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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI BY _____ DEPUTY

In re:)
)
MISSISSIPPI CHEMICAL)
CORPORATION, *et al.*¹) CASE NO. 03-02984 WEE
) Chapter 11
Debtors.) **Jointly Administered**
_____)

**MOTION FOR ORDER AUTHORIZING PAYMENT OF PRE-PETITION CLAIMS OF
CERTAIN ESSENTIAL TRADE CREDITORS**

COME NOW Mississippi Chemical Corporation, *et al.*, Debtors and debtors-in-possession in these jointly administered reorganization proceedings ("Debtors"), and submit their Motion for an order authorizing payment of pre-petition claims of certain Essential Trade Creditors in the ordinary course of business (the "Motion"). In support of the Motion, the Debtors would 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 and 363 of the Bankruptcy Code.

Relief Requested

4. The Debtors purchase specialized goods and services, including parts and services necessary for the operation of their plants and equipment, from certain vendors who are critical to the Debtors' operations. These necessary vendors are identified on Exhibit "A" attached hereto and incorporated herein by reference (collectively, the "Essential Trade Creditors").

5. The Debtors represent that maintaining their business relationship with each of the Essential Trade Creditors is extremely important. The specific explanations of the importance of each Essential Trade Creditor are provided on Exhibit "A". If the Debtors damage their relationships with these Essential Trade Creditors, or experience any material interruption in the provision of these goods and services, their ability to create future revenue would suffer and thereby have a significant adverse impact upon the Debtors' reorganization efforts.

6. The Debtors' obligations to these Essential Trade Creditors include, among other things, obligations to (a) suppliers of parts for plant equipment, (b) providers of services incidental to compliance with certain regulations, and (c) providers of services necessary to the Debtors' operations. Some Essential Trade Creditors are among only a handful of such suppliers available to the Debtors. In many circumstances, the Debtors may not be able to locate suitable replacement providers. Other Essential Trade Creditors provide goods for a reduced cost. The remaining Essential Trade Creditors are parties providing services that are central to the Debtors' continued business operations.

7. The Debtors have carefully identified those Essential Trade Creditors whose pre-petition claims they believe need to be paid immediately in order for the Debtors to continue

receiving post-petition goods or services therefrom. The Debtors believe that it is necessary to pay these certain Essential Trade Creditors to prevent some of them from refusing to sell goods and services to the Debtors on customary trade terms, or to ensure that the Essential Trade Creditors do not proceed to interrupt the provision of the goods and services.

8. Some of the Essential Trade Creditors may refuse to allow the Debtors to continue on such terms as they enjoyed pre-petition and may demand cash-on-delivery or other less favorable terms. Others may altogether refuse to accept further orders due to the unpaid pre-petition claims. Such actions could jeopardize the Debtors' liquidity and hinder their reorganization capabilities. Furthermore, deterioration of trade credit -- a simple, inexpensive and advantageous source of financing now available to the Debtors -- and cancellation or disruption of services or goods would jeopardize the Debtors' competitiveness in the industry and their ability to maintain the value of their business. Failure to pay the enumerated claims of the Essential Trade Creditors and the potential harm that could result would certainly be detrimental to the interests of the estate and all interested parties herein.

9. Conversely, enabling the Debtors to reinstate or maintain, as the case may be, their traditional trade credit terms will allow them to maximize working capital while enabling the Debtors to maintain their current levels of operations. Furthermore, granting the relief requested herein will avoid the time and expense of litigating reclamation claims and other motions by some of the Essential Trade Creditors. It will be beneficial to all interested parties herein for the Debtors to continue purchasing their goods and services from the Essential Trade Creditors according to terms and conditions established prior to the Petition Date.

10. The Debtors believe that most, if not all, of the pre-petition claims of the Essential Trade Creditors constitute current obligations that are unpaid only due to the timing of the filing

of the Debtors' petitions. Stated differently, the Debtors' trade payables are only those that arose in the most recent billing cycles prior to the Petition Date of each respective Essential Trade Creditor.

11. The Debtors have identified only those few Essential Trade Creditors that are necessary to prevent damage to these relationships or jeopardizing the terms they enjoyed prior to the Petition Date.

