition and post-petition property of the Debtors and all proceeds thereof, including the proceeds or other amounts received in respect of the Debtors’ claims and causes of action arising under state or federal law under sections 541, 542, 544, 545, 547, 548, 549, 550, 551, 552 and 553 of the Bankruptcy Code (collectively, the “Avoidance Actions”). The Superpriority Claims granted pursuant to this paragraph shall be subject and subordinate in priority of payment only to, during the occurrence and continuance of an Event of Default or after the Maturity Date, payment of the Carve Out. Except as set forth in this Order, no other superpriority claims shall be granted or allowed in these Chapter 11 Cases.

(b) Under section 364(d) of the Bankruptcy Code, as security for the DIP Obligations, the DIP Agent, on behalf of itself and the DIP Lenders, is hereby granted, subject and subordinate in priority only to, and only during the occurrence and continuance of an Event of Default or after the Maturity Date, payment of the Carve Out, valid, enforceable and perfected first-priority priming security interests in and liens (the “DIP Liens”) on all of the Debtors’ property, assets, or interests in property or assets of any kind or nature whatsoever, real or personal, whether now owned or hereafter existing, and wherever located and whether now

existing or hereafter acquired or created, including, without limitation, all property of the Debtors' estates, including, without limitation, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, fixtures, goods, investment property, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, capital stock of subsidiaries, trademarks, trade names, all deposit accounts, all securities accounts, all cash maintained in deposit and other accounts, all commercial tort claims, all causes of action, Avoidance Actions, all cash and non-cash proceeds, rents, products and profits of any of the foregoing (collectively, the "Collateral"). The DIP Liens shall have priority over any and all pre-petition or post-petition liens and security interests.

(c) The DIP Liens shall be effective automatically and immediately upon the entry of this Order, and no lien or security interest granted to the DIP Agent or DIP Lenders under this Order or the DIP Loan Documents, as approved by this Order, shall (i) be subject to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or (ii) hereafter be subordinated to or made pari passu with any other lien or security interest created and/or perfected pursuant to section 364(c) or (d) of the Bankruptcy Code or otherwise. The DIP Liens arising hereunder shall be and hereby are fully perfected security interests, such that no additional steps need be taken by the DIP Agent or the DIP Lenders to perfect such interests. Any provision of any lease or other license, contract or other agreement that requires (y) the consent or approval of one or more landlords or other parties or (z) the payment of any fees or obligations to any governmental entity, in order for any Debtors to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest or the proceeds thereof or other Collateral related thereto shall have no force and effect with respect to

the transactions granting the DIP Lenders a priority security interest in such leasehold interest, license, contract or agreement, or the proceeds of any assignment and/or sale thereof by any Debtors in favor of the DIP Agent or the DIP Lenders in accordance with the terms of the DIP Loan Documents.

(d) The DIP Liens and Superpriority Claims and other rights and remedies granted to the DIP Agent and DIP Lenders under this Order shall continue in the Chapter 11 Cases and in any superseding case or cases for the Debtors under any Chapter of the Bankruptcy Code, and such liens, security interests and claims shall maintain their priority as provided in this Order until all the DIP Obligations have been indefeasibly paid in full in cash and the total commitment has been terminated in accordance with the DIP Loan Documents.

11. Acknowledgements. Without prejudice to the rights of any other party (but subject to the limitations contained in paragraph 21), the Debtors and the Guarantor acknowledge, represent, stipulate and agree that:

(a) the Debtors have obtained all authorizations, consents and approvals required to be obtained from, and have made all filings with and given all notices required to be made or given to, all federal, state and local governmental agencies, authorities and instrumentalities in connection with the execution, delivery, performance, validity and enforceability of the DIP Loan Documents to which any Debtor is a party;

(b) as consideration for entry into the DIP Loan Documents, until such time as all DIP Obligations are indefeasibly paid in full in cash and the total commitment is terminated in accordance with the DIP Facility, and except with respect to the Carve Out upon the occurrence and during the continuance of an Event of Default, the Debtors shall not in any way prime or seek to prime (or otherwise cause to be subordinated in any way) the DIP Liens and Adequate

Protection Liens (as defined below) provided to the DIP Agent, DIP Lenders, Agent and Pre-Petition Lenders (all as defined below) under this Order, the Final DIP Order or the DIP Loan Documents by offering a subsequent lender or a party-in-interest a superior or pari passu lien or security interest pursuant to section 364(c) or (d) of the Bankruptcy Code or otherwise, other than any additional liens granted to the DIP Agent and DIP Lenders in the Final DIP Order as may be contemplated in the DIP Facility and the Motion;

(c) as consideration for entry into the DIP Loan Documents, until such time as all DIP Obligations are indefeasibly paid in full in cash and the total commitment is terminated in accordance with the DIP Facility, the Debtors shall not in any way or at any time, permit to exist an administrative expense claim against any of the Debtors of any kind or nature whatsoever, including without limitation any administrative expenses of the kind specified in, or arising or ordered under, sections 105, 326, 328, 503(b), 506(c), 507(a), 507(b), 546(c) 726, 1113 and 1114 of the Bankruptcy Code having priority equal or superior to the priority of the Superpriority Claims as provided herein, except with respect to the Carve Out upon the occurrence and during the continuance of an Event of Default;

(d) the Debtors are parties to pre-petition revolving and term loans provided pursuant to that certain Amended and Restated Credit Agreement, dated as of September 4, 2013 (as amended, restated, supplemented or otherwise modified from time to time, the “Pre-Petition Credit Agreement”), among the Debtors, as borrowers, and Phosphate Holdings, Inc. as guarantor (the “Guarantor”), the lenders from time to time party thereto (the “Pre-Petition Lenders”) and STUW LLC, as administrative agent for the Pre-Petition Lenders (the “Agent”), and all agreements, documents, and instruments delivered in connection therewith (together with the Pre-Petition Credit Agreement, the “Pre-Petition Loan Documents”). As of the Petition Date,

the Debtors and the Guarantor were jointly and severally indebted to the Agent and Pre-Petition Lenders under the Pre-Petition Credit Agreement in the approximate principal amount of \$57.5 million, plus additional interest, fees and costs (the “Pre-Petition Indebtedness”);

(e) The Pre-Petition Indebtedness is valid, enforceable and existing, and all liens, claims and interests held by the Pre-Petition Lenders to secure the Pre-Petition Indebtedness (or the Agent, on their behalf) are valid, existing properly perfected, enforceable, first-priority liens on the collateral identified therein (the “Pre-Petition Collateral”); and

(f) all of the Debtors’ cash, including cash in the deposit accounts, whether as originally collateral or proceeds of other Pre-Petition Collateral, constitutes Cash Collateral of the Agent and Pre-Petition Lenders.

