

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

US BANKRUPTCY COURT
SOUTHERN DISTRICT OF MS
FILED

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In re:)
)
MISSISSIPPI CHEMICAL)
CORPORATION, *et al.*¹)
)
Debtors.)
_____)

CHARLENE J. KENNEDY
CLERK

CASE NO. 03-02984 WEE
Chapter 11
Jointly Administered

**AMENDED MOTION FOR ORDER
DEEMING UTILITIES ADEQUATELY PROTECTED UNDER § 366**

COME NOW Mississippi Chemical Corporation, *et al.*, Debtors and debtors-in-possession in these jointly administered reorganization proceedings ("Debtors"), and submit their amended motion for an order deeming the Debtors' utilities adequately protected under § 366 of the Bankruptcy Code ("Motion"). In support of the Motion, the Debtors submit the Affidavit of Charles O. Dunn, President and Chief Executive Officer of Mississippi Chemical Corporation ("Dunn Affidavit") simultaneously filed herewith, and further show as follows:

1. Each of the above-captioned Debtors has filed its voluntary petition under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*
2. The Debtors remain in possession of their property and continue to operate their businesses as debtors-in-possession pursuant to §§ 1107 and 1108. No trustees, examiners or committees have been appointed in these cases.
3. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334, and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue of these cases is proper in this

¹ The Debtors are the following entities: Mississippi Chemical Corporation; Mississippi Nitrogen, Inc.; MissChem Nitrogen, L.L.C.; Mississippi Chemical Company, L.P.; Mississippi Chemical Management Company; Mississippi Phosphates Corporation; Mississippi Potash, Inc.; Eddy Potash, Inc.; Triad Nitrogen, L.L.C.; and Melamine Chemicals, Inc.

Court pursuant to 28 U.S.C. § 1408. The relief requested in this Motion is sought pursuant to §§ 105, 363 and 366 of the Bankruptcy Code.

4. This Motion has been designated by the Debtors as a First Day Motion and has been approved for expedited consideration by the Court. This Motion was filed contemporaneously with the Debtors' Petitions.

Summary of Operations

5. Mississippi Chemical Corporation ("MCC") was incorporated in Mississippi on May 23, 1994, and is the successor by merger to a business of the same name which was incorporated in Mississippi in September 1948 as the first fertilizer cooperative in the United States. The Debtors' corporate headquarters is located in Yazoo City, Mississippi. The Debtors employ approximately 1,100 persons throughout all of their locations, none of whom are represented by unions.

6. The Debtors operate three strategic business units that offer different products: nitrogen, phosphate and potash. The Debtors produce nitrogen products at their production facilities in Yazoo City, Mississippi, Donaldsonville, Louisiana, and through Farmland MissChem Limited in Point Lisas, The Republic of Trinidad and Tobago ("FMCL"). The Debtors' principal nitrogen products include anhydrous and aqua ammonia; fertilizer-grade ammonium nitrate sold under the trade name Amtrate®; UAN solution sold under the trade name N-Sol 32®; urea synthesis; nitric acid and nitrogen tetroxide. The Debtors recently acquired a melamine crystal production facility located within the Donaldsonville, Louisiana, nitrogen complex, and production is anticipated to begin in June 2003. The Debtors sell their nitrogen products to fertilizer dealers and distributors as well as industrial users located primarily in the

southern region of the United States where the Debtors' facilities are located. The Debtors transport their nitrogen products by barge, rail, pipeline, truck and oceangoing vessels.

7. The Debtors produce diammonium phosphate fertilizer ("DAP") at their facility in Pascagoula, Mississippi. Almost all of the Debtors' DAP sales are for agricultural use, and the majority of its DAP sales are for international markets. Since October 1, 1997, all of the Debtors' export sales of DAP have been made through Phosphate Chemicals Export Association, Inc. ("PhosChem"), a Webb-Pomerene corporation, and all domestic sales of DAP have been made through the Debtors' internal sales staff.

8. The Debtors produce potash at two mines and related facilities and operate a granular compaction plant near Carlsbad, New Mexico. The Debtors' potash reserves are controlled under long-term federal and state potassium leases on approximately 100,000 surface acres, which consist of approximately 220,000 subsurface acres due to the naturally occurring overlap of ore zones in the Carlsbad potash basin. The majority of the Debtors' agricultural potash sales are in domestic markets in the states west of the Mississippi River where it enjoys freight cost advantages over Canadian and overseas potash producers.