Authority for Relief

12. The Court's general equitable powers are codified in section 105(a) of the Bankruptcy Code. Section 105(a) empowers the Court to "issue any order, process, or judgment that is necessary to carry out the provisions of this title." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (citing NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984)). Under section 105(a), a court "can permit a pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor," In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992), and if "payment of the pre-petition claims is 'critical to the debtor's reorganization efforts.'" In re Just for Feet, Inc., 242 B.R. 821, 826 (Bankr. D. Del. 1999)(citing In re Financial News Network, Inc., 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991)).

13. The Debtors submit that the Court is authorized to grant the relief requested pursuant to § 105(a), which provides in pertinent part that "the court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." The Debtors strongly believe that the continuation of favorable trade terms and credit are imperative

to their reorganization efforts and that payment of the pre-petition claims of the Essential Trade Creditors is essential to ensure such a result. The Court may exercise its equitable powers to grant the relief requested in this Motion.

14. Further, the Debtors aver that § 105(a), in conjunction with § 1107(a), fully permit and authorize the Court to enter such an order approving this Motion.

15. As a fiduciary to the creditors and equity holders of the Debtors' estates under § 1107(a), the Debtors must seek to protect and preserve the value of the estates. 7 COLLIER ON BANKRUPTCY ¶ 1107.02[4] (15th ed. revised). Each of the estates now before the Court are clearly most valuable as going concerns, and the continued and uninterrupted operation of the Debtors' businesses is vital to sustaining their value. Ensuring that the Essential Trade Creditors continue to provide the Debtors with their respective goods and services is essential to the Debtors' preservation of the value of these estates and their ability to most successfully reorganize in a fashion that is best for all interested parties.

16. The authority to grant this relief is further based on the Doctrine of Necessity, which has been explained by the Third Circuit and which "teaches no more than, if payment of a claim that arose prior to reorganization is essential to the continued operation of the [business] during the reorganization, payment may be authorized even if it is made out of corpus." In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3rd Cir. 1981); see also In re Sharon Steel Corp., 159 B.R. 730, 736 (Bankr. W.D. Penn. 1993)(holding same); Ionosphere Clubs, 98 B.R. at 176; In re Chateaugay Corp., 80 B.R. 279 (S.D.N.Y. 1987). It is imperative that the Debtors continue their relationships with the Essential Trade Creditors, as more fully set forth above. Further, to prevent undue harm to the estates or the Debtors' reorganization, the Debtors believe

that payment of their pre-petition claims is the most practical alternative for accomplishing all these goals and does not unduly prejudice other interested parties.

17. Therefore, the Debtors request that the Court exercise its authority under § 105(a) to authorize payment of the pre-petition claims of the Essential Trade Creditors to enable the Debtors to fulfill their duties as debtors-in-possession and to effectively reorganize under Chapter 11.

Proposed Terms

18. The Debtors have specifically identified the Essential Trade Creditors. Attached as Exhibit "A" hereto is a schedule of the Essential Trade Creditors that the Debtors seek to pay together with the amount owed to each.

19. The Debtors further propose that, if granted the authority to pay the pre-petition claims of the Essential Trade Creditors, any Essential Trade Creditors receiving such payment shall first agree in writing to (a) continue or reinstate, as the case may be, the trade terms that existed and were in effect during the one year period pre-petition ("Customary Trade Terms"), (b) forego any declaration of breach or default and/or (c) provide the Debtors such other terms as are mutually agreeable between the parties. The proposed form agreement the Debtors intend to present to each Essential Trade Creditor for execution in accordance with this paragraph is attached hereto as Exhibit "B".

20. In the event that any Essential Trade Creditor receiving payment pursuant to any order granting this Motion thereafter refuses to continue supplying goods or services according to Customary Trade Terms or other terms agreeable to the Debtors, the Debtors reserve the right to declare any payment made thereto in satisfaction of a pre-petition claim a post-petition advance that the Debtors shall be entitled to recover from such Essential Trade Creditor either in

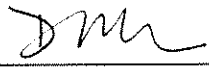
cash or goods in equal amount and/or apply toward any then outstanding post-petition obligations. Upon such recovery, the pre-petition claim against such Essential Trade Creditor shall be reinstated.