12. Fees and Expenses. The DIP Agent and DIP Lenders shall submit summary invoices for fees and expenses to the United States Trustee, counsel for Debtors, and counsel for the official committee of unsecured creditors (the “Committee”) and such parties shall have five (5) business days to object to the reasonableness of the invoiced fees and expenses. If no party objects to the fees and expenses, the fees and expenses shall increase the DIP Obligations. If a party objects to a portion of the expenses, the remaining fees shall be added to the DIP Obligations. If the parties are unable to resolve the objection to any portion of the remaining fees, the DIP Agent may file an application requesting approval of the remaining fees with the Court. Notwithstanding the forgoing, none of the DIP Agent’s or DIP Lenders’ costs, fees, charges, or expenses shall be required to be maintained in accordance with the United States Trustee guidelines or file any interim or final fee application with the Court.

13. Indemnity. Whether or not the DIP Financing transaction is consummated, each Debtor shall indemnify and hold harmless the DIP Agent, each DIP Lender, their respective

subsidiaries and affiliates, and their respective shareholders, members, partners, officers, directors, employees, agents and advisors from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of counsel) that may be incurred by or asserted against such entity or individual in connection with the DIP Financing, except to the extent any of the foregoing results from the willful misconduct of such entity or individual as determined by a final judgment of a court of competent jurisdiction.

14. Recording and Filing Fees. All fees and costs and/or expenses payable by the Debtors in connection with the recording, filing and insuring of financing statements, mortgages and financing statements to confirm or evidence the perfection of the security interests granted or authorized by this Order are hereby approved and shall be promptly paid in full by the Debtors without the necessity of the Debtors, the DIP Lenders or the DIP Agent filing any further application with the Court for approval or payment of such fees, costs and/or expenses.

15. Authority to Execute and Deliver Necessary Documents. Without limiting paragraph 10(c) above, each of the Debtors is hereby authorized and empowered and directed to:

(a) enter into and deliver the Term Sheet and the other DIP Loan Documents, including, but not limited to, UCC financing statements and mortgages or deeds of trust as necessary or appropriate;

(b) to perform all of its obligations under the DIP Loan Documents and such other agreements as may be required by the DIP Loan Documents to give effect to the terms of the financing provided for in the DIP Loan Documents as approved by this Order;

(c) to perform all acts required under the DIP Loan Documents and this Order, including, without limitation, the payment of all principal, interest, charges, fees, and the reimbursement of present and future reasonable costs and expenses (including without limitation,

reasonable attorneys' fees and legal expenses) paid or incurred by the DIP Lenders or the DIP Agent as provided for in this Order and the DIP Loan Documents; and

(d) to perform all other acts, to make, execute and deliver all other instruments, agreements and documents, which may be required or necessary for the Debtors to perform all of their obligations under this Order and the DIP Loan Documents, without further order of the Court and pending the Final Hearing.

16. Amendments. The Debtors, DIP Agent and DIP Lenders may enter into any amendments or modifications to the DIP Facility and the other DIP Loan Documents without the need of further notice and hearing or order of this Court, in each case in such form as the Debtors, the DIP Agent and DIP Lenders may agree and a copy of which is delivered to the Committee and the United States Trustee; provided, however, that notice of any material modification or amendment shall be provided to the Committee and the United States Trustee, each of which shall have five (5) days from the date of such notice within which to object in writing; provided, further, however, that if any such objection is timely made, then such modification or amendment shall be permitted only pursuant to an order of the Court (or upon withdrawal of the objection). If no Committee is appointed, the Debtors shall docket a notice of any material modification or amendment and parties-in-interest shall have five (5) days to file an objection in writing, provided, however, that if such objection is timely made, then such modification or amendment shall be permitted only pursuant to an order of the Court.

17. Carve Out.

(a) The DIP Liens and the Superpriority Claims shall be subject to (i) the unpaid fees of the Clerk of the Court and the United States Trustee; (ii) the fees and expenses incurred by any Chapter 7 trustee and any professionals retained by such trustee, in an aggregate amount not

to exceed \$50,000; (iii) to the extent provided in the Approved Budget and allowed by final order (which cannot exceed such budgeted amounts), all unpaid fees and expenses of Chapter 11 professionals retained by the Debtors or the Committee, which are incurred at any time on or before the first business day following a Termination Event, whether allowed by the Court prior to or after the Termination Event; and (iv) after the first business day following a Termination Event, to the extent allowed by a final order, the payment of reasonable fees of such Chapter 11 professionals referenced in *clause (iii)* above in an aggregate amount not to exceed \$100,000; ((i) through (iv), the “Carve Out”). No fees or disbursements shall be compensable from the Carve Out to the extent such fees are related to the preparation for, or commencement and prosecution of any Challenge (as defined below) or objection to the debt or collateral position of the DIP Agent or the DIP Lenders or hindering or delaying the DIP Agent’s or any DIP Lender’s enforcement or realization upon the Collateral once an Event of Default has occurred and is continuing. Notwithstanding the foregoing restrictions, up to an aggregate of \$50,000 of Cash Collateral or proceeds of the DIP Loans may be used to pay professional fees and expenses incurred by the Committee to investigate the extent, validity and priority of claims and liens of the Agent and/or Pre-Petition Lenders relating to the Pre-Petition Loan Documents, but not to challenge any liens or claims under the Pre-Petition Loan Documents.

(b) Any payment of fees and expenses incurred after the occurrence and during the continuance of an Event of Default, including any payment of Chapter 11 professional fees, shall permanently reduce the Carve Out on a dollar-for-dollar basis. The payment of the Carve Out from the proceeds of DIP Agent and DIP Lenders’ Collateral shall be (i) added to and made part of the DIP Obligations, (ii) secured by the Collateral, and (iii) otherwise entitled to the protections granted under this Order, the DIP Loan Documents, the Bankruptcy Code and

applicable law.