9. MCC is a publicly held stock corporation traded over the counter under the symbol "MPSI".

Summary of Financing

10. In August 1997, Mississippi Phosphate Corporation ("MPC") issued \$14,500,000 in industrial revenue bonds, a portion of which was tax-exempt, to finance the development of a new phosphogypsum disposal facility at its Pascagoula, Mississippi, DAP manufacturing plant. On April 1, 1998, MPC issued \$14,500,000 in tax-exempt industrial revenue bonds (the "1998 IRBs"), the proceeds of which were used to redeem the initial industrial revenue bonds issued in

August 1997. The 1998 IRBs mature on March 1, 2022, and carry a 5.80% fixed rate of interest. The 1998 IRBs may be redeemed at the Debtors' option at a premium from March 1, 2008 to February 28, 2010, and may be redeemed at face value at any time after February 28, 2010, through the maturity date. MCC has guaranteed the obligations under the 1998 IRBs.

11. On November 25, 1997, MCC issued \$200,000,000 of 7.25% Senior Notes due November 15, 2017, pursuant to a \$300,000,000 shelf registration statement filed with the Securities and Exchange Commission. Semiannual interest payments of approximately \$7,250,000 are due on each May 15 and November 15. The holders may elect to have the Senior Notes repaid on November 15, 2007.

12. The Debtors have a secured revolving credit facility with Harris Trust and Savings Bank ("Harris Bank") as administrative agent, totaling approximately \$163,500,000 (reduced from the original \$165,000,000 facility amount due to certain asset sales) (the "Harris Facility"). The Harris Facility, as amended, currently matures on November 10, 2003. The Harris Facility bears interest at rates related to the Prime Rate or Federal Funds Rate. The Debtors had letters of credit outstanding at May 9, 2003, in the amount of \$900,000 (that lower the Debtors' available draw under the Harris Facility) and borrowings outstanding in the amount of \$150,527,155.74. Based on the Debtors' borrowing base calculation as of May 5, 2003, the Debtors had \$11,980,844 available under the Harris Facility.

Current Operations

13. For the nine-month period ended March 31, 2003, the Debtors continued to experience operating losses in each of their operating segments. High natural gas prices caused the Debtors to temporarily idle portions of its nitrogen facilities. The Debtors' nitrogen losses included significant impairments of its long-lived assets at its Donaldsonville, Louisiana facility.

Due to continued negative operating results, the Debtors determined that one of their anhydrous ammonia plants and the assets associated with the prilling section of its urea plant would be idled indefinitely. During the nine-month period ended March 31, 2003, the Debtors' nitrogen net sales increased slightly from the comparable prior year period; however, it was not enough to overcome higher natural gas costs, the primary raw material in the production of anhydrous ammonia. The Debtors' DAP segment operating losses primarily resulted from limited availability of certain raw materials, mainly sulfur and sulfuric acid, and the higher cost of ammonia. This resulted in reduced DAP production tonnage and higher raw material costs. The Debtors' potash segment had reduced export sales due to unfavorable pricing in those markets as well as reduced sales domestically. Each of the Debtors' segments incurred general and administrative expenses and interest charges. During the nine-month period ended March 31, 2003, the Debtors also incurred increased insurance costs, increased costs associated with its refinancing efforts and additional costs associated with reductions in workforce and completion of an early retirement offer.

14. The Debtors' declining performance results over the past five years have been primarily attributable to dramatic increases in, and the volatility of, the price of natural gas (the Debtors' primary raw material), an imbalance in the global supply and demand of fertilizer products, and highly unexpected conditions in the agricultural industry related to low farm commodities prices, farmer planting decisions, and adverse weather. When coupled with an influx of unfairly, low-priced imports into the Debtors' primary trade area, these conditions resulted in a continuing diminution of available working capital and increasing liquidity concerns. The Debtors have been faced with the need to restructure their debt and capital in order

to obtain relief from the continued financial strain imposed by current market conditions and to maintain the viability of their businesses.

