

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

U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
FILED

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CHARLENE J. KENNEDY  
CLERK

In re: )  
 )  
MISSISSIPPI CHEMICAL )  
CORPORATION, *et al.*<sup>1</sup> )  
 )  
Debtors. )  
\_\_\_\_\_ )

CASE NO. 03-02984 WEE DEPUTY  
Chapter 11  
**Jointly Administered**

**MOTION PURSUANT TO § 365 FOR APPROVAL OF  
REJECTION OF EXECUTORY CONTRACT AND FOR OTHER RELIEF**

COME NOW Mississippi Chemical Corporation, *et al.*, Debtors and debtors-in-possession in these jointly administered reorganization proceedings (collectively, the “Debtors”), and move the Court to enter an order approving their rejection of an executory contract with LPC Packaging, Inc. (“Motion”), and in support of this Motion would respectfully show as follows:

1. On May 15, 2003, (the “Petition Date”), the Debtors filed their voluntary petitions 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 Court pursuant to 28 U.S.C. § 1408. The relief requested in this motion is sought pursuant to § 365 of the Bankruptcy Code and Bankruptcy Rules 6006 and 9014.

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<sup>1</sup> 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.

### **Background**

4. On or about October 1, 1999, Mississippi Potash, Inc. ("MPI"), a Debtor herein, entered into that certain Storage and Handling Agreement with LPC Packaging, Inc. ("LPC"), pursuant to which MPI has stored potash in LPC's warehouse at 1203 Report Avenue, Stockton, California 95205 (the "Warehouse"). This agreement, together with an amendment executed by the parties on or about October 1, 2001, is attached hereto as Exhibit "A" and incorporated herein by reference (the "Agreement").

5. Among other duties, the Agreement required LPC to perform the following services for MPI:

- a. Provide all power, supervision, labor, loading and unloading equipment, certified truck scales and other material, equipment and/or services required to receive Product (as defined in the Agreement) by rail, unload and transfer Product to the Warehouse;
- b. Provide warehousing services while Product is stored at the Warehouse;
- c. Remove Product from the Warehouse as requested by MPI;
- d. Weigh outbound Product; and
- e. Load outbound Product for shipment by truck as designated by MPI.

6. As of the Petition Date, MPI owed LPC \$28,413.69 in connection with prepetition services provided by LPC at the Warehouse pursuant to the Agreement (the "Prepetition Debt") but the Debtors were not in default thereunder.

7. MPI recognizes its obligation to satisfy any state law warehouseman's lien shown by LPC to be valid, and MPI believes that the amount of Prepetition Debt for services rendered is not in dispute. MPI recognizes and acknowledges LPC's warehouseman's lien in the amount of the Prepetition Debt.

8. MPI believes that LPC has been and has at all times remained adequately protected, as the market value of the Product far exceeds the Prepetition Debt.

**Authority**

9. Section 365 of the Bankruptcy Code permits the Debtors to assume or reject executory contracts at any time prior to confirmation.

10. Section 365 of the Bankruptcy Code contains the rules governing executory contracts. Neither § 365, nor any other section of the Bankruptcy Code, provides a precise definition of the term “executory contract.” Due to the lack of a precise definition in the Bankruptcy Code, courts construing section 365 have encountered some difficulty in framing the definition of an “executory contract.” *Matter of Crippin*, 877 F.2d 594, 596 (7th Cir. 1989). However, the majority of courts confronting this issue have adopted the definition offered by Professor Vern Countryman, which provides:

A contract under which the obligations of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other.

Countryman, *Executory Contracts in Bankruptcy*: Part I, 57 Minn. L. Rev. 439 (1973). The United States Fifth Circuit Court of Appeals has adopted the Countryman definition of executory contracts. *See, e.g., Stewart Title Guar. Co. v. Old Republic Nat'l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1994). The legislative history behind § 365 also supports the application of the Countryman definition. *See* S. Representative No. 989, 95th Cong., 2d Sess. 58, reprinted in 1978 U.S. Code & Admin. News 5787, 5844 (“[t]hough there is no precise definition of what contracts are executory, it generally includes contracts on which performance remains due on both sides.”). Further, at least one court addressing the issue has held that the definition of an

executory contract should be very broad. *In re: III Enterprises, Inc.* V, 163 B.R. 453, 458 (Bankr. E.D. Pa. 1994), *aff'd*, *Pueblo Chemical, Inc. v. III Enterprises, Inc.* V, 169 B.R. 551.

