



ENTERED
09/22/2015

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

<p>IN RE:</p> <p>HAVERHILL CHEMICALS LLC</p> <p>Debtor(s).</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>CASE NO: 15-34918</p> <p>CHAPTER 11</p> <p>DAVID R. JONES</p>
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INTERIM ORDER (A) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTION 363(c) OF THE BANKRUPTCY CODE AND GRANTING ADEQUATE PROTECTION, AND (B) SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001

This matter came before the Court pursuant to the Emergency Motion for Order (A) Authorizing Use of Cash Collateral Pursuant to Section 363(c) of the Bankruptcy Code and Granting Adequate Protection, and (B) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001 (the “Motion”) filed by the above-captioned debtor (the “Debtor”) on September 18, 2015. Pursuant to the Motion, the Debtor seeks entry of this Order with the consent of the Agent (defined below). Based on the Motion and the entire record before the Court,

THE COURT HEREBY FINDS BASED ON THE REPRESENTATIONS OF THE PARTIES as follows:

A. On September 18, 2015 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11, thereby commencing this Chapter 11 case (the “Chapter 11 Case”).

B. This Court has jurisdiction over the Chapter 11 Case and the Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. The Motion presents a core proceeding as defined in 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested in the Motion are §§ 105, 361, 362, 363, 507 of title 11 of the United States Code, 11 U.S.C. §§ 101 - 1532 (as amended, the

“Bankruptcy Code”) and rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

C. Bank of America, N.A., as Administrative Agent (the “Agent”) for the parties identified as “Lenders” (collectively, the “Lenders”), the Lenders, and the Debtor are parties to a Credit Agreement dated as of October 31, 2011, as amended by First Amendment to Credit Agreement and Waiver dated as of April 29, 2013, Second Amendment to Credit Agreement dated as of April 17, 2014, and Third Amendment to Credit Agreement dated as of July 10, 2014 (as amended, the “Credit Agreement”), pursuant to which the Lenders made the following credit facility available to the Debtor (the “Credit Facility”): (i) a revolving credit facility in the original maximum principal amount of \$70,000,000 (the “Revolving Credit Facility”); and (ii) a term loan in the original maximum principal amount of \$75,000,000 (the “Term Loan”).

D. In connection with the Credit Facility, the Debtor delivered to the Agent, for the benefit of the Lenders, among other things: (i) an Open-End Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of October 31, 2011 (the “Mortgage”), pursuant to which the Debtor granted the Agent a lien upon the real estate and improvements located in Scioto County, Ohio described in the Mortgage (the “Real Property”) (ii) a Security Agreement dated as of October 31, 2011 (as amended, the “Security Agreement”), pursuant to which the Debtor granted the Agent, for the benefit of Lenders, a security interest in and lien upon the personal property described in the Security Agreement (the “Personal Property”); (iii) a Collateral Assignment of Rights dated as of October 31, 2011 (the “Collateral Assignment”), pursuant to which the Debtor assigned all of the Debtor’s rights under the Acquisition Agreement (as defined in the Collateral Assignment) (the “Assigned Rights”) to the Agent; and (iv) a Pledge Agreement dated May 30, 2014 (the “Pledge Agreement”), pursuant

to which the Debtor pledged and granted to the Agent a security interest in the stock of Guarantor (defined below) (the "Guarantor Stock").

E. In connection with the Credit Facility, the Agent, among other things: (i) recorded the mortgage on November 1, 2011 with the Recorder's Office for Scioto County, Ohio, in Book 310, Page 417; (ii) filed an "all assets" UCC-1 Financing Statement with the Texas Secretary of State on October 31, 2011, Filing No. 11-0031824929, naming the Debtor as debtor and the Agent as secured party; and (iii) recorded a Memorandum of Security Agreement with the Surface Transportation Board on November 14, 2011, Recordation No. 29986.

F. Haverhill Chemicals International, Inc. (the "Guarantor"), a non-debtor subsidiary of the Debtor, delivered to the Agent a Guaranty dated as of May 30, 2014 (the "Guaranty"), pursuant to which the Guarantor, among other things, guaranteed the prompt payment and performance of all indebtedness and liabilities owing by the Debtor to the Agent and the Lenders under the Credit Agreement.

