

UNITED STATES BANKRUPTCY COURT Southern District of Mississippi		PROOF OF CLAIM						
Name of Debtor: Mississippi Phosphates Corporation, et al.,		Case Number: 14-51677-KMS						
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.								
Name of Creditor (the person or other entity to whom the debtor owes money or property): United States of America on behalf of the United States Environmental Protection Agency		COURT USE ONLY <input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____ <input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.						
Name and address where notices should be sent: Karl Fingerhood, United States Department of Justice P.O. Box 7611 Washington, D.C. 20044-7611 Telephone number: (202) 514-7519 email: karl.fingerhood@usdoj.gov								
<div style="position: relative; height: 40px;"> RECEIVED APR 24 2015 BMC GROUP </div>								
Name and address where payment should be sent (if different from above): Telephone number: _____ email: _____								
1. Amount of Claim as of Date Case Filed: \$ <u>See Attached</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.								
2. Basis for Claim: <u>Environmental - See Attached</u> (See instruction #2)								
3. Last four digits of any number by which creditor identifies debtor:	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)						
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)								
Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ <u>See Attached</u> Basis for perfection: <u>See Attached</u> Amount of Secured Claim: \$ <u>See Attached</u> Amount Unsecured: \$ <u>See Attached</u>								
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.								
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B). </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4). </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5). </td> </tr> <tr> <td style="vertical-align: top;"> <input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7). </td> <td style="vertical-align: top;"> <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8). </td> <td style="vertical-align: top;"> <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(). </td> </tr> </table>			<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).	<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)().
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).						
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)().						
Amount entitled to priority: \$ _____								
<i>*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>								
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)								

MISS PHOSPHATES



00370

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

- ☐ I am the creditor. ☒ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)
- (See Bankruptcy Rule 3004.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Alan A. Annicella

Title: Physical Scientist

Company: U.S. Environmental Protection Agency

Address and telephone number (if different from notice address above): 61 Forsyth Street SW

Atlanta, GA 30303

Telephone number: (404) 562-8610

email: annicella.alan@epa.gov

Alan A. Annicella
(Signature)

4/22/15
(Date)

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

In re:)
)
)
 MISSISSIPPI PHOSPHATES)
 CORPORATION, *et al.*,)
)
)
 Debtors.)
)

CASE NO. 14-51667-KMS
Chapter 11
Jointly Administered

1. The United States of America (the “United States”) files this Proof of Claim at the request of the United States Environmental Protection Agency (“EPA”) against debtor Mississippi Phosphates Corporation, (“MPC”) for civil penalties under Sections 3008 of the Solid Waste Disposal Act, as amended by the Resources Conservation Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (HSWA) (collectively “RCRA”), 42 U.S.C. § 6928; civil penalties under Section 113(b) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(b); and civil penalties under Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d). In addition, with respect to equitable remedies that are not within the Bankruptcy Code’s definition of “claim,” 11 U.S.C. § 101(5), this Proof of Claim is filed only in a protective fashion.

2. At all times relevant to this Proof of Claim MPC has owned and operated a phosphate fertilizer manufacturing facility located in Pascagoula, Mississippi (“the Facility”). On October 27, 2014, MPC and its subsidiaries filed Chapter 11 bankruptcy petitions. The MPC Facility currently includes, *inter alia*, two sulfuric acid plants, a phosphoric acid plant, a diammonium phosphate

fertilizer ("DAP") granulation plant, phosphogypsum storage stacks, and an earthen ditch system and ponds for managing and storing process wastewater. There is also a deep water ship terminal at the facility for ocean bound vessels that deliver the phosphate rock and pick up DAP product for sale. Additionally, MPC operates a wastewater treatment plant, pursuant to a permit issued by the Mississippi Department of Environmental Quality ("MDEQ"), to treat and discharge process wastewater into Bayou Casotte under certain conditions.

3. Until December 2014, MPC produced phosphoric acid at its phosphoric acid plant, produced sulfuric acid at its two sulfuric acid plants, and produced DAP at its fertilizer plant ("DAP Plant"). At the phosphoric acid plant, sulfuric acid was reacted with mineral phosphate rock to produce phosphoric acid. At the DAP plant, phosphoric acid was then reacted with ammonia to produce DAP. The fertilizer is pelletized and shipped in bulk. As described below, process wastewaters from these distinct plants and processes were commingled and reused in a common wastewater management system.

4. Solid wastes, including process wastewaters from phosphoric acid production, sulfuric acid production and DAP fertilizer production are regulated under RCRA, the CWA, the Mississippi Solid Wastes Disposal Law of 1974, Miss. Code Ann. §§ 17-17-1, et seq., the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. §§ 49-17-1, et seq.; and regulations issued pursuant thereto.