11. An obligation is deemed “material” if its nonperformance would excuse the other party from performing its obligations under the contract. *Matter of Murexco Petroleum Co.*, 15 F.3d 60, 62-63 (5th Cir. 1994); *In re: WRT Energy Corp.*, 202 B.R. 579, 582 (Bankr. W.D. La. 1996). While federal law controls the issue of whether a particular contract is executory, the applicable state law controls the issue of whether an obligation is material. *See, e.g., In re: Streets & Beard Farm Partnership*, 882 F.2d 233, 235 (7th Cir. 1989). The determination of whether a particular contract is executory must be made on a case-by-case basis. The relevant date for analyzing whether a particular contract is executory is the date the bankruptcy petition was filed. *In re: General Homes Corp.*, 199 B.R. 148, 151 (S.D. Tex. 1996); *In re: Spectrum Information Technologies, Inc.*, 190 B.R. 741, 747 (Bankr. E.D. N.Y. 1996). Material obligations remain under the Agreement, which are required in order for the Debtors to realize the benefits of the Agreement; accordingly, the Agreement is an executory contract.

12. Under § 365, a debtor generally has the power, subject to court approval, to either assume or reject executory contracts to which it is a party. 11 U.S.C. § 365(a). In judging the propriety of a debtor’s decision to reject an executory contract, most courts, including the Fifth Circuit, have applied a “business judgment” standard. *See Sharon Steel Corp. v. National Fuel Gas Distrib. Corp. (In re: Sharon Steel Corp.)*, 872 F.2d 36, 39-40 (3rd Cir. 1989); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *see also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (describing business judgment test as “traditional”). The Debtors to date have neither assumed nor rejected any executory contracts, although they have a pending motion for authority to assume several contracts.

### **Relief Requested**

13. In the exercise of their business judgment, the Debtors have determined that rejection of the Agreement is in their best economic interests and necessary to enable them to continue the operation of their business, and they request that this Court approve rejection of the Agreement. The Debtors believe that rejection of the Agreement should be permitted.

14. The Debtors further request that the Court allow them sixty (60) days from the entry of an Order to sell and/or remove the Product from the Warehouse.

15. The Debtors further request that this Court direct LPC to continue performance under and compliance with the Agreement and to provide, during said sixty (60) day period and until Debtors have removed and/or sold all the Product, all services required under the Agreement.

16. The Debtors will pay LPC for all post-petition services provided pursuant to the Agreement in the ordinary course of business as and when the same become due and payable and pursuant to the terms of the invoices issued by LPC, which terms are "net 30" of invoice.

17. Because the Debtors are requesting authority to immediately remove the Product from LPC's possession, thereby resulting in the loss of the warehouseman's lien, the Debtors request that the Court direct LPC to immediately release all Product from its possession at the direction of the Debtors but that said lien attach to the proceeds of the sale of said Product. The Debtors will segregate and demonstrate that said proceeds have been designated such that they remain readily identifiable and therefore provide to LPC adequate protection pending entry of an order hereon. Upon entry of an order granting this Motion, the Debtors will satisfy LPC's lien in full from the proceeds or otherwise.

18. The rejection and the terms for satisfaction of LPC's lien have been discussed and mutually agreed upon between the Debtors and LPC. They have further agreed that, due to LPC's oversecured position, payment by MPI of \$30,913.69 will satisfy in full the Prepetition Debt owed to LPC.

19. The Debtors believe that nothing herein runs afoul of the proposed DIP Facility or any obligations of the Debtors to Harris Trust and Savings Bank, in its capacity as Agent for the DIP Lenders or the Pre-Petition Lenders.