G. In connection with the Guaranty, the Guarantor delivered to the Agent a Joinder Agreement dated as of May 30, 2014 (the "Joinder Agreement"), pursuant to which the Guarantor became a party to the Security Agreement. The Agent filed an "all assets" UCC-1 Financing Statement with the Nevada Secretary of State on June 17, 2014, Document No. 2014015546-4, naming the Guarantor as debtor and the Agent as secured party.

H. Following defaults under the Credit Facility, the Debtor, the Guarantor, the Agent, and the Lenders entered into the following: (i) a Forbearance Agreement dated as of April 6, 2015, as amended by Amendment to Forbearance Agreement dated as of April 17, 2015, Second Amendment to Forbearance Agreement dated as of May 7, 2015, and Third Amendment to Forbearance Agreement dated as of May 20, 2015 (as amended, the "First Forbearance

Agreement”), (ii) a Second Forbearance Agreement dated as of June 12, 2015, as amended by Amendment to Second Forbearance Agreement dated as of July 17, 2015 (as amended, the “Second Forbearance Agreement”), and (iii) a Third Forbearance Agreement dated as of July 23, 2015, as amended by Amendment to Third Forbearance Agreement dated as of August 4, 2015, Second Amendment to Third Forbearance Agreement dated as of August 21, 2015, and Third Amendment to Third Forbearance Agreement dated as of September 11, 2015 (as amended, the “Third Forbearance Agreement” and, together with the First Forbearance Agreement and the Second Forbearance Agreement, the “Forbearance Agreements”). Pursuant to the Forbearance Agreements, the Debtor, among other things, (a) amended certain provisions contained in the Credit Agreement and the Security Agreement, (b) acknowledged the amount of the Debtor’s obligations owing under the Prepetition Loan Documents (defined below), (c) confirmed that all of Agent’s liens and security interests continue in full force and effect and secure all of the Debtor’s obligations arising out of the Prepetition Loan Documents, and (d) released and forever discharged the Agent and the Lenders from any and all claims, counterclaims, demands, damages, debts, obligations, liabilities, actions, and causes of action arising or accruing prior to the execution of the Forbearance Agreements.

I. The prepetition loan documents described in paragraphs C-H hereof, as amended, supplemented, or otherwise modified prior to the Petition Date, together with all collateral and ancillary documents executed in connection therewith are collectively referred to herein as the “Prepetition Loan Documents,” and the principal, interest, costs, expenses, fees, and other amounts owing under the Prepetition Loan Documents are collectively referred to herein as the “Prepetition Indebtedness.”

J. Computed as of September 18, 2015, the Debtor admits that it is liable to the Agent, on behalf of the Lenders, for the Prepetition Indebtedness in the aggregate amount of at least \$44,077,700.94, broken down as follows:

1. With respect to the Revolving Credit Facility, the aggregate amount of at least \$676,335.94, comprised of: (i) an outstanding, cash-collateralized letter of credit in the amount of \$675,000.00 (the "Letter of Credit"); (ii) \$1,335.94 of letter of credit fees; and (iii) certain other recoverable fees (including attorneys' fees) and costs owing under the Revolving Credit Facility and related Prepetition Loan Documents. The Debtor previously delivered \$675,000 in cash (the "L/C Cash Collateral") to the Agent to Cash Collateralize (as defined in the Credit Agreement) the Letter of Credit.

2. With respect to the Term Loan, the aggregate amount of at least \$43,401,365.00, comprised of: (a) \$43,377,470.17 of unpaid principal; (b) \$23,894.83 of accrued and unpaid interest; and (c) certain other recoverable fees (including attorneys' fees) and costs owing under the Term Loan and related Prepetition Loan Documents.

The Debtor admits that the Prepetition Indebtedness constitute allowable, legal, valid, binding, and enforceable obligations of the Debtor.

K. The Debtor admits that, as security for repayment of the Prepetition Indebtedness, the Agent, for the benefit of the Lenders, holds valid, binding, enforceable, and properly perfected first-priority liens and security interest in and on the Real Estate, the Personal Property, the Assigned Rights, the Guarantor Stock, and all other assets and property described in the Prepetition Loan Documents, whether then owned or thereafter acquired or arising, together with all proceeds and products thereof, including the Cash Collateral (collectively, the "Collateral").