(c) Nothing contained in this Order shall be construed: (i) to exempt those persons hereafter receiving interim compensation payments or reimbursement of expenses pursuant to any such Court-approved procedure from the applicable provisions of bankruptcy law, including the requirements that such compensation or reimbursement be allowed on a final basis after the filing of appropriate fee applications, and, if applicable, any subsequent order of this Court requiring that such payments be disgorged, and/or (ii) as consent to the allowance of any fees and expenses referred to above, and shall not affect any right of the DIP Agent or the DIP Lenders to object to the reasonableness of such amounts.

18. Prohibited Uses of Cash Collateral/DIP Proceeds. Neither Cash Collateral nor proceeds of any of the DIP Financing shall be used to request the use of Cash Collateral without the DIP Agent's and DIP Lenders' prior written consent, or authorization to obtain post-petition loans or other financial accommodations pursuant to section 364(c) or (d) of the Bankruptcy Code, or otherwise, other than from the DIP Lenders without the consent of the DIP Lenders. Neither Cash Collateral nor proceeds of any of the DIP Financing shall be used for the payment or reimbursement of any fees or disbursements of the Debtors, the Committee, any trustee appointed in these Chapter 11 Cases, or any other person that are incurred in connection with the assertion and prosecution of, or joinder in, any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter (a) asserting claims pursuant to sections 542, 544, 545, 546, 547, 548, 549, 550, 551, 553(b) or 724(a) of the Bankruptcy Code or other cause of action (whether arising under state law, the Bankruptcy Code or other federal law) against any of the DIP Lenders, DIP Agent, Agent, or Pre-Petition Lenders, including any action with respect to the validity and extent of the DIP Obligations or the Pre-Petition Indebtedness or

the validity, extent, priority and enforceability of liens and security interests securing the DIP Obligations or the Pre-Petition Indebtedness; (b) invalidating, setting aside, avoiding or subordinating, in whole or in part, the DIP Lenders' and/or DIP Agent's liens on and security interests in the Collateral, or the Agent's and/or Pre-Petition Lenders' liens on and security interests in the Pre-Petition Collateral; or (c) seeking to modify any of the rights granted to the DIP Agent or the DIP Lenders or the Adequate Protection Claims and Adequate Protection Liens granted to the Agent and Pre-Petition Lenders under this Order or the DIP Loan Documents.

19. Limitation on Surcharges. Subject to entry of the Final DIP Order, except to the extent of the Carve Out, no costs or expenses of administration or other surcharge, lien, assessment or claim incurred on or after the Petition Date of any person or entity shall be imposed against any of the Collateral, the Pre-Petition Collateral, any Pre-Petition Lenders, the Agent, any DIP Lenders, or the DIP Agent, nor shall the Collateral, the Pre-Petition Collateral, any Pre-Petition Lenders, the Agent, any DIP Lenders or the DIP Agent be subject to surcharge by any party-in-interest for any amounts arising or accruing after the Petition Date pursuant to sections 506(c), 552(b) or 105(a) of the Bankruptcy Code or similar principle of law. No action, inaction, or acquiescence by the Pre-Petition Lenders, Agent, DIP Lenders or DIP Agent in these Chapter 11 Cases, including the Pre-Petition Lenders' or DIP Lenders' funding of the Debtors' ongoing operations under this Order or the Final DIP Order, or the DIP Loan Documents, shall be deemed to be or shall be considered as evidence of any alleged consent by the Pre-Petition Lenders, Agent, DIP Lenders or DIP Agent to a charge against the Pre-Petition Collateral, the Collateral, any Pre-Petition Lender, the Agent, any DIP Lender, or the DIP Agent pursuant to sections 506(c), 552(b) or 105(a) of the Bankruptcy Code. Neither the Pre-Petition Lenders, Agent, DIP Agent nor DIP Lenders shall be subject in any way whatsoever to the equitable

doctrine of “marshaling” or any similar doctrine with respect to the Collateral or the Pre-Petition Collateral.

20. Adequate Protection. The Debtors, in connection with the Pre-Petition Credit Agreement, granted the Agent and Pre-Petition Lenders, mortgages, liens on and security interests in the Pre-Petition Collateral. The Agent and Pre-Petition Lenders are entitled, pursuant to sections 105, 361, 363 and 364 of the Bankruptcy Code, to adequate protection of their interests in the Pre-Petition Collateral, including Cash Collateral, in an amount equal to the diminution in value of the Pre-Petition Collateral. As adequate protection, the Agent and Pre-Petition Lenders are hereby granted the following:

(a) Adequate Protection Claims. The Agent and Pre-Petition Lenders are granted allowed superpriority administrative expenses claims against the Debtors (the “Adequate Protection Claims”) as provided in section 507(b) of the Bankruptcy Code. The Adequate Protection Claims shall have recourse to and be payable from all Collateral. Notwithstanding the foregoing, the Adequate Protection Claims shall be subordinate and subject to (i) the Carve Out and (ii) the Superpriority Claims.

(b) Adequate Protection Liens. To the extent of any diminution in value of the Pre-Petition Collateral, as additional adequate protection, the Agent and Pre-Petition Lenders are hereby granted (effective and perfected upon the date of this Order and without the necessity of the execution by the Debtors of security agreements, pledge agreements, mortgages, financing statements or other agreements) a valid, perfected replacement security interest in and lien on all of the Collateral (the “Adequate Protection Liens”) to secure any Adequate Protection Claim, subject and subordinate only to the DIP Liens and the Carve Out.

(c) Reservation of Rights to Seek Additional Adequate Protection. The grant of

adequate protection to the Agent and Pre-Petition Lenders is without prejudice to the right of the Agent and Pre-Petition Lenders to seek modification of the grant of adequate protection provided by this Order so as to provide different or additional adequate protection; provided, however, that any such additional or modified adequate protection shall at all times be subordinate and junior to the Carve Out and the claims and liens granted to the DIP Agent and DIP Lenders under this Order and the DIP Loan Documents.