WHEREFORE, PREMISES CONSIDERED, the Debtors request that the Court enter an Order granting the following relief, which has been agreed to by LPC:

A. approving the Debtors' rejection of the Agreement attached as Exhibit "A", pursuant to the terms described hereinabove and in accordance with § 365 of the Bankruptcy Code;

B. LPC agrees to immediately resume and continue performance under the Agreement, including loading, unloading and release of all Product at MPI's direction, until the earlier of either: a) the Debtors' removal of all Product in LPC's possession; or b) the date 60 days from the date of the entry of an order granting the Motion;

C. authorizing the Debtors to satisfy LPC's warehousemen's lien in the amount of the Prepetition Debt upon entry of an Order granting this Motion;

D. authorizing the Debtors to pay postpetition amounts as they become due and payable in the ordinary course of business according to the customary invoice terms, which are 30 days from the date of the invoice; and

E. such other relief to which the Debtors are entitled.

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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Alan J. Bogdanow

William D. Young

**VINSON & ELKINS L.L.P.**

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2001 Ross Avenue

Dallas, TX 75201-2975

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Facsimile: (214) 220-7716

## STORAGE AND HANDLING AGREEMENT

This Storage and Handling Agreement ("Agreement") is made and entered into this 1<sup>st</sup> day of October, 1999, by and between **LPC Packaging, Inc.** ("LPC"), a California corporation, and **Mississippi Potash, Inc.** ("MPI"), a Mississippi corporation.

### WITNESSETH:

WHEREAS, MPI desires to store its standard and granular grade potash fertilizer ("Product") at LPC's storage facility in Stockton, California (the "Facility"), and for LPC to perform certain warehousing services for MPI at the Facility, including, but not limited to, providing personnel and equipment to (i) unload Product delivered to the Facility in rail hopper cars, (ii) transfer Product into the Facility, (iii) act as warehouseman for Product stored at the Facility, (iv) remove Product from the Facility when requested by MPI, and (v) weigh and load outgoing Product onto trucks for shipment to MPI's customers; and

WHEREAS, LPC is willing to allow MPI to store Product at the Facility and to perform the foregoing warehousing services at the Facility for MPI;

NOW, THEREFORE, for and in consideration of the mutual undertakings of the parties, it is hereby understood and agreed by and between the parties as follows:

1. The initial term of this Agreement shall be for a period of one (1) year, commencing October 1, 1999, and ending September 30, 2000; provided, however, that it will thereafter be automatically renewed for successive one (1) year terms unless written notice of termination is received by either party at least ninety (90) days prior to the end of the initial or the then-current renewal term. The term "Contract Year" as used herein shall mean a twelve (12) month period extending from October 1 to September 30.

2. During the term of this Agreement, LPC agrees to make two separate storage bins available to MPI at the Facility. One storage bin shall be capable of receiving and storing two thousand (2,000) tons of standard form Product, and the other bin shall be capable of receiving and storing five hundred (500) tons of granular form Product. LPC warrants that it will not in any way commingle Product received from MPI with product received from another source and that it will *prominently* post signs on the two bins to place LPC employees and other third parties on notice that the Product stored in said bins is owned by MPI. The term "ton" as used herein shall mean a short ton of two thousand (2,000) pounds.

3. LPC, as an independent contractor and at its own expense, shall (i) provide all power, supervision, labor, loading and unloading equipment, certified truck scales and other material, equipment and/or services required to receive Product by rail, unload and transfer Product to the Facility, (ii) provide warehousing services while Product is stored at the Facility, (iii) remove Product from the Facility when requested by MPI, (iv) weigh outbound Product and (v) load outbound Product for shipment by truck as designated by MPI. LPC shall maintain and keep in good repair all equipment required to perform such services, including, but not limited to, loading, unloading and conveying equipment installed at the Facility. LPC shall conduct all unloading and loading operations Monday through Friday between the hours of 7:00 a.m. and 3:30 p.m. (the "Normal Hours of Operation") unless MPI gives LPC reasonable advance notice of its need to have Product unloaded or loaded outside of LPC's Normal Hours of Operation. In the





event that MPI requests LPC to unload or load Product at any time other than LPC's Normal Hours of Operation, MPI agrees to pay LPC an overtime rate of Seventy-five Dollars (\$75.00) per hour for the time spent by LPC performing the requested work.