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

- A. Granting the Motion in its entirety;
- B. Authorizing the Debtors to pay pre-petition claims of Essential Trade Creditors in the amounts stated on Exhibit "A" hereto;
- C. Granting such other and more general relief as the Court deems just.

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

PHELPS DUNBAR LLP
111 East Capitol Street, Suite 600
Post Office Box 23066
Jackson, Mississippi 39225-3066
Telephone: (601) 352-2300
Facsimile: (601) 360-9777

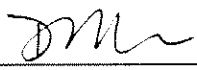
Alan J. Bogdanow
William D. Young
VINSON & ELKINS L.L.P.
3700 Trammel Crow Center
2001 Ross Avenue
Dallas, TX 75201-2975
Telephone: (214) 220-7700
Facsimile: (214) 220-7716

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.A. P.O. Box 3919 Jackson, MS 39207-3919
Ronald H. McAlpin Assistant U.S. Trustee Suite 706 100 W. Capitol Street Jackson, Mississippi 39269	Bankruptcy Management Corporation Attn: Tinamarie Feil 1330 E. Franklin Ave. El Segundo, CA 90245

SO CERTIFIED, this the 15 day of July, 2003.



JAMES W. O'MARA
DOUGLAS C. NOBLE

EXHIBIT A

CRITICAL VENDORS

MISSCHEM NITROGEN, L.L.C.

Vendor: Compressor Controls Corporation (CCC)
Address: 4725 121st Street
Des Moines, IA 50322-2316

- Amount Needed to Cure: \$ 7,451
- Expected Future Amount \$51,000 by 12/31/03

Why Vendor is Critical: The control systems for the major rotating equipment for the No. 4 Ammonia plant are manufactured by CCC, which is the sole source for technical support and parts. These control systems are required for operation of the rotating equipment, including the Atlas Copco compressor, which in turn is required for operation of the entire No. 4 Ammonia plant. Their technical services are indispensable for start up of the No. 4 Ammonia plant.

Vendor: Atlas Copco
Address: 46 School Road
Vooreheesville, NY 12186-9698

- Amount Needed to Cure: \$264,617
- Expected Future Amount \$100,000 until end of project (July 30, 2003)

Why Vendor is Critical: Vendor is the original equipment manufacturer for the #4 Ammonia plant compressor. They are the provider of parts; they possess exclusive engineering and technical knowledge of this equipment; and they have the original drawings and dimensions. Their support and parts are required to maintain manufacturer warranties. The current compressor repair job is in progress and is required for operation of the #4 Ammonia plant.

CRITICAL VENDORS

MISSISSIPPI PHOSPHATES CORPORATION

Vendor: **US Fusion**
Address: 2324 S. Commerce Avenue
Gonzales, LA 70737

- Amount Needed to Cure: \$111,300
- Expected Future Amount \$259,200 by 06/30/05

Why Vendor is Critical: The Debtor has undertaken the closure of its older gypsum disposal area, usually referred to as the "west gyp stack." The closure project was in progress on the date Debtor filed its petition. The project was mandated by the Mississippi Department of Environmental Quality ("MDEQ"), and the Debtor and MDEQ had previously defined the scope of work and schedule through agreement. It is imperative that the project be continued without interruption.

This vendor has provided HDPE pipe for the drainage system on the closure project of the west gypsum stack and is an integral part of the project. The vendor is a primary supplier of HDPE pipe and accessories within the Gulf States Region. The vendor is critical to the success of the closure project, including its later phases in the Spring of 2004 and 2005.

Vendor: **Puckett Machinery**
Address: P.O. Drawer 2579
Gulfport, MS 39505-2579

- Amount Needed to Cure: \$ 11,421
- Expected Future Amount \$ 60,000 by 12/31/03

Why Vendor is Critical: The vendor is the local distributor for Caterpillar parts and service in Debtor's area. Debtor operates 23 pieces of equipment made by Caterpillar (mainly payloaders and dossiers) that are vital to the operation of the plant. When this equipment becomes inoperable, repair service and/or parts are needed quickly and therefore must be obtained locally. Ordering service and parts from another distributor is not a practical option because of the inherent time constraints. Debtor does a significant amount of business with this vendor.