5. Sulfuric acid utilized in the phosphoric acid plant is primarily produced onsite in one of two sulfuric acid plants. Elemental sulfur is piped to the facility, burned with oxygen and converted by catalyst into sulfuric acid. Air emissions from sulfuric acid production include sulfur dioxide and sulfuric acid mist and are regulated under the CAA.

6. The production of phosphoric acid generates two waste streams of great environmental significance. First, the solid waste known as phosphogypsum left after the reaction between the phosphate rock and sulfuric acid contains many heavy metals and is disposed of as a slurry in an on-site landfill/surface impoundment (generally referred to as a "gypsum stack"). The gypsum stacks at MPC are designated the East Stack and the West Stack. The East Stack is located adjacent to Bangs Lake and the West Stack is located adjacent to Bayou Casotte. Until December 2014, the East Stack remained in use. The West Stack was closed in 2005. Second, wastewater generated from phosphoric acid production has a very low pH and high concentrations of phosphorous, ammonia and fluorides. This wastewater is also prohibited from discharge and is managed onsite together with contaminated stormwater runoff that comes into contact with the gypsum stacks or wastewater. The solid wastes and wastewater from phosphoric acid production are disposed of in an on-site landfill and water conveyance system known as the Phosphogypsum Stack System, which consists of the East and West Stacks and a series of unlined cooling ponds and unlined earthen ditches around the two gypsum stacks. Regulations and the Facility's National Pollution Discharge Elimination System ("NPDES") Permit prohibit discharge of treated wastewater except under certain catastrophic or chronic rainfall events.

7. In 2005, a levee within the East Stack system failed after receiving heavy rains over the previous two weeks. The spill resulted in thousands of fish and shellfish killed in Bayou Cassotte and Bangs Lake. Other releases from the facility have occurred during hurricanes and tropical storms in 2012 and 2013 also resulting in smaller fish kills. Today, with the existing acreage of the landfill, an inch of rain produces 11.9 million gallons of wastewater. This waste water is reduced only by evaporation, consumption in the manufacturing process, or by wastewater treatment (maximum 1.5 million gallons per day).

8. Debtor also maintains the closed West Gypsum Stack. This stack ceased receiving phosphogypsum in 2002 and closure was completed in 2005. A seep of wastewater outside the confining perimeter dike of the closed West Stack was discovered in 2011. In 2012 EPA issued an administrative order to MPC under RCRA Section 7003 Order, as discussed further below, that required, among other things, assessment of the area affected by the seepage.

9. Important environmental concerns that need to be addressed at the MPC facility are discussed throughout this Proof of Claim and include the following: 1) The Wastewater Treatment Plant ("WWTP") must continue to operate and the Stacks need to be maintained to ensure contaminated wastewater holding ponds do not overtop and cause additional levee failures; 2) The Phosphogypsum Stack System must be closed and post-closure care must be maintained in accordance with RCRA hazardous waste regulations; 3) Maintenance of the East Stack including continued levee stabilization, inspection, and management of the millions of gallons of contaminated wastewater between the ponds within the levee/stack. The ponds are currently at a high level due to recent rainfall events, and the wastewater treatment is required to reduce the amount, because additional rainfall events could result in a catastrophic release; 4) In addition, certain monitoring requirements under the CAA need to be implemented and CWA monitoring must continue; and 5) Maintenance of the closed West Stack includes ensuring the cover remains intact and stable to prevent stormwater infiltration.

PROTECTIVE FILING FOR WORK OBLIGATIONS

10. The United States is not required to file a proof of claim with respect to MPC's injunctive obligation to comply with work requirements and compliance obligations imposed by court orders or by environmental statutes, regulations, administrative orders, licenses, or permits, because such obligations are not claims under 11 U.S.C. § 101(5). MPC and any reorganized debtor must

comply with such mandatory requirements. The United States reserves the right to take future actions to enforce any such obligations of MPC. While the United States believes that its position will be upheld by the appropriate court, the United States has included the aforementioned obligations and requirements in this Proof of Claim in a protective fashion, to safeguard against the possibility that MPC will contend that it does not need to comply with such obligations and requirements, and the appropriate court finds that it is not required to do so. Therefore, a protective contingent claim is filed in the alternative for such obligations and requirements, but only in the event that the appropriate court finds that such obligations and requirements are claims under 11 U.S.C. § 101(5), rather than obligations and requirements that MPC and any reorganized debtor must comply with. Nothing in this Proof of Claim constitutes a waiver of any rights by the United States or an election of remedies with respect to such rights and obligations.