21. Challenge to Pre-Petition Indebtedness and Liens. Any party-in-interest (including the Committee and any trustee appointed or elected in the Chapter 11 Cases prior to the termination of the Challenge Period (as defined in this paragraph)⁵ but excluding the Debtors and the Guarantor), predetermined by the Court to have standing, shall have until the later of: (a) sixty (60) days following the entry of this Order, (b) a later date consented to by the Agent and Pre-Petition Lenders; or (c) a date ordered by the Court (the "Challenge Period")⁶ to file an adversary proceeding or contested matter (i) challenging or objecting to the validity, perfection, enforceability, or priority of the Agent's and Pre-Petition Lenders' security interests in and liens on the Pre-Petition Collateral or the amount and allowance of the Pre-Petition Indebtedness, or (ii) otherwise asserting any claims or causes of action against the Agent or Pre-Petition Lenders (any action under (i) or (ii), a "Challenge"). If a Challenge is not filed on or before the conclusion of the Challenge Period, then (w) the Agent and Pre-Petition Lenders shall be deemed to have allowed secured claims against each of the Debtors in the aggregate of the amount of \$58,197,393 consisting of \$57,549,956 in principal and \$647,437 in interest (plus costs expenses and fees recoverable under the Pre-Petition Loan Documents) for all purposes in the Chapter 11

⁵ Upon request to counsel for the Agent by any party-in-interest, the Agent shall provide electronic access to the Pre-Petition Loan Documents.

⁶ Until the occurrence of the Investigation Termination Date, the Debtors' acknowledgements, representations, stipulations and agreements contained in this Order shall not be binding upon the Committee or any non-debtor parties-in-interest.

Cases and any subsequent Chapter 7 cases, and shall be entitled to credit bid the full amount of their aggregate Pre-Petition Indebtedness and claims at any sale of assets in the Chapter 11 Cases pursuant to sections 363(k) or 1129 of the Bankruptcy Code, (x) all of the agreements, acknowledgments, representations, and stipulations contained in paragraph 11 of this Order shall be irrevocably binding on the estates and all parties-in-interest (including, without limitation, a receiver, administrator, or trustee appointed in any of the these Chapter 11 Cases or in any jurisdiction) without further action by any party or this Court and the Debtors, the Committee and any other party-in-interest (including, without limitation, a receiver, administrator, trustee, examiner with expanded powers, responsible officer, or other estate representative appointed in any of the Chapter 11 Cases or in any jurisdiction) shall thereafter be forever barred from bringing any Challenge, (y) the Agent's and Pre-Petition Lenders' security interests in and liens on the Pre-Petition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, first-priority security interests and liens, not subject to any defense or affirmative claim that would operate reduce the amount of the Pre-Petition Indebtedness, including without limitation, setoff, recharacterization, subordination or other affirmative claims by the estates against the Agent or Pre-Petition Lenders, and (z) the Pre-Petition Indebtedness and the Agent's and the Pre-Petition Lenders' security interests in and liens on the Pre-Petition Collateral shall not be subject to any further Challenge by the Debtors or any other party-in-interest, including, without limitation, any Committee, receiver, administrator, trustee, examiner with expanded powers, responsible officer, or other estate representative appointed in any of these Chapter 11 Cases.

22. Additional Perfection Measures.

- (a) The liens, security interests, and priorities granted to the DIP Agent, DIP Lenders,

Agent and Pre-Petition Lenders pursuant to this Order and the DIP Loan Documents with respect to property of the Debtors' estates shall be perfected by operation of law immediately upon entry of this Order by the Court.

(b) Neither the Debtors nor the DIP Agent, DIP Lenders, Agent or Pre-Petition Lenders shall be required to enter into or to obtain landlord waivers, mortgagee waivers, bailee waivers or warehouseman waivers or to file or record financing statements, mortgages, deeds of trust, leasehold mortgages, notices of lien or similar instruments in any jurisdiction (including, trademark, copyright, trade name or patent assignment filings with the United States Patent and Trademark Office, Copyright Office, or any similar agency with respect to intellectual property), or obtain consents from any licensor or similarly situated party-in-interest, or take any other action in order to validate and to perfect the security interests, DIP Liens or Adequate Protection Liens granted pursuant to this Order.

(c) If the Agent, Pre-Petition Lenders, DIP Agent or DIP Lenders, in their sole discretion, choose to obtain consents from any licensor or similarly situated party-in-interest, to file financing statements, notices of lien or similar instruments, to record financing statements, mortgages or deeds of trust, or to otherwise confirm perfection of such security interests and liens: (i) the Agent, Pre-Petition Lenders, DIP Agent and DIP Lenders are authorized and empowered to file or record financing statements, mortgages, deeds of trust or similar instruments which secure the DIP Obligations or the Adequate Protection Liens; (ii) all such documents shall be deemed to have been recorded and filed as of the time and on the date of entry of this Order; and (iii) no defect in any such act shall affect or impair the validity, perfection and enforceability of the liens granted hereunder.

(d) In lieu of obtaining such consents or filing such financing statements, notices of

lien or similar instruments, the Agent, Pre-Petition Lenders, DIP Agent or DIP Lenders may, in their discretion, choose to file a true and complete copy of this Order in any place at which any such instruments would or could be filed, together with a description of Collateral located within the geographic area covered by such place of filing, and such filing shall have the same effect as if such financing statements, notices of lien or similar instruments had been filed or recorded at the time and on the date of entry of this Order.

(e) Federal, state and local governmental agencies, authorities and instrumentalities that have jurisdiction over the Collateral are hereby directed to accept for filing a certified copy of this Order or an acknowledgement of this Order.

23. Access to Information. Without limiting the rights of access and information afforded the DIP Agent or the DIP Lenders under the DIP Loan Documents, the Debtors shall permit representatives, agents and/or employees of the DIP Agent and DIP Lenders to have reasonable access to their premises and their records during normal business hours (without unreasonable interference with the proper operation of the Debtors' businesses) and shall cooperate, consult with, and provide to such persons all such nonprivileged information as they may reasonably request.

24. Access to Collateral. Notwithstanding anything contained herein to the contrary, and without limiting any other rights or remedies of the DIP Agent or DIP Lenders contained in this Order or the DIP Loan Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Loan Documents, upon five (5) days' written notice to the landlord of any leased premises upon which any Collateral is located (a "Landlord") that an Event of Default has occurred and is continuing, the DIP Agent and DIP Lenders may, subject to any separate agreement by and between such Landlord and the DIP Agent or DIP Lenders, enter upon any

leased premises of any of the Debtors for the purpose of exercising any remedy with respect to Collateral located thereon and shall be entitled to all of the Debtors' rights and privileges as lessee under such lease without interference from the Landlord thereunder; provided, however, that the DIP Agent and DIP Lenders shall only pay base rent as defined in the lease with any such Landlord (or other agreement between the DIP Agent or DIP Lenders and the Landlord) and additional rent obligations of the Debtors (limited to charges for utilities, unless otherwise agreed between the Landlord and DIP Lender) that first arise after the written notice referenced above and that are payable during the period of such occupancy by the DIP Lenders, calculated on a per diem basis. Nothing herein shall require the Debtors to assume and assign to the DIP Agent or the DIP Lenders any lease under section 365(a) of the Bankruptcy Code as a precondition to the rights afforded to the DIP Agent or the DIP Lenders in this paragraph.