Vendor: Gulf Engineering Company, Inc.
Address: P.O. Box 10067
Jefferson, LA 70181-0067

- Amount Needed to Cure: \$ 39,341
- Expected Future Amount \$ 50,000 by 12/31/03

Why Vendor is Critical: This vendor provides critical off-site repair services for high speed rotating machinery used in sulfuric acid production and in-plant repairs to steam generation equipment that is essential to sulfuric acid production. Sulfuric acid production is, in turn, critical for overall plant, operation. The services provided by Gulf Engineering are not available from any other local source, and the inherent time constraints in obtaining repair services render more distant options unavailable to Debtor as a practical matter.

Vendor: N.F.M.
Address: P.O. Box 357N
Memphis, TN 38150-0000

- Amount Needed to Cure: \$ 2,395
- Expected Future Amount \$12,000 by 12/31/03

Why Vendor is Critical: This vendor manufactures special filter cloth for filters used in the phosphoric acid plant and is the only known source for this unique filter cloth. These filter cloths are vital to the operation of the phosphoric acid plant, which in turn is essential for the operation of Debtor's plant as a whole.

Vendor: Process Pump Repair, Inc.
Address: 1438 Industrial Parkway
P.O. Box 501
Saraland, AL 36571

- Amount Needed to Cure: \$45,583
- Expected Future Amount \$25,000 by 12/31/03

Why Vendor is Critical: This vendor manufactures precision assemblies used in Debtor's sulfuric acid plant sulfur burners. These components are not available from any other source known to Debtor. The sulfur burners are critical for sulfuric acid plant operation, which in turn is critical for Debtor's overall plant operation.

Vendor: Tuthill Energy Services/Coppus
c/o Delta Process Equipment, Inc.
Address: P.O. Box 92794
Chicago, IL 60675-2794

- Amount Needed to Cure: \$71,058
- Expected Future Amount \$85,000 by 12/31/03

Why Vendor is Critical: Debtor's plant operates numerous coppus turbines that power sulfuric acid circulating pumps. The turbine/pump combinations are critical elements required for sulfuric acid production. Tuthill Energy Services / Coppus is the sole source for turbine parts which are required to keep these turbines operational. Sulfuric acid plant operation is critical for Debtor's overall plant operation.

Vendor: Samco Enterprises, Inc.
Address: P.O. Box 60829
Houston, TX 77205

- Amount Needed to Cure: \$18,436
- Expected Future Amount \$25,000 by 12/31/03

Why Vendor is Critical: This vendor is the only known source of replacement parts for the plant's ammonia storage area refrigeration compressor. Operation of the compressor is critical because stored ammonia must be kept at the proper temperature in order to avoid flaring or venting ammonia. The latter are costly procedures and can give rise to environmental and safety problems.

CRITICAL VENDOR

MISSISSIPPI POTASH

Vendor:

Fenner Nationwide/Scandura

Address:

146 South Westwood
Toledo, OH 43697

- Amount Needed to Cure: \$126,996 for belts used prepetition
- Expected Future Amount: \$312,900 by 12/31/03

Why Vendor is Critical: Vendor is the only manufacturer of PVC Conveyor Belt made to NCB-158 Safety Standards, this being the only belt used for underground conveyor belts in Debtor's mines. Other available conveyor belts not manufactured to said Standards will smoke and burn in the event of an underground fire, thus causing death by smoke inhalation in the event of even a small fire underground. In addition, normal rubber belts will combust from friction when the belt slips. Another fire source is the many high voltage connections usually found on belt lines, so that an electrical problem can easily cause a fire. In fact, other mines suffer injuries in their workforces precisely because they do not use this vendor's belts. Debtor's Liability and Business Interruption insurance premiums are based upon Debtor's commitment to using this type of conveyor belt underground.

Since 1988, Fenner Nationwide has kept an inventory of its belts at Debtor's site—with no written agreement and with no charge to Debtor until Debtor actually uses the belts. This practice continued after Fenner Nationwide and Scandura, the last two manufacturers of this type of belt, merged to become the only remaining manufacturer. Debtor now needs this vendor to replenish its inventory on Debtor's site, which vendor has declined to do.