11. Consistent with the foregoing, this Proof of Claim is also filed in a protective manner with respect to any and all compliance and work obligations of MPC under RCRA, 42 U.S.C. §§ 6901-6992k. RCRA establishes a comprehensive regulatory program for generators of hazardous waste and for owners and operators of facilities that treat, store, or dispose of hazardous waste. RCRA's Subchapter III (RCRA §§ 3001-3023, 42 U.S.C. §§ 6921-6940, known as "Subtitle C"), required EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store, or dispose of hazardous wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 270-279, comprise EPA's RCRA hazardous waste program.

12. Pursuant to RCRA Section 3006, 42 U.S.C. § 6926, EPA has authorized certain states, including Mississippi, to administer various aspects of the hazardous waste management program in such states. Pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), these authorized state

hazardous waste management programs are enforceable by EPA. Under RCRA, regulated entities are required to, *inter alia*, operate in compliance with RCRA regulatory requirements, implement closure and post-closure work and corrective action work, and perform any necessary action with respect to any imminent and substantial endangerment to health or the environment, as required by RCRA and/or RCRA permits, consent decrees, or administrative orders. The Phosphogypsum Stack System is a hazardous waste management unit under RCRA and is subject to the closure and post-closure requirements of 40 C.F.R. Part 264, Subparts G (Closure and Post-Closure), K (Surface Impoundments) and N (Landfills). Closure must be in a manner that "controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere." 40 C.F.R. § 264.111. Because the Phosphogypsum Stack System qualifies as a surface impoundment(s) and the East Stack qualifies as a landfill, the Facility is also subject to the closure and post-closure requirements of 40 C.F.R. Part 264, subparts K (Surface Impoundments) and N (Landfills). For surface impoundments closure requires either (1) the removal or decontamination of waste residues, containment system components, subsoils, structures and equipment, or (2) elimination of free liquids, stabilize remaining wastes, and cover the surface impoundment with a final cover designed to, *inter alia*, minimize migration of liquids through the cover and promote drainage. 40 C.F.R. § 264.228(a). Landfill closure regulations have similar final cover requirements. 40 CFR § 264.310. *See, also*, 42 U.S.C. §§ 6924, 6928, 6973. MPC is liable for any and all injunctive and compliance obligations that it is required to perform under RCRA, RCRA permits, and RCRA administrative orders. *See Paragraphs 23 - 39 infra.*

13. It is critical to protection of public health and safety and protection of the environment that the debtor bankruptcy estate, MPC, and/or its successor in interest, and/or purchaser of the assets of MPC through any sale properly take the following actions: 1) Close the Phosphogypsum Stack System to meet post-closure requirements under RCRA, including the continued operation of the wastewater treatment system; and 2) Continue post-closure maintenance of the West Stack, including treatment of any leachate/seepage, and remediate the contaminated groundwater beneath the Facility to acceptable standards. Pursuant to MPC's Solid Waste Management Permit from MDEQ and Mississippi Commission on Environmental Quality Agreed Order No. 4716-04. MPC maintains financial assurance in the form of a trust fund at Regions Bank to fund closure and /or post-closure care of the landfill at its facility. The sole beneficiary of the Trust Fund is MDEQ. To fund the Trust, Debtor has been making quarterly payments of \$200,000 into the fund since 2002. As of the end of September 2014, the Trust Fund value stood at approximately \$11,100,000. EPA estimates the costs associated with closure and post-closure are in the range of \$121,000,000. It is the United States' position that a proof of claim is not required to be filed for such injunctive, compliance, and regulatory obligations and requirements under RCRA. See Paragraph 10, *supra*.

14. Even though MPC is no longer manufacturing DAP, MPC is also subject to requirements under the CAA associated with MPC's continuing title V permit requirements with regard to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Radon Emissions from Phosphogypsum Stacks (40 C.F.R. Part 61, Subpart R) (Radon NESHAP). Because MPC ceased operations of the phosphoric acid and DAP plants in December 2014, the phosphogypsum stacks either are, or will become, inactive. Pursuant to 40 C.F.R. § 61.201, a stack is determined to be inactive when no further routine additions of phosphogypsum will be made and the

stack is no longer used for water management associated with the production of phosphogypsum. If a stack has not been used for either purpose for two years, it is presumed to be inactive. In accordance with 40 C.F.R. 40 C.F.R. § 61.202, once a phosphogypsum stack has become inactive, the owner/operator must assure that the stack does not emit more than 20 picocuries per cubic meter (20pCi/m³) of radon-222. Within 60 days of the date a stack becomes inactive, each owner/operator is required to test and monitor the stack for radon, in accordance with 40 C.F.R. Part 61, Appendix 13 (EPA Test Method 115). Within 90 days after the testing is conducted, a report is required to be submitted to EPA detailing the results of the radon test, along with other information, including a description of the control measures taken to decrease the radon emissions. MPC is liable for any and all injunctive and compliance obligations that it is required to perform under the CAA. It is the United States' position that a proof of claim is not required to be filed for such injunctive, compliance, and regulatory obligations and requirements under the CAA. See Paragraph 10, *supra*.