25. Event of Default. The date upon which any of the following events occur and are continuing beyond any applicable grace period set forth below shall each be an "Event of Default" hereunder: (a) the Debtors fail to make a payment to the DIP Lenders as and when required by the DIP Loan Documents or this Order, or otherwise fail to comply in any material respect with any of the terms or conditions of the DIP Loan Documents and/or this Order; and (b) the occurrence of a "Termination Event" under the Term Sheet.

26. Automatic Stay Modified. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agent and DIP Lenders to exercise, (a) immediately upon the occurrence of an Event of Default, all rights and remedies under the DIP Loan Documents, including acceleration of the DIP Obligations which shall become due and payable with interest at the default rate and (b) rights to (i) terminate the total commitment under the DIP Loan Documents, (ii) freeze monies or

balances in the Debtors' accounts, (iii) set off monies or balances of the Debtors in accounts maintained by the DIP Agent or DIP Lenders, and (iv) exercise the rights and remedies available under this Order and/or applicable law (including the Uniform Commercial Code as in effect in any jurisdiction), including foreclosing upon and selling all or any portion of the DIP Collateral. In any hearing regarding the DIP Agent's or DIP Lenders' exercise of rights or remedies under this paragraph, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing, and each of the Debtors hereby waives any right to seek relief under law or equity to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Agent or the DIP Lenders set forth in this Order or the DIP Loan Documents. The DIP Agent's or the DIP Lenders' delay or failure to exercise rights and remedies under the DIP Loan Documents or this Order shall not constitute a waiver of the DIP Agent's or DIP Lenders' rights, unless any waiver is made pursuant to a written instrument executed in accordance with the terms of the DIP Facility.

27. Termination of Authorization to Use Cash Collateral. Unless the Debtors obtain the prior written consent of the DIP Agent and DIP Lenders, until the entry of the Final DIP Order, the Debtors are authorized to use cash collateral only in accordance with the line items set forth in the Approved Budget. Upon the occurrence and during the continuance of an Event of Default, the DIP Agent and DIP Lenders shall have no further obligation to provide financing under the DIP Loan Documents or DIP Facility as approved by this Order, and the authorization to use cash collateral under the terms of this Order shall automatically terminate; provided, however, that if the Debtors' right to use cash collateral has been terminated pursuant to the provisions of this Order, such right may be extended only upon (a) consent of the DIP Agent, (b) the DIP Obligations and the Pre-Petition Indebtedness having been otherwise paid in full, or (c)

further Order of this Court entered upon and after appropriate notice and opportunity for a hearing being provided to the DIP Agent and DIP Lenders. The DIP Agent and DIP Lenders shall have no obligation to agree to such an extension under any circumstances and may elect or not elect to agree to such an extension as they determine in its sole and absolute discretion.

28. No Responsible Person/Fiduciary and Limits on Lender's Liability. In making the decision to make the DIP Financing, administering the DIP Financing, and extending other financial accommodations to the Debtors under the DIP Facility or to collect the indebtedness and obligations of the Debtors, the DIP Agent and DIP Lenders shall not (a) owe any fiduciary duty to the Debtors, their creditors, shareholders or estates, and (b) be considered to be exercising control over any operations of the Debtors or acting in any way as a responsible person, an owner or an operator under any applicable law, including without limitation, any environmental law (including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq., as either may be amended from time to time, or any similar federal or state statute). Nothing in this Order, the DIP Loan Documents, the Pre-Petition Loan Documents or any other documents related to this transaction shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agent, DIP Lenders, Agent or Pre-Petition Lenders of any liability for any claims arising from the pre-petition or post-petition activities of the Debtors or any of their affiliates in the operation of their businesses or in connection with their restructuring efforts.

29. Successors and Assigns. The DIP Loan Documents and the provisions of this Order shall be binding upon the DIP Agent, DIP Lenders, Agent, Pre-Petition Lenders, Debtors and their respective successors and assigns, and shall inure to the benefit of the DIP Agent, DIP

Lenders, Agent, Pre-Petition Lenders and Debtors and their respective successors and assigns including, without limitation, any trustee, responsible officer, examiner with expanded powers, estate administrator or representative, or similar person appointed in a case for the Debtors under any Chapter of the Bankruptcy Code.

30. No Third Party Beneficiary. Except with respect to any of the DIP Agent, DIP Lenders, Agent, Pre-Petition Lenders, their delegates, indemnified parties pursuant to paragraph 13, and successors and assigns, no rights are created hereunder for the benefit of any third party, any creditor or any direct, indirect or incidental beneficiary.

31. Binding Nature of Agreement. The DIP Obligations shall constitute valid and binding obligations of each of the Debtors enforceable against each of them, and each of their successors and assigns, in accordance with their terms and the terms of this Order. Each of the DIP Loan Documents to which the Debtors are and will become a party shall constitute legal, valid and binding obligations of the Debtors, enforceable against the Debtors in accordance with their terms. The DIP Loan Documents have been or will be properly executed and delivered to the DIP Agent and DIP Lenders by the Debtors. The rights, remedies, powers, privileges, liens and priorities of the DIP Agent and DIP Lenders and the Agent and Pre-Petition Lenders provided for in this Order and in any other DIP Loan Documents shall not be modified, altered or impaired in any manner by any subsequent order (including a confirmation order) or by any plan of reorganization or liquidation in these Chapter 11 Cases or in any subsequent case under the Bankruptcy Code, unless and until the DIP Obligations have first been paid in full in cash and completely satisfied and the total commitment is terminated in accordance with the DIP Facility.

32. Subsequent Reversal or Modification. This Order is entered pursuant to section 364 of the Bankruptcy Code, granting the DIP Agent and DIP Lenders all protections afforded

by section 364(e) of the Bankruptcy Code. If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, that action will not affect (a) the validity of any obligation, indebtedness or liability incurred hereunder by any of the Debtors to the DIP Agent and DIP Lenders or the Agent and Pre-Petition Lenders prior to the date of receipt by the DIP Lenders or Pre-Petition Lenders of written notice of the effective date of such action, or (b) the validity and enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Loan Documents. Notwithstanding any such reversal, stay, modification or vacatur, any post-petition indebtedness, obligation or liability incurred by any of the Debtors to the DIP Agent and DIP Lenders or the Agent and Pre-Petition Lenders prior to written notice to the DIP Agent, DIP Lenders, Agent and Pre-Petition Lenders of the effective date of such action shall be governed in all respects by the original provisions of this Order, and the DIP Agent and DIP Lenders and the Agent and the Agent and Pre-Petition Lenders shall be entitled to all the rights, remedies, privileges and benefits granted herein and in the DIP Loan Documents with respect to all such indebtedness, obligation or liability.