4. MPI will keep LPC informed as to the expected arrival of Product by rail hopper cars. LPC agrees to unload the Product within a period of time that shall not extend beyond the free time allowed for the rail hopper cars. In the event that demurrage does accrue, the same shall be payable by LPC; provided, however, that MPI shall have the right to pay said demurrage charge, and LPC agrees to fully reimburse MPI for said demurrage incurred as a result of failure to unload the rail hopper cars in a timely manner.

5. MPI agrees to pay LPC a handling charge based upon the amount of Product actually handled, payable in the amount of Eleven and 50/100 Dollars (\$11.50) per ton of Product going "into" the Facility. MPI agrees to put at least ten thousand (10,000) tons of Product through the Facility during each Contract Year. If MPI fails to put ten thousand (10,000) tons of Product through the Facility during any Contract Year, MPI will pay to LPC, on or before thirty (30) days after the end of the relevant Contract Year, an amount equal to Eleven and 50/100 Dollars (\$11.50) multiplied by the difference between ten thousand (10,000) tons and the actual number of tons put through the Facility in that Contract Year. LPC will invoice MPI on a monthly basis, and MPI will pay any charges that are due LPC within thirty (30) days of receipt of such monthly invoice.

6. LPC agrees to maintain records of receipt from and deliveries to MPI and to furnish MPI monthly inventory reports thereof, including all additions to, and withdrawals from, the Facility and the net balance of Product on hand. Said records shall be maintained in such a manner that the tonnage of Product received by rail hopper cars is shown and the amount of Product loaded onto trucks is shown. LPC shall weigh, or be responsible for seeing that outgoing trucks are weighed, and provide scale and delivery tickets to MPI. The weight of incoming Product shall be conclusively established by the origin bill of lading unless in obvious error. The weight of outgoing Product shall be conclusively established by the certified scales at the Facility unless in obvious error.

7. MPI shall have the right of reasonable ingress and egress to the Facility during reasonable hours in connection with the handling of Product hereunder and to inspect the records maintained by LPC in connection therewith. It is agreed that there is a normal shrinkage in the handling of bulk fertilizer and that a loss of one percent (1%) of throughput is reasonable and customary. LPC shall not be responsible for shrinkage up to one percent (1%), but shall be responsible to MPI for losses exceeding one percent (1%). If MPI ascertains that there has been any such excess loss, reimbursement therefor to MPI shall be at MPI's retail sales price as shown by its price list at such time, which reimbursement shall be, at MPI's discretion, payment of MPI's invoice or a credit against any sums due or which may become due to LPC hereunder.

8. It is understood and agreed that LPC is an independent contractor and has no authority to bind MPI hereunder. No relationship of employer-employee or master and servant is intended, nor shall it be construed to exist, between LPC and MPI or between MPI and any servant, agent, employee and/or subcontractor of LPC performing the services described herein. LPC shall select, furnish and provide all tools, materials and equipment; shall select and pay its own servants, agents, employees and/or subcontractors; and shall comply with all requirements of law with respect to tax withholdings, unemployment insurance and other obligations it bears as an

employer. Neither LPC nor its servants, agents, employees or subcontractors shall be subject to any orders, supervision or control of MPI.

9. MPI shall in no way be liable for any personal injuries (including death) whether the same be injuries to MPI employees, LPC employees, or to other persons, or damage to any type of property, caused by, resulting from or attributable to the operation of the Facility or the storage of Product at the Facility. LPC agrees to defend, indemnify and hold MPI harmless from any and all claims (including claims made by employees, agents or representatives of LPC) for personal injury, wrongful death, and/or property damage, including all damages, settlements, fees, costs and expenses associated with resolving and defending such claims that arise, directly or indirectly, from the performance of services hereunder or MPI's storage of Product at the Facility, except to the extent that any such claims were caused by the negligence of MPI. LPC also agrees to maintain, throughout the time this Agreement is in effect, comprehensive general liability insurance covering the services provided hereunder by LPC with a minimum policy limit of One Million Dollars (\$1,000,000) and a maximum deductible of Twenty-five Thousand Dollars (\$25,000) and employer's liability insurance, which includes statutory workers' compensation coverage, with a minimum policy limit of Two Hundred Fifty Thousand Dollars (\$250,000) and a maximum deductible of Ten Thousand Dollars (\$10,000). LPC also agrees to name MPI as an additional insured under said policies and, upon MPI's request, to provide certificates of insurance confirming its compliance with this provision. It is further understood and agreed that any insurance that may be carried by MPI is for MPI's own benefit and shall in no way relieve LPC of its liabilities and responsibilities under this Agreement.