15. MPC is also subject to requirements under the CWA. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that EPA may issue National Pollution Discharge Elimination System ("NPDES") permit that authorize the discharge of any pollutant into navigable waters. Section 402(a) also provides that permittees may only discharge in compliance with Section 301 of the CWA, 33 U.S.C. § 1311, and such other conditions as EPA determines is necessary to carry out the provisions of the CWA. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that a State may establish its own permit program and, after receiving approval of its program by the EPA may issue NPDES permits. The State of Mississippi issued NPDES Permit MS0003115 to MPC to conditionally permit the discharge of treated process wastewaters in accordance with the permit.

16. The production of DAP at the facility results in numerous by-products which are collected in process wastewater and transferred to the onsite landfills. The ponded process wastewater

contained within the collective process wastewater storage system is estimated by MPC to be 605 million gallons and has a very high nutrient content (phosphorous, ammonia-nitrogen, and fluoride), low pH of approximately 2.0 standard units (very acidic), and contains several heavy metals (selenium, thallium, arsenic, nickel, zinc, cadmium, lead, chromium, and copper), each of which is considered a pollutant as set forth at Section 502(6) of the CWA, 33 U.S.C. § 1362(6). MPC operates a wastewater treatment plant that is allowed to discharge treated process wastewater into Bayou Casotte under the conditions set forth in MPC's NPDES Permit No. MS0003115. The impacts of prior improper wastewater discharges have included fishing and water contact closures of Bayou Casotte, fish kills, and related economic effects.

17. Under the conditions of MPC's NPDES Permit, and the Federal effluent guidelines codified in 40 C.F.R. Part 418, MPC is required to manage all precipitation that contacts the process wastewater storage system and must be able to maintain the system to contain a volume of water (i.e., "surge capacity") equal to the runoff from the 25-year, 24-hour rainfall event (10.2 inches). Discharges of process wastewater from the Phosphogypsum Stack System may only occur as a result of chronic or catastrophic precipitation events that cause the surge capacity to be less than this amount. At present, there is no available surge capacity and MPC has to store process wastewater in its emergency holding area.

18. Under the conditions of MPC's NPDES Permit No. MS0003115, MPC is required to maintain a minimum level of surge capacity in its wastewater management system (10.2 inches equivalent to a 25-year, 24-hour rainfall event) and a minimum freeboard even when the surge capacity is compromised. The permit authorizes the treatment and discharge of process wastewater only during the occurrence of chronic or catastrophic precipitation events that cause the water level to

rise into and reduce the surge capacity of the system. At present, MPC does not have the required 10.2 inch surge capacity.

19. Normal manufacturing operations consume nearly 1.2 million gallons of wastewater each day when the facility is operating. With the cessation of operations that wastewater is no longer being consumed each day. It is uncertain when or if manufacturing will resume at the Facility. As one inch of rainfall yields approximately 11.9 million gallons of contaminated storm water, the loss of consumption from production activities, the reduced evaporation rates from lost heat loads generated during operations and the corresponding increase in volume stored poses a great risk of an uncontrolled release of untreated acidic wastewater.

20. It is critical that MPC continue the operation of its wastewater management system in order to reduce wastewater volumes stored on-site and to mitigate the risk of a potential untreated wastewater release. Additionally, it will very likely be necessary to expand the capacity of the 1.44 million gallons per day wastewater management system to handle an increased volume of wastewater. As discussed above, the Phosphogypsum Stack System must be "closed" in accordance with RCRA, and closure requires the removal of the contaminated process wastewater from the system in order to allow capping and covering of the East Stack, unlined cooling ponds, and unlined earthen ditch system. It is the United States' position that a proof of claim is not required to be filed for such injunctive, compliance, and regulatory obligations and requirements under the CWA. See Paragraph 10, *supra*.

DEBTOR-OWNED SITES

21. MPC has or may in the future have environmental liabilities for properties that are part of its bankruptcy estate and/or for the migration of hazardous substances from property of its bankruptcy estate, including but not limited to its facility at 601 Industrial Road (Highway 611),

Pascagoula, Mississippi 39568. Pursuant to 28 U.S.C. § 959(b), MPC is required to manage and operate estate property in accordance with non-bankruptcy law, including all applicable environmental statutes and regulations. Further, any reorganized debtor will be subject to liability under environmental law with respect to any property it owns or operates. The United States is not required to file a proof of claim relating to property of the estate other than for: (i) response costs incurred before the petition date; and (ii) civil penalties for days of violations occurring before the petition date. This Proof of Claim is only filed protectively with respect to post-petition liabilities and response costs relating to property of the estate.