33. No Waivers. This Order shall not be construed in any way as a waiver or relinquishment of any rights that the DIP Agent, DIP Lenders, Agent, or Pre-Petition Lenders may have to bring or be heard on any matter brought before this Court. The rights and obligations of the Debtors and the rights, claims, liens, security interests and priorities of the DIP Agent and DIP Lenders arising under this Order are in addition to, and are not intended as a waiver or substitution for, the rights, obligations, claims, liens, security interests and priorities granted by the Debtors under the DIP Loan Documents.

34. Sale/Conversion/Dismissal.

(a) No motion shall be filed by the Debtors seeking, and no order shall be entered by

the Court providing for, either the sale of the ownership of the stock of any of the Debtors or the sale of any of the assets of the Debtors under section 363 of the Bankruptcy Code without the express consent of the DIP Agent, DIP Lenders, Agent and Pre-Petition Lenders. In the event that any of the Collateral is the subject of a motion to sell under section 363 of the Bankruptcy Code or under a plan pursuant to section 1129 of the Bankruptcy Code, the DIP Agent and the Agent shall be entitled to credit bid the full amount of the DIP Obligations and the Pre-Petition Indebtedness under sections 363 and/or 1129 of the Bankruptcy Code.

(b) If an order is entered (i) dismissing any of these Chapter 11 Cases under sections 305 or 1112 of the Bankruptcy Code or otherwise, (ii) converting these Chapter 11 Cases under section 1112 of the Bankruptcy Code or (iii) appointing a Chapter 11 trustee or an examiner with expanded powers, such order shall provide that (x) the liens, security interests and Superpriority Claims granted to the DIP Agent and DIP Lenders hereunder and in the DIP Loan Documents, as the case may be, shall continue in full force and effect, shall remain binding on all parties-in-interest and shall maintain their priorities as provided in this Order until all DIP Obligations and the Pre-Petition Indebtedness shall have been indefeasibly paid in full in cash and the total commitment shall have been terminated in accordance with the DIP Facility, and (y) this Court shall retain jurisdiction to the fullest extent permitted by law, notwithstanding such dismissal, for purposes of enforcing the liens, security interests and Superpriority Claims of the DIP Agent and DIP Lenders, as the case may be.

35. Injunction. Except as provided in the DIP Facility, this Order and the Final DIP Order, the Debtors shall be enjoined and prohibited from, at any time during the Chapter 11 Cases, (a) granting liens in the Collateral or any portion thereof to any other parties, pursuant to section 364(d) of the Bankruptcy Code or otherwise, which liens are senior to, pari passu with or

junior to the liens of the DIP Agent and DIP Lenders, except for the Adequate Protection Liens and liens granted to the Agent, on behalf of itself and the Pre-Petition Lenders, in accordance with the Final DIP Order as contemplated by the DIP Facility and the Motion and/or (b) (i) using the Cash Collateral, and (ii) applying to the Court for an order authorizing the use of the Cash Collateral or the Collateral, except in accordance with the DIP Facility and this Order.

36. Survival. The liens, lien priority, administrative priorities and other rights and remedies with respect to the Debtors granted to the DIP Agent and DIP Lenders pursuant to the DIP Loan Documents, this Order and any Final DIP Order and the other DIP Loan Documents (specifically including, but not limited to, the existence, perfection and priority of the liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of indebtedness by any Debtor (pursuant to section 364 of the Bankruptcy Code or otherwise), by any dismissal or conversion of any of the Chapter 11 Cases, or by the confirmation of a plan of reorganization in any of the Chapter 11 Cases which does not (a) contain a provision for termination of the total commitment and payment in full in cash of the Pre-Petition Indebtedness and all DIP Obligations on or before the effective date of such plan or plans upon entry thereof and (b) provide for the continuation of the liens and security interests granted to the DIP Agent and DIP Lenders, and the priorities thereof until the earlier of (i) such plan effective date, and (ii) the date the Pre-Petition Indebtedness and the DIP Obligations are paid in full in cash and the total commitment is terminated, or by any other act or omission whatsoever.

37. Priority of Terms. To the extent of any conflict between or among (a) the express terms or provisions of any of the DIP Loan Documents, the Motion, any other order of this

Court, or any other agreements, on the one hand, and (b) the terms and provisions of this Order, on the other hand, unless such term or provision herein is phrased in terms of “as defined in” or “as more fully described in” the DIP Facility or the DIP Loan Documents, the terms and provisions of this Order shall govern.

38. Final Hearing. The Debtors shall promptly mail copies of this Order and notice of the Final Hearing upon: (a) counsel to the Committee (if a Committee has been appointed and counsel for the Committee has been selected); (b) the United States Trustee; (c) all parties who have filed requests for notice under Bankruptcy Rule 2002; (d) the holders of the twenty (20) largest unsecured claims against the Debtors; (e) the Agent for the DIP Lenders and its counsel; (f) the Agent and its counsel; (g) all parties who have asserted liens on assets of the Debtors; and (h) all other parties ordered by the Court. The Debtors request that the Court deem such notice of the final hearing to be sufficient notice under Bankruptcy Rule 4001. Any objection to the relief sought at the Final Hearing shall be made in writing setting forth with particularity the grounds thereof, and filed with the Court and served so as to be actually received no later than five (5) days prior to the Final Hearing by counsel to the Debtors, counsel to the DIP Lenders, the U. S. Trustee, counsel for the Committee and all parties requesting notice in the Chapter 11 Cases. The Court shall conduct a Final Hearing on the Motion commencing on November __, 2014 at __: __ __. m.

39. Retention of Jurisdiction. This Court shall retain jurisdiction over all matter pertaining to the implementation, interpretation and enforcement of this Order.

40. Binding Effect of Order. The terms of this Order shall be binding on any trustee appointed under Chapter 7 or Chapter 11 of the Bankruptcy Code.