Vendor:

Highland Machinery

Address:

P. O. Box 215
Prestonburg, KY 41653

- Amount Needed to Cure: \$17,800
- Expected Future Amount: \$35,600 by 12/31/03

Why Vendor is Critical: Vendor is the sole source of an advanced design of underground conveyor belt feeders, which are better and much cheaper than those of other manufacturers. This vendor's feeders embody a revolutionary design concept which enables the vendor to sell its feeders for \$17,800 each, whereas other manufacturers' feeders cost approximately \$150,000 each. Debtor's intention is to standardize its entire mining operation with the installation of this vendor's feeders whenever existing feeders need to be replaced. There are more than 25 feeders in the mine, three of from Highland. Two more are needed now.

EXHIBIT B

[DEBTORS' LETTERHEAD]

July ____, 2003

Dear _____:

As you are no doubt aware, on May 15, 2003 (the "Petition Date"), Mississippi Chemical Corporation, *et al.* (the "Debtors") filed their voluntary petitions under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Mississippi, Western Division (the "Bankruptcy Cases" and the "Bankruptcy Court," respectfully). On July ____, 2003, we requested the Bankruptcy Court's authority to pay certain suppliers in recognition of the importance of our relationship with certain suppliers, and our desire that the Debtors' Bankruptcy Cases have as little effect on certain suppliers as possible. On _____, 2003, the Bankruptcy Court entered an order (the "Order") authorizing us, under certain conditions, to provisionally pay prepetition claims of certain trade creditors that agree to the terms set forth below and to be bound by the terms of the Order. A copy of the Order is enclosed.

In order to receive payment on prepetition claims, each selected trade creditor must agree to continue to supply goods to the debtors based on "Customary Trade Terms." In the Order, Customary Trade Terms are defined as the favorable trade terms, practices and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs) in effect between such trade creditor and the Debtors during the one year period prior and up to the Petition Date or such other trade terms, practices and programs that are at least as favorable as those that were in effect during such time.

For purposes of administration of this trade program as authorized by the Bankruptcy Court, the debtors and you agree as follows:

- 1 The estimated balance of prepetition Trade Claims (the "Prepetition Claim") the Debtors will provisionally pay is \$_____.
- 2 You will provide open credit terms as follows (if more space is required, attach continuation pages): _____

- 3 The open trade balance or credit line that you will extend to the Debtors for shipment of postpetition goods is \$_____ (which shall not be less than the greater of the open trade balance outstanding: (a) on _____, or (b) on the favorable trade terms during the one year period prior and up to the Petition Date).
- 4 You will hereafter extend to the Debtors all Customary Trade Terms (as defined in the Order and in this Trade Agreement).

Payment of your Prepetition Claim in the manner set forth in the Order may only occur upon execution of this letter by a duly-authorized representative of your company and the return of this letter to the Debtors. Your execution of this letter agreement and return of the same to the Debtors constitutes an agreement by you and the Debtors:

- (i) to the Customary Trade Terms and, subject to the reservations contained in the Order, to the amount of the Prepetition Claim set forth above;
- (ii) that during the pendency of the Bankruptcy Case, you will continue to supply the Debtors with goods or services pursuant to the Customary Trade Terms and that the Debtors will pay for such goods or services in accordance with Customary Trade Terms;
- (iii) that you have reviewed the terms and provisions of the Order and that you consent to be bound by such terms;
- (iv) that you will not separately seek payment for reclamation and similar claims outside of the terms of the Order unless your participation in the trade payment program authorized by the Order (the "Trade Payment Program") is terminated or unless the Company otherwise agrees; and
- (v) that if either the Trade Payment Program or your participation therein terminates as provided in the Order, any payments received by you on account of your Prepetition Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to you and that you will immediately repay to the Debtors any payments made to you on account of your Prepetition Claim to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding without the right of any set-offs, claims, provision for payment of reclamation or trust fund claims, or otherwise.

The Debtors and you also hereby agree that any dispute with respect to this letter agreement, the Order and/or your participation in the Trade Payment Program shall be determined by the Bankruptcy Court.

If you have any questions about this Agreement or our financial restructuring, do not hesitate to call.

Sincerely,

By: _____
Its: _____

Agreed and Accepted by:
[Name of Trade Vendor]

By: _____
Its: _____

Dated: _____