22. The United States is entitled to administrative expense priority for, *inter alia*, any response costs it incurs with respect to property of the estate after the petition date. The United States reserves the right to file an application for administrative expenses and to take other appropriate action in the future with respect to property of the estate.

RCRA LIABILITY FOR PENALTIES AND FURTHER INJUNCTIVE RELIEF

23. On January 24-26, 2005, EPA and MDEQ performed a RCRA and CWA compliance evaluation inspection ("CEI") at the Facility. Then on March 3-5, 2005, EPA and MDEQ performed a sampling investigation at the Facility as a follow-up to the January 2005 CEI.

24. On September 28, 2005, EPA issued to MPC a Notice of Violation of RCRA: EPA ID No: MSD 077090133, citing violations of Section 3005, 42 U.S.C. § 6925, 40 C.F.R. §§ 262.11, 268.7, 268.9 and 268.40(a), and 40 C.F.R. Parts 260-270, related to, *inter alia*, its failure to make hazardous waste determinations and its treatment, and storage or disposal of hazardous DAP Plant scrubber/process wastewater without a permit.

25. On September 23, 2009, EPA issued an unilateral administrative order to MPC (the "2009 UAO"), pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), finding, among other

things, that MPC's past and then current handling, storage, treatment, transportation and/or disposal of solid and/or hazardous wastes at the Facility presented an imminent and substantial endangerment to human health and/or the environment within the meaning of Section 7003 of RCRA. The 2009 UAO required immediate action by MPC to mitigate the endangerment posed by the illegal discharge (including leaks and spills) of hazardous waste from MPC's Sulfuric Acid Plants ("SAPs") and DAP operations onto soils, in groundwater and in waters at a construction area near the SAPs.

26. EPA later issued MPC an Administrative Order on Consent, Docket Number: RCRA-04-2012-4250, pursuant to Section 7003(a), which became effective on February 16, 2012 ("2012 AOC"). The 2012 AOC subsumed uncompleted requirements from the 2009 AO and added additional requirements, required, among other things, that MPC : 1) Mitigate soil contamination around the SAPs and remediate and prevent contaminated groundwater from migrating; 2) Remediate contaminated groundwater within and prevent contaminated groundwater from migrating from, the DAP Plant; 3) Mitigate soil contamination around the construction area and remediate and prevent contaminated groundwater from migrating; and, 4) Assess seepage from the West Stack perimeter dike and if further work is necessary, submit a West Stack Improvement Plan. The 2012 AOC also requires that MPC undertake interim corrective action for the West Stack (to address liquids outside of the West Stack perimeter dike and prevent future migration) and the Plant Area (to address contaminated soils and contaminated groundwater). Although MPC completed some activities and provided certain investigation reports and action plans, MPC stopped most work under the 7003 by sometime in 2013 and has not completed many important requirements of the Order.

27. Pursuant to Sections 3008(a) and (g) and 3006(g) of RCRA, 42 U.S.C. §§ 6928(a) and (g) and 6926(g), the United States may enforce the federally-approved Mississippi hazardous waste program, as well as the federal regulations that remain effective in Mississippi. At the Facility, MPC

commingled hazardous wastes from the chemical processing of fertilizer with wastes from mineral processing. Specifically, MPC disposed of RCRA hazardous wastes from the phosphoric acid and DAP production areas into the Phosphogypsum Stack System dedicated for mineral processing wastes. As a result of the commingling of hazardous wastes with mineral processing wastes, the Phosphogypsum Stack System is subject to RCRA Subtitle C hazardous waste requirements. 11 Miss. Admin. Code, Part 3, Ch. 1, Rule 1.2 (40 C.F.R. § 261.3(a)(2)(i)).

28. MPC is liable for injunctive relief and pre-petition civil penalties pursuant to Miss. Code Ann. §17-17-29 and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for each failure to make a hazardous waste determination for solid wastes generated at its Facility in violation of 11 Miss. Admin Code, Part 3, Ch.1, Rule 1.3 (40 C.F.R. § 262.11).

29. MPC is liable for injunctive relief and pre-petition civil penalties pursuant to Miss. Code Ann. §17-17-29 and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for treatment, storage, and disposal of hazardous waste on the ground in and around the SAPs, in the SAP Ditch, in the construction/maintenance area, and in the Phosphogypsum Stack System without a permit or interim status in violation of Miss. Code Ann. §17-17-27 (RCRA Section 3005(a), 42 U.S.C. § 6925(a)), and the applicable regulatory requirements of 11 Miss. Admin Code, Part 3, Ch.1, Rule 1.7 (40 C.F.R. Part 264, Subparts A-G, K, and CC).