41. Entry of Order; Effect. This Order shall take effect immediately upon execution,

notwithstanding the possible application of Fed. R. Bankr. P. 6004(g), 7062, 9014, or otherwise,
and the Clerk of the Court is hereby directed to enter this Order on the Court's docket in these
Chapter 11 Cases.

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ButlerSnow 23237504v1



Oct. 27, 2014 Mississippi Phosphates Corp. DIP Budget	1	2	3	4	5	6	7	8	9	10
Week Ending:	26-Oct	2-Nov	9-Nov	16-Nov	23-Nov	30-Nov	7-Dec	14-Dec	21-Dec	28-Dec
Beginning Cash	\$ 789,800	\$ 789,800	\$ 1,421,409	\$ 1,018,052	\$ 1,704,486	\$ 3,477,346	\$ 742,058	\$ 4,027,579	\$ 3,740,496	\$ 3,444,116
DAP/MAP Provisional Amount	\$ -	\$ 728,784	\$ 1,680,000	\$ 3,292,800	\$ 3,292,800	\$ 3,214,400	\$ 2,755,200	\$ -	\$ -	\$ -
MAP/DAP true-up on Netback	-	615,552	-	799,578	973,989	973,989	1,062,654	483,738	-	-
Terminal Management Fee Ammonia	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Receipts	\$ -	\$ 1,344,336	\$ 1,680,000	\$ 4,092,378	\$ 4,266,789	\$ 4,188,389	\$ 3,817,854	\$ 483,738	\$ -	\$ -
Total Cash Available	\$ 789,800	\$ 2,134,136	\$ 3,101,409	\$ 5,110,430	\$ 5,971,275	\$ 7,665,735	\$ 4,559,912	\$ 4,511,316	\$ 3,740,496	\$ 3,444,116
OPERATIONAL COST DISBURSEMENTS:										
Raw Material Purchased	-	2,592,827	1,821,774	1,946,544	1,688,145	-	-	-	-	-
Plant Payroll related	-	823,900	-	769,400	-	769,400	119,500	267,320	42,880	163,000
Accrued Vacation	-	-	-	100,000	-	150,000	-	100,000	-	75,000
Management Services Agreement	-	-	35,833	-	67,876	-	35,833	-	84,000	35,833
Utilities	-	344,000	710,000	-	-	775,000	-	-	-	250,000
Company Property and Casualty Insurance	-	-	-	-	387,158	-	-	-	-	387,158
Other Operational Spending	-	430,000	323,000	223,000	163,000	76,700	48,000	13,000	13,000	16,700
Other Administrative Expenses	-	350,000	-	-	-	-	-	-	-	-
Sub-Total Operational Costs	-	4,540,727	2,890,607	3,038,944	2,306,179	1,771,100	203,333	380,320	139,880	927,691
PREPAID and CAPITAL ADDITION DISBURSEMENTS										
Contingency	-	50,000	50,000	50,000	50,000	50,000	50,000	30,000	10,000	10,000
Sub- Total Prepaid and Capital Addition Disbursements	-	50,000	50,000	50,000	50,000	50,000	50,000	30,000	10,000	10,000
Environmental Spending										
Environmental Management - Allen Engineering	-	20,000	-	20,000	-	-	20,000	-	20,000	-
Waste Water Treatment Chemicals	-	77,000	77,000	77,000	77,000	77,000	77,000	77,000	77,000	77,000
Financial Assurance Trust Payment	-	-	-	-	-	-	-	-	-	200,000
Sub-Total Environmental Spending	-	97,000	77,000	97,000	77,000	77,000	97,000	77,000	97,000	277,000
Bankruptcy Fees and Expenses										
Debtor Costs - Legal and other Services	-	25,000	60,750	197,500	60,750	-	177,000	247,500	49,500	-
Creditor Costs	-	-	5,000	22,500	-	-	5,000	36,000	-	-
US Trustee and Court Costs	-	-	-	-	-	-	-	-	-	-
Total Bankruptcy Costs	-	25,000	65,750	220,000	60,750	25,577	182,000	283,500	49,500	-
Cash Consumed	-	4,712,727	3,083,357	3,405,944	2,493,929	1,923,677	532,333	770,820	296,380	1,214,691
DIP Lending Activity	-	4,000,000	1,000,000	-	-	(5,000,000)	-	-	-	-
Ending Cash	\$ 789,800	\$ 1,421,409	\$ 1,018,052	\$ 1,704,486	\$ 3,477,346	\$ 742,058	\$ 4,027,579	\$ 3,740,496	\$ 3,444,116	\$ 2,229,425

Note: The above does not include any potential 503(b)9 claims, if any should exist at the time of filing.