10. LPC shall pay all taxes and fees assessed for the privilege of warehousing, but will not be responsible for the payment of any taxes assessed on MPI's Product stored at the Facility.

11. Neither LPC nor MPI shall assign or permit any transfer by operation of law or otherwise of any or all of its rights and duties hereunder without the prior written approval of the other party, which shall not be unreasonably withheld; provided, however, that MPI can assign its rights and obligations hereunder to an affiliate without having to obtain the written approval of LPC.

12. LPC shall execute such financing statements or other documents deemed appropriate by MPI to protect MPI's ownership of Product stored at the Facility against claims of creditors or other persons.

13. If, during the term of this Agreement, LPC shall file a voluntary petition in bankruptcy, or make an assignment for the benefit of creditors, or be adjudicated bankrupt, or be declared insolvent, or fail to perform any material part of this Agreement, including the obligations specifically set forth herein, and such default shall continue for ten (10) days after MPI has given written notice of such default to LPC, then and thenceforth, in any of said events, this Agreement may be terminated, at the option of MPI, and MPI may at any time after the date of the notice of termination remove all Product belonging to MPI from the Facility. The cost of removal of Product upon termination shall be deducted from the amount of compensation otherwise payable by MPI to LPC for the handling thereof. The right of MPI to terminate this Agreement as herein set forth is in addition to, and not in exhaustion of, such other rights that may accrue to MPI because of the failure of LPC to fulfill, perform or observe the obligations, agreements, or covenants of this Agreement, and the exercise or pursuit by MPI of any of the rights or causes of action accruing hereunder shall not be in exhaustion of such other rights or causes of action that MPI might otherwise have. Upon such termination, MPI shall have no further obligation hereunder.

14. If either LPC or MPI is unable to perform its obligations hereunder and such inability shall result from an act of God or the public enemy, fire, flood, explosion, war, perils of the sea, government regulations, expropriation, confiscation, insurrection, riot, sabotage, strikes, labor trouble or other causes of like nature beyond the reasonable control of the party affected, such inability shall be excused hereunder.

15. Although MPI shall maintain title to the Product stored at the Facility at all times, LPC agrees that it will be responsible for any damage to, or destruction or loss of, Product while in LPC's care, custody and control unless such damage, destruction or loss is caused by MPI's negligence.

16. This Agreement constitutes the entire agreement between MPI and LPC and there are no understandings, representations or warranties of any kind, express or implied, not specifically set forth herein. No agreement in any way modifying this Agreement shall be binding unless reduced to writing and signed by both parties. This Agreement shall be construed under and governed by the laws of the state of California.

17. All notices and other communications given hereunder shall be validly given or made if in writing, when delivered personally (by courier service or otherwise), when delivered by facsimile, or when actually received when mailed by first-class certified U.S. mail, postage prepaid and return receipt requested, and all legal process with regard hereto shall be validly served when served in accordance with applicable law, in each case to the address of the party to receive such notice or other communication set forth below, or at such other address as either party hereto may from time to time advise in writing the other party pursuant hereto:

If to LPC:                   LPC Packaging, Inc.  
P.O. Box 600  
11199 North Highway 99 ( Zip 95240)  
Lodi, CA 95241  
Attention: Jack Garibaldi, Plant Manager  
Telephone: (209) 939-1753  
Facsimile: (209) 939-9827

If to MPI:                   Mississippi Potash, Inc.  
P.O. Box 1914  
3622 Highway 49 East  
Yazoo City, MS 39194  
Attention: Rosalyn B. Glascoe, Secretary  
Telephone: (601) 751-2216  
Facsimile: (601) 751-2232

*With copy to:*           Mississippi Potash, Inc.  
P.O. Box 1914  
3622 Highway 49 East  
Yazoo City, MS 39194  
Attention: Lamar Self  
Director of Distribution and Customer Service  
Telephone: (601) 751-2393  
Facsimile: (601) 751-2928

LPC or MPI may change the address and name of addressee to which subsequent notices are to be sent by notice to the other given as aforesaid.