30. MPC is liable for injunctive relief and pre-petition civil penalties pursuant to Miss. Code Ann. §17-17-29 and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for each failure to determine if hazardous wastes generated at its Facility needed to be treated before they could be land disposed in violation of 11 Miss. Admin Code, Part 3, Ch.1, Rule 1.15 (40 C.F.R. § 268.7(a)(1)).

31. MPC is liable for injunctive relief and pre-petition civil penalties pursuant to Miss. Code Ann. §17-17-29 and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for failure to meet the

standards set forth at 11 Miss. Admin Code, Part 3, Ch.1, Rule 1.15 (40 C.F.R.

§§ 268.40(a), and 268.48), prior to land disposing prohibited waste in violation of 11 Miss. Admin Code, Part 3, Ch.1, Rule 1.15 (40 C.F.R. §§ 268.9(c), 268.40(a), and 268.48).

32. MPC is liable for injunctive relief and pre-petition civil penalties pursuant to Miss. Code Ann. §17-17-29 and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for failure to establish a cost estimate for closure in violation of 11 Miss. Admin Code, Part 3, Ch.1, Rule 1.7 (40 C.F.R. § 264.142(a)).

33. MPC is liable for injunctive relief and pre-petition civil penalties pursuant to Miss. Code Ann. §17-17-29 and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for failure to establish adequate financial assurance for closure in violation of 11 Miss. Admin Code, Part 3, Ch.1, Rule 1.7 (40 C.F.R. § 264.143).

34. MPC is liable for injunctive relief and pre-petition civil penalties pursuant to Miss. Code Ann. §17-17-29 and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for failure to establish a cost estimate for post-closure in violation of 11 Miss. Admin Code, Part 3, Ch.1, Rule 1.7 (40 C.F.R. § 264.144).

35. MPC is liable for injunctive relief and pre-petition civil penalties pursuant to Miss. Code Ann. §17-17-29 and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for failure to establish financial assurance for post-closure in violation of 11 Miss. Admin Code, Part 3, Ch.1, Rule 1.7(40 C.F.R. § 264.145).

36. MPC is liable for injunctive relief and pre-petition civil penalties pursuant to Miss. Code Ann. §17-17-29 and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a) for failure to establish financial assurance for third party liability in violation of 11 Miss. Admin Code, Part 3, Ch.1, Rule 1.7 (40 C.F.R. § 264.147).

37. MPC is liable for penalties with respect to the above referenced violations of RCRA of up to \$25,000 per day per violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2471, as amended by 31 U.S.C. § 3701, and as provided in 40 C.F.R. Part 19, the maximum civil penalty per day per violation amount specified in Paragraph 23 increases to \$27,500 per day for each violation occurring on and after January 31, 1997, further increases to \$32,500 per day for each violation occurring on or after March 15, 2004, and further increases to \$37,500 per day for each violation occurring after January 12, 2009. Each day of violation constitutes a separate violation under Section 3008(g) of RCRA, 42 U.S.C. § 6928(g). The amount of MPC's liability for civil penalties will be determined by a court with jurisdiction.

38. In addition, MPC is liable for injunctive relief and pre-petition civil penalties for its failure to comply with the requirements of the 2012 AOC, pursuant to Sections 7003(b) and Section 3008(a) of RCRA, 42 U.S.C. §§ 6928(a) and 6973(b). Defendant is liable for a civil penalty of up to \$5,000 per day for each day of noncompliance with the 2012 AOC.

39. The United States' position as to injunctive obligations is set forth in Paragraph 10.

CAA PENALTY CLAIMS

40. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated National Emissions Standards for Hazardous Air Pollutants ("NESHAP") regulations concerning maximum achievable control technology ("MACT") set forth at 40 C.F.R. Part 63, subparts A (general), AA (phosphoric acid production) and BB (phosphate fertilizer production). When operating, MPC has been a major source of hazardous air pollutants (HAPs) subject to the MACT requirements.

41. MPC has been in violation of numerous requirements of 40 C.F.R. Part 63 Subpart AA with respect to the Phosphoric Acid Manufacturing MACT:

- i. failure to submit the Notification of Compliance Status Report in violation of 40 C.F.R. §§ 63.9(h)(2)(i) and 63.607(a);
- ii. failure to establish operating parameter ranges for the scrubbers in violation of 40 C.F.R. §§ 63.605(d) and 63.609;
- iii. failure to install, calibrate, maintain, and operate a monitoring system in violation of 40 C.F.R. §§ 63.605(c) and 63.609;
- iv. failure to maintain the operating parameters (daily average pressure drop across each scrubber and flow rate), in violation of 40 C.F.R. § 63.604; and
- v. failure to conduct performance test and compliance demonstration once per annum in violation of 40 C.F.R. § 63.606(a).