Oct. 27, 2014 Mississippi Phosphates Corp. DIP Budget	11	12	13	14	15	16	17	18	19	20	21
Week Ending:	4-Jan	11-Jan	18-Jan	25-Jan	1-Feb	8-Feb	15-Feb	22-Feb	1-Mar	8-Mar	15-Mar
Beginning Cash	\$ 2,229,425	\$ 1,867,045	\$ 1,619,045	\$ 1,166,665	\$ 1,473,557	\$ 1,251,977	\$ 1,007,727	\$ 594,207	\$ 951,099	\$ 732,204	\$ 1,487,954
DAP/MAP Provisional Amount	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
MAP/DAP true-up on Netback	-	-	-	-	-	-	-	-	-	-	-
Terminal Management Fee Ammonia	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Receipts	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Cash Available	\$ 2,229,425	\$ 1,867,045	\$ 1,619,045	\$ 1,166,665	\$ 1,473,557	\$ 1,251,977	\$ 1,007,727	\$ 594,207	\$ 951,099	\$ 732,204	\$ 1,487,954
OPERATIONAL COST DISBURSEMENTS:											
Raw Material Purchased	-	-	-	-	-	-	-	-	-	-	-
Plant Payroll related	97,380	98,000	62,380	85,750	50,520	114,250	50,520	85,750	48,895	114,250	48,895
Accrued Vacation	-	50,000	-	25,000	-	-	-	-	-	-	-
Management Services Agreement	-	-	-	21,500	-	-	-	21,500	-	-	-
Utilities	-	-	-	70,000	-	-	-	45,000	-	-	-
Company Property and Casualty Insurance	-	-	-	387,158	-	-	-	387,158	-	-	-
Other Operational Spending	43,000	13,000	13,000	16,700	18,000	23,000	13,000	16,700	18,000	23,000	13,000
Other Administrative Expenses	-	-	-	-	1,060	-	-	-	-	-	-
Sub-Total Operational Costs	140,380	161,000	75,380	606,108	69,580	137,250	63,520	556,108	66,895	137,250	61,895
PREPAID and CAPITAL ADDITION DISBURSEMENTS											
Contingency	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Sub- Total Prepaid and Capital Addition Disbursements	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Environmental Spending											
Environmental Management - Allen Engineering	20,000	-	20,000	-	20,000	-	20,000	-	20,000	-	20,000
Waste Water Treatment Chemicals	77,000	77,000	77,000	77,000	77,000	77,000	77,000	77,000	77,000	77,000	77,000
Financial Assurance Trust Payment	-	-	-	-	-	-	-	-	-	-	-
Sub-Total Environmental Spending	97,000	77,000	97,000	77,000	97,000	77,000	97,000	77,000	97,000	77,000	97,000
Bankruptcy Fees and Expenses											
Debtor Costs - Legal and other Services	110,000	-	247,500	-	45,000	15,000	225,000	-	45,000	15,000	225,000
Creditor Costs	5,000	-	22,500	-	-	5,000	18,000	-	-	5,000	18,000
US Trustee and Court Costs	-	-	-	-	-	-	-	-	-	-	-
Total Bankruptcy Costs	115,000	-	270,000	-	45,000	20,000	243,000	-	45,000	20,000	243,000
Cash Consumed	362,380	248,000	452,380	693,108	221,580	244,250	413,520	643,108	218,895	244,250	411,895
DIP Lending Activity	-	-	-	1,000,000	-	-	-	1,000,000	-	1,000,000	-
Ending Cash	\$ 1,867,045	\$ 1,619,045	\$ 1,166,665	\$ 1,473,557	\$ 1,251,977	\$ 1,007,727	\$ 594,207	\$ 951,099	\$ 732,204	\$ 1,487,954	\$ 1,076,059

Note: The above does not include any potential 503(b)9 claims, if.

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B4 (Official Form 4) (12/07)

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

In re Mississippi Phosphates Corporation

Debtor(s)

Case No.

Chapter 11

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

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

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
OCP Office Cherifien Des Ocpangle Route D'el Jadida De La Grand Ceinture Casablanca, Morocco	OCP Office Cherifien Des Ocpangle Route D'el Jadida De La Grand Ceinture Casablanca, Morocco			4,690,253.50
Transammonia, Inc. 320 Park Ave 10th Floor New York, NY 10022	Transammonia, Inc. 320 Park Ave 10th Floor New York, NY 10022			1,967,000.00
Oxbow Sulphur Inc. 1450 Lake Robbins Dr. Ste 500 The Woodlands, TX 77380	Oxbow Sulphur Inc. 1450 Lake Robbins Dr. Ste 500 The Woodlands, TX 77380			1,741,326.46
Central Maintenance & Weld 2620 Keysville Road Lithia, FL 33547	Central Maintenance & Weld 2620 Keysville Road Lithia, FL 33547			1,541,778.51
Premier Chemicals 4664 James Ave Ste 125 Baton Rouge, LA 70808	Premier Chemicals 4664 James Ave Ste 125 Baton Rouge, LA 70808			1,455,651.75
Shrieve Chemical P. O. Box 671515 Dallas, TX 75267-1667	Shrieve Chemical P. O. Box 671515 Dallas, TX 75267-1667			1,167,705.95
Int'l Welding & Fabricatio 11401 Hwy 63 Moss Point, MS 39562	Int'l Welding & Fabricatio 11401 Hwy 63 Moss Point, MS 39562			1,072,519.16
Hydrovac Industrial Ser. P. O. Box 83006 Chicago, IL 60691-3010	Hydrovac Industrial Ser. P. O. Box 83006 Chicago, IL 60691-3010			975,105.72
Unimin Lime P. O. Box 181 Calera, AL 35040	Unimin Lime P. O. Box 181 Calera, AL 35040			877,322.96
Envir. Acid Solutions 24838 NC Hwy 33 East Aurora, NC 27806	Envir. Acid Solutions 24838 NC Hwy 33 East Aurora, NC 27806			666,920.17
Duponte Sulfur Prod. 586 Hwy 44 La Place, LA 70068	Duponte Sulfur Prod. 586 Hwy 44 La Place, LA 70068			629,045.00

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

In re Mississippi Phosphates Corporation

Case No. _____

Debtor(s)

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS
(Continuation Sheet)

(1) <i>Name of creditor and complete mailing address including zip code</i>	(2) <i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	(3) <i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	(4) <i>Indicate if claim is contingent, unliquidated, disputed, or subject to setoff</i>	(5) <i>Amount of claim [if secured, also state value of security]</i>
MS Power Company P. O. Box 4275 Gulfport, MS 39502-4275	MS Power Company P. O. Box 4275 Gulfport, MS 39502-4275			508,779.67
Carrier Rental Systems 6282 Hwy 73 Geismar, LA 70734	Carrier Rental Systems 6282 Hwy 73 Geismar, LA 70734			502,440.40
Dresser-Rand Company P. O. Box 7247-6149 Philadelphia, PA 19170-6149	Dresser-Rand Company P. O. Box 7247-6149 Philadelphia, PA 19170-6149			414,730.91
Jackson Cty Port Auth. P. O. Box 70 Pascagoula, MS 39568-0070	Jackson Cty Port Auth. P. O. Box 70 Pascagoula, MS 39568-0070			386,721.27
Plant Maintenance Ser. 37110 Hwy 30 Geismar, LA 70734	Plant Maintenance Ser. 37110 Hwy 30 Geismar, LA 70734			352,135.92
RPW, Inc. P. O. Box 2151 Pascagoula, MS 39569	RPW, Inc. P. O. Box 2151 Pascagoula, MS 39569			284,301.76
VIP International 6638 Pecue Lane Baton Rouge, LA 70817-4400	VIP International 6638 Pecue Lane Baton Rouge, LA 70817-4400			271,406.26
BP Energy Co. 209 Public Square Cleveland, OH 44114-2375	BP Energy Co. 209 Public Square Cleveland, OH 44114-2375			235,878.91
Brook Services LTD P. O. Box 8406 Dallas, TX 75284-0640	Brook Services LTD P. O. Box 8406 Dallas, TX 75284-0640			227,968.71

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

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

Date October 27, 2014

Signature /s/ Robert Kerley

Robert Kerley
CFO

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