Pre-Petition Refinancing and Restructuring Activities

15. The Debtors have spent the last several months negotiating the restructuring of their financial obligations with various parties. In 2002, the Debtors retained Credit Suisse First Boston (“CSFB”) and Gordian Group, LLC (“Gordian”) as financial advisors to assist in the refinancing efforts and to evaluate other financial alternatives. CSFB was initially engaged to assist in exploring financing alternatives prior to the execution of the Harris Facility. After the Debtors entered into the current amendment to the Harris Facility, CSFB was retained with the specific mandate to assist the Debtors in the marketing of the Debtors’ interest in FMCL in accordance with the terms of the Harris Facility.

16. Gordian was initially engaged by the Company in September 2002. Gordian’s services include providing financial advisory services in respect of (i) a potential financial restructuring of the Debtors’ debt obligations, (ii) raising new or replacement capital for the Debtors, (iii) any merger, consolidation, reorganization, recapitalization, joint venture or other business combination or sale of assets of the Debtors or the acquisition of substantially all or a portion of the assets or outstanding securities of another entity, and/or (iv) obtaining debtor-in-possession financing, in one or a series of transactions. Gordian has assisted the Debtors in the evaluation of business plans, determination of debt capacity values, and development of external and internal restructuring plan alternatives.

17. The Debtors’ primary financial restructuring efforts since the execution of the Harris Facility have included (i) negotiating with a private equity fund regarding a restructuring of the Debtors’ capital structure, (ii) negotiating with holders of MCC’s Senior Notes regarding

various restructuring alternatives, (iii) sourcing debtor-in-possession financing from a variety of sources and (iv) actively and continuously marketing MCC's interest in FMCL in accordance with requirements of the Harris Facility. These initiatives have been pursued simultaneously whenever possible, in order to preserve franchise value and provide for a more orderly restructuring process.

18. Notwithstanding the considerable efforts of the Debtors and their professionals and advisors, the Debtors now believe that reorganization under Chapter 11 is the mechanism by which they will best be able to (i) obtain necessary working capital to address their immediate liquidity concerns, (ii) continue to pursue and implement the best strategic alternatives for restructuring their companies, and (iii) maximize the value of their businesses for the benefit of all creditor and equity interests.

Relief Requested

19. In connection with the operation of their businesses, the Debtors obtain electricity, natural gas, water, telephone services and/or similar services through accounts with various utility companies (the "Utility Companies"). The Utility Companies are identified Exhibit "A" attached hereto and incorporated herein by reference.

20. Pursuant to § 366 of the Bankruptcy Code, the Utility Companies may not alter, refuse or discontinue service to a debtor for the first twenty (20) days of a bankruptcy case (the "Stay Period"). Upon expiration of the Stay Period, however, § 366(b) provides that a utility company may (but need not) terminate services if a debtor has not furnished adequate assurance of payment. The Debtors request that the Court continue the Stay Period until such time as this Motion has been finally ruled upon so as to prevent any prejudice to the Debtors in the *interim*.

21. Uninterrupted utility services are essential to ongoing operations and, consequently, to the success of the Debtors' reorganization. The Debtors operations, as described above, simply cannot function without utility services. Should the Utility Companies refuse or discontinue services for even a brief period, operations would be severely disrupted. The impact on business operations, revenue and reorganization efforts would be extremely harmful and would jeopardize the Debtors' reorganization efforts. Accordingly, it is critical that utility services continue uninterrupted.

22. The Debtors believe that substantially all of its Utility Companies will hold no pre-petition claims against the estates, and to the extent that any such claims exist, they will arise only due to the intervening filings of the petitions herein during the middle of a billing or payment cycle. Stated differently, but for the filing of the petitions, the Debtors would have paid all amounts owed to their Utility Companies on a current and timely basis, as always.

23. The Debtors request that the Court obviate the need to make any post-petition deposit or provide any security in accordance with § 366. The Debtors' payment history to their utilities have been good, and in fact in most cases there are and have never been any defaults under any contracts or other arrangement, and the Debtors' going concern value remains sufficient to provide adequate assurance of payment through other means (whether *via* allowed administrative expense claim, application of sufficient pre-petition deposits or otherwise). Thus, security deposits are unnecessary and should not be required of any Debtor. *See Virginia Electric & Power Co. v. Caldor, Inc.*, 117 F.3d 646 (2nd Cir. 1997)(holding same).