42. MPC has also been in violation of numerous requirements of 40 C.F.R. Part 63 Subpart BB with respect to the Phosphate Fertilizer Production MACT:

- vi. failure to submit the Notification of Compliance Status Report in violation of 40 C.F.R. §§ 63.9(h)(2)(i) and 63.627(a) ;
- vii. failure to establish operating parameter ranges for the scrubbers in violation of 40 C.F.R. §§ 63.625(f) and 63.630;
- viii. failure to install, calibrate, maintain, and operate a monitoring system in violation of 40 C.F.R. §§ 63.625(c) and 63.630;
- ix. failure to maintain the operating parameters (daily average pressure drop across each scrubber and flow rate), in violation of 40 C.F.R. § 63.624 ; and

- x. failure to conduct performance test and compliance demonstration
once per annum in violation of 40 C.F.R. § 63.626(a).

43. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), provides that whenever the owner or operator of a major stationary source violates any requirement or prohibition of Subchapter I of the CAA (42 U.S.C. §§ 7401-7515), the Administrator of EPA shall commence a civil action for injunctive relief and to assess a civil penalty up to \$25,000 per day for each such violation.

44. MPC is liable for civil penalties for the above referenced violations of the CAA of up to \$25,000 per day per violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2471, as amended by 31 U.S.C. § 3701, and as provided in 40 C.F.R. Part 19, the maximum civil penalty per day per violation amount specified increases to \$27,500 per day for each violation occurring on and after January 31, 1997, further increases to \$32,500 per day for each violation occurring on or after March 15, 2004, and further increases to \$37,500 per day for each violation occurring after January 12, 2009. Each day of violation constitutes a separate violation under Section 7413(b) of CAA, 42 U.S.C. § 7413(b). The amount of MPC's liability for civil penalties will be determined by a court with jurisdiction.

CWA PENALTY CLAIMS

45. MPC is required by Condition L-7 and L-8 of the NPDES permit, and by the federal regulations at 40 CFR 418.13, to have a Phosphogypsum Stack System designed, constructed and operated to maintain a surge capacity equal to the runoff from the 25-year, 24-hour rainfall event (10.2 inches). The NPDES permit requires that process wastewater may only be discharged from the Phosphogypsum Stack System when chronic or catastrophic precipitation events cause the water level to rise into the surge capacity. As a result of such precipitation events, and due to several other factors

associated with poor operations, maintenance and management, MPC has discharged process wastewater through its WWTP at an average flowrate of 1.1 million gallons per day for 222 days, 324 days, and 350 days each year, respectively, from 2012 through 2014.

46. Discharges from the Facility must also adhere to the NPDES permit conditions regarding effluent limitations and monitoring requirements. Monitoring results provided by MPC to the MDEQ by way of Discharge Monitoring Reports show that there have been 3,687 statutory days of effluent limit violations from 2012 through 2014. Categories of pollutants that were discharged beyond NPDES permitted limits include suspended solids, nutrients, ammonia, excessive pH, heavy metals, and the measured overall toxic effects on macro-marine organisms.

47. Despite MPC's extensive use of the WWTP, extreme precipitation events have occurred which caused process wastewater to significantly encroach into the necessary surge capacity of the ponds on the East Gypsum Stack. As a result, MPC has on occasion, and in violation of the bypass prohibition section under Condition T-32 of the NPDES permit and 40 CFR 122.41(m), bypassed wastewater treatment entirely and/or partially treated process wastewater before discharging hundreds of millions of gallons of wastewater to Bayou Casotte.

48. MPC reported bypasses of partially treated wastewater into Bayou Casotte in violation of its Permit over multiple days in September 2002, June 2003, January 2008, March 2009, December 2009, January 2010, and March-April 2014. On these occasions MPC partially treated the wastewaters with caustic/lime in an attempt to neutralize pH. Nevertheless, high levels of phosphorous, nitrogen (as ammonia), and fluoride were released into Bayou Casotte during these bypasses.

49. MPC has also released untreated wastewater on at least three occasions in violation of its Permit. For example, in April 2005, there was a catastrophic release of untreated wastewater due to

a dike failure at a pond on top of the East Stack resulting in a fish kill in Bangs Lake. Also, in August 2012, Hurricane Isaac dumped a total of 32" of rain at the Facility which led to an emergency release of untreated wastewater resulting in a fish kill in Bayou Casotte. MPC used its available caustic to help neutralize the pH, but it was unable to receive additional deliveries of caustic because of flooding and so could not even partially neutralize much of the released wastewater. MDEQ and the Mississippi Department of Marine Resources closed Bayou Casotte for two days to allow contaminant levels to dissipate. Then in August 2013, another release of untreated wastewater from MPC caused a fish kill in Bayou Casotte. MDEQ and the Mississippi Department of Marine Resources again closed Bayou Casotte to fishing and issued a contact advisory.