18. Any failure by either party at any time, or from time to time, to enforce or require the strict keeping and performance of any term and condition of this Agreement shall not constitute a waiver by such party of any subsequent breach of such term or condition or of the right of such party to avail itself of such remedies as it may have for any such subsequent breach.

IN WITNESS WHEREOF, LPC and MPI have each caused this Agreement to be signed as of the date first above written.

**LPC PACKAGING, INC.**

**MISSISSIPPI POTASH, INC.**

By: \_\_\_\_\_

Typed Name:

Title:

By: \_\_\_\_\_

Joe A. Ewing

Vice President of Marketing

**AMENDMENT NO. 1  
TO  
STORAGE AND HANDLING AGREEMENT**

This Amendment No. 1 to Storage and Handling Agreement, by and between **LPC Packaging, Inc.** ("LPC"), a California corporation, and **Mississippi Potash, Inc.** ("MPI"), a Mississippi corporation is effective as of October 1, 2001.

WITNESSETH:

WHEREAS, LPC and MPI are parties to that certain Storage and Handling Agreement dated October 1, 1999, whereby MPI stores standard and granular grade potash fertilizer in two separate storage bins located at LPC's storage facility in Stockton, California, and LPC performs certain warehousing services for MPI at the facility (the "Agreement"); and

WHEREAS, LPC and MPI wish to amend the Agreement as provided for in paragraph 16 thereof;

NOW, THEREFORE, the parties hereby agree as follows:

1. The second sentence of paragraph numbered 2 is hereby amended by changing the amount of standard form Product being stored in one of the bins from two thousand (2,000) tons to one thousand (1,000) tons. Said sentence as hereby amended shall read in its entirety as follows:

One storage bin shall be capable of receiving and storing one thousand (1,000) tons of standard form Product, and the other bin shall be capable of receiving and storing five hundred (500) tons of granular form Product.

2. Paragraph numbered 5 of the Agreement is hereby amended by deleting the same in its entirety and inserting the following in lieu thereof:

MPI agrees to pay LPC a handling charge based upon the amount of Product actually handled, payable in the amount of Eleven and 50/100 Dollars (\$11.50) per ton of Product going "into" the Facility. MPI agrees to put at least four thousand (4,000) tons of Product into the Facility during each Contract Year. The handling charge for said four thousand (4,000) tons of Product shall be payable in twelve (12) equal monthly installments of Three Thousand Eight Hundred Thirty-three and 33/100 Dollars (\$3,833.33). If and when said four thousand (4,000) tons of Product have been put into the Facility, LPC shall bill MPI an amount equal to Eleven and 50/100 Dollars (\$11.50) per ton for each additional ton of Product going into the Facility. LPC will invoice MPI on a monthly basis, and MPI will pay any charges that are due LPC within thirty (30) days of receipt of such monthly invoice.

3. Except as amended hereby, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 to Storage and Handling Agreement to be effective as of the date set forth above.

**LPC PACKAGING, INC.**

**MISSISSIPPI POTASH, INC.**

By: \_\_\_\_\_  
Typed Name:  
Title:

By: \_\_\_\_\_  
Joe A. Ewing  
Vice President of Marketing

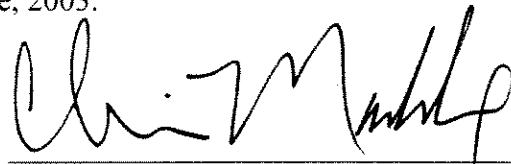


### CERTIFICATE OF SERVICE

I do hereby certify that I have this date caused to be served *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	James H. Shenwick Carnegie Hall Tower 152 West 57th Street 35th Floor New York, New York 10019

SO CERTIFIED, this the 19<sup>th</sup> day of June, 2003.



JAMES W. O'MARA  
DOUGLAS C. NOBLE  
CHRISTOPHER R. MADDUX