24. The Debtors propose that all Utility Companies be permitted, as adequate assurance under § 366, to invoice the Debtors no more frequently than twice monthly, on the 15th and the 30th of each month. The Debtors will then be obligated to pay each invoice within

ten (10) days from receipt thereof, failing in which the Debtors will have a seven (7) day cure period by which to pay the past due amounts and to also provide to the affected Utility Company a deposit sufficient to cover the average cost of service provided by such Utility Company for a period of fourteen (14) days. If the Debtors fail to cure any default in this fashion, the affected Utility Company shall then be free to alter, refuse or discontinue service to the Debtor.

25. Accordingly, the Debtors request that the Court deem all Utility Companies adequately protected under § 366 by adequate assurance of payment through other available means and by implementation of the procedures set forth hereinabove.


WHEREFORE, the Debtors respectfully request that the Court enter an Order granting them the following relief:

- A. Granting the Motion in its entirety;
- B. Deeming all Utilities Companies adequately protected under § 366 as provided herein; and
- C. Granting such other and more general relief as the Court deems just.

[Signatures On Following Page]

Respectfully submitted,

MISSISSIPPI CHEMICAL CORPORATION, *et al.*

By: 
James W. O'Mara, MS Bar No. 3929
Douglas C. Noble, MS Bar No. 10526
Christopher R. Maddux, MS Bar No. 100501

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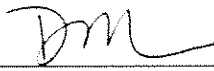
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CERTIFICATE OF SERVICE

I do hereby certify that I have this date mailed *via* electronic mail and/or U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing pleading to all parties listed below. The Debtors' Noticing Agent, BMC, shall likewise serve a copy of same to all parties on the Shortened Service List.

James E. Spiotto Chapman and Cutler 111 W. Monroe Street Chicago, Illinois 60603	Stephen W. Rosenblatt Butler, Snow, O'Mara, Stevens & Cannada Post Office Box 22567 Jackson, MS 39225-2567
Anthony Princi Thomas L. Kent Orrick, Herrington & Sutcliffe LLP 666 Fifth Avenue New York, New York 10103	Craig M. Geno Harris, Geno & Dunbar P.O. Box 3919 Jackson, MS 39207-3919
Ronald H. McAlpin Assistant U.S. Trustee Suite 706 100 W. Capitol Street Jackson, Mississippi 39269	

SO CERTIFIED, this the 3rd day of June, 2003.



JAMES W. O'MARA
DOUGLAS C. NOBLE

EXHIBIT "A"
UTILITY VENDORS

AllTel PO Box 53053 Atlanta, GA 30353-0533	AT&T Wireless PO Box 8220 Aurora, IL 60572	Cellular South PO Box 519 Meadville, MS 39653
AT&T PO Box 2969 Omaha, NE 68103	BellSouth PO Box 740144 Atlanta, GA 30374	Cox PO Box 61060 New Orleans, LA 70161
Plateau Cellular PO Box 9000 Clovis, NM 88102	PCT Networks 1101 West Pierce Carlsbad, NM 88220	Southwestern Bell PO Box 940012 Dallas, TX 75394
T Speed Broadband Comm, Inc. 1440 Corporate Dr. Irving, TX 75038	Valor Telecom PO Box 1366 Española, NM 87532-1366	Cingular Wireless PO Box 31488 Tampa, FL 33631
AT&T Wireless PO Box 2971 Omaha, NE 68103	Yazoo Valley Electric Power P O Box 8 Yazoo City, MS 39194	Mississippi Valley Gas Box 3377 Jackson, MS 39207-3377
MS Power Company P O Box 4275 Gulfport, MS 39502-4275	Jackson County Port Authority P O Box 70 Pascagoula, MS 39568-0070	Pascagoula Utilities P O Box 908 Pascagoula, MS 39568-0908
Lea County Electric P O Box 1447 Lovington, NM 88260	Xcel Energy P O Box 1261 Amarillo, TX 79120-5000	Peoples Water Service P O Box 230 Donaldsonville, LA 70346