50. Section 309 of the CWA, 33 U.S.C. § 1319 provides for penalties for discharges of wastewater in violation of a NPDES permit.

51. MPC is liable for penalties with respect to the above referenced violations of the CWA of up to \$25,000 per day per violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2471, as amended by 31 U.S.C. § 3701, and as provided in 40 C.F.R. Part 19, the maximum civil penalty per day per violation amount specified increases to \$27,500 per day for each violation occurring on and after January 31, 1997, further increases to \$32,500 per day for each violation occurring on or after March 15, 2004, and further increases to \$37,500 per day for each violation occurring after January 12, 2009. Each day of violation constitutes a separate violation under Section 7413(b) of CAA, 42 U.S.C. § 7413(b). The amount of MPC's liability for civil penalties will be determined by a court with jurisdiction.

52. The United States' position as to injunctive obligations is set forth in Paragraph 10

ADDITIONAL TERMS

53. This Proof of Claim is filed as an unsecured non-priority claim, except to the extent:

(i) any rights of setoff secure the United States' claims; (ii) any secured/trust interest exists in insurance proceeds received by MPC on account of the United States' claims; and (iii) administrative priority exists with respect to property of the estate, post-petition violations of law, or otherwise. The United States will file any application for administrative expenses at the appropriate time. The United States' position as to injunctive obligations is set forth in Paragraph 10.

54. This Proof of Claim is also filed to the extent necessary to protect the United States' rights with respect to any insurance proceeds received by MPC, and any funds held in escrow by MPC, in connection with the matters discussed herein.

55. This Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim debts owed to MPC by these or any other federal agencies.

56. The United States has not perfected any security interest on its claims against MPC.

57. Except as stated in this Proof of Claim, no judgments against MPC have been rendered on the claims set forth herein.

58. No payments to the United States have been made by MPC on the claims set forth herein.

59. This Proof of Claim reflects certain known liabilities of MPC to the United States. The United States reserves the right to amend this Proof of Claim to assert additional liabilities, including but not limited to liabilities for additional costs for the matters discussed herein.

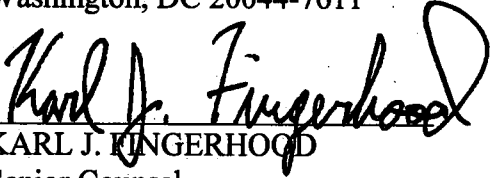
60. Additional documentation in support of this Proof of Claim is too voluminous to attach, but is available upon request.

Dated: April 24, 2015

Respectfully submitted,

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

ALAN S. TENENBAUM
National Bankruptcy Coordinator
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611


KARL J. FINGERHOOD
Senior Counsel
(as to legal issues only)
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Phone: (202) 514-7519
karl.fingerhood@usdoj.gov



U.S. Department of Justice

Environment and Natural Resources Division

DJ No. 90-7-1-08388/18

Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044

Telephone (202) 514-7519

Facsimile (202) 514-0097

BY FEDEX – FIRST PRIORITY OVERNIGHT DELIVERY

BMC Group
Attn: Mississippi Phosphates Corporation Claims Processing
300 N. Continental Blvd #570
El Segundo, CA 90245

RECEIVED

APR 24 2015

BMC GROUP

Telephone: 310.321.5555

April 23, 2015

Re: In re Mississippi Phosphates Corporation, et. al, Chapter 11
Bankr. No. 14-51667-KMS (USBC S.D. Miss.)

Dear Sir or Madam:

Enclosed please find an original and three copies of the PROOF OF CLAIM FILED BY THE UNITED STATES OF AMERICA, ON BEHALF OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY for filing in the above referenced matter.

Once filed, please return a "filed" stamped copy to this office in the enclosed pre-paid, pre-addressed return FEDEX envelope.

If you have any questions regarding this matter, please do not hesitate to contact me at (202) 514-7519.

Thank you for your cooperation and assistance in this matter.

Sincerely,

Karl Fingerhood
Senior Counsel, U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

karl.fingerhood@usdoj.gov

cc with enclosures by U.S. Mail:

Marshall Binford Esq.
US EPA - Region 4 - Sam Nunn Atlanta Federal Center
61 Forsyth St, SW
Atlanta, Georgia 30303

Kevin Beswick, Esq.
US EPA - Region 4 - Sam Nunn Atlanta Federal Center
61 Forsyth St, SW
Atlanta, Georgia 30303

cc with enclosures by Interoffice-Mail:

Ken Long, Esq.
PHB Room 8022

Mary Lee Morrison
PHB Room 6009