L. The Debtor further admits that: (a) the Prepetition Indebtedness and any other amounts owing to the Lenders pursuant to the Prepetition Loan Documents are due and owing, are legally binding and enforceable obligations of the Debtor, and are not subject to any offset, defense, claims, counterclaims or any other diminution of any type, kind or nature whatsoever; (b) the Prepetition Loan Documents are valid and enforceable against the Debtor in accordance with their terms, are not subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever, and are not subject to avoidance pursuant to applicable state or federal laws; (c) the liens and security interests of the Agent for the benefit of the Lenders in, to, and against all of the Collateral are first-priority valid, binding, enforceable and properly perfected liens and security interests, and are not subject to avoidance under any state and federal law; and (d) there are no existing claims or causes of action of the Debtor, breaches of contract or other liabilities, whether liquidated or unliquidated, direct or indirect, and whether arising under state or federal law (including the Bankruptcy Code) against the Agent or the Lenders, arising from the relationships between the Debtor, on one hand, and the Agent and the Lenders, on the other hand.

M. The Debtor stipulates that all cash, negotiable instruments, deposit accounts, and other cash equivalents (including the proceeds, products, offspring, rents, or profits of the Collateral as provided in Section 552(b) of the Bankruptcy Code), whether existing before or after the commencement of the Chapter 11 Case, constitutes the cash collateral of the Agent and the Lenders within the meaning of Sections 363(a) and 552(b) of the Bankruptcy Code (the "Cash Collateral").

N. The Debtor does not have sufficient available sources of working capital and financing to carry on the operation of its business without the use of Cash Collateral. The ability

of the Debtor to pay employees and otherwise finance its operations is essential to the Debtor's continued viability, and the Debtor's critical need for use of Cash Collateral is immediate. Without the use of Cash Collateral, the continued operation of the Debtor's business would not be possible, and serious and irreparable harm to the Debtor and its estate would occur.

O. The Debtor has requested that the Agent consent to the interim and limited use of Cash Collateral. The Debtor undertook arm's-length negotiations with the Agent with respect to the interim and limited use of Cash Collateral addressed pursuant to the terms of this Order.

P. The Agent is willing to allow the Debtor to use its Cash Collateral on an interim basis pursuant to the terms and conditions set forth in this Order. The terms and conditions of the proposed use of Cash Collateral pursuant to this Order are fair and reasonable, were negotiated by the parties in good faith at arm's length, and the parties otherwise acted in good faith. Neither the Agent nor the Lenders have agreed to any further or other use of Cash Collateral for any other purpose except as set forth in this Order.

Q. The Agent and the Lenders are not in control of the Debtor or its operations or acting as a "controlling person," "responsible person," "managing agent," or "owner or operator" with respect to the operation or management of the Debtor (as such terms are defined in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act, or any similar state or federal statute) or owe any fiduciary duty to the Debtor, its bankruptcy estate, or its creditors. The Agent's and the Lenders' relationship with the Debtor is not a joint venture or partnership with the Debtor.

R. The Debtor has provided sufficient notice of the Court's initial hearing resulting in the entry of this Order. Sufficient and adequate notice under the circumstances of the Motion

and the relief granted in this Order has been given pursuant to Sections 102(1) and 363(c) of the Bankruptcy Code and Bankruptcy Rules 2002 and 4001.

S. Based on the record before this Court, there is good cause for the Court to authorize the Debtor's interim use of Cash Collateral under the terms and conditions stated herein (and not otherwise).

Based upon the foregoing findings and conclusions, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED as follows:

1. The paragraphs contained in the foregoing findings and conclusions of this Order are incorporated herein by reference, and the Debtor and the Agent consent and stipulate to the facts and findings contained in such preamble and to the entry of this Order.

2. The Motion is GRANTED on an interim basis as provided in this Order. All objections to the Motion on an interim basis are overruled.

3. Pursuant to Section 363(c) of the Bankruptcy Code, the Debtor shall be, and hereby is, authorized to use the Cash Collateral on an interim basis upon (and only upon) the terms and conditions set forth in this Order.

4. The Debtor's use of Cash Collateral is limited to payment of the authorized expenses pursuant to the budget attached hereto as Exhibit 1 (the "Budget") and for no other purpose without the prior written consent of the Agent. The Debtor is hereby authorized to use the Cash Collateral only to pay the actual, necessary, and ordinary expenses of the Debtor in the categories and during the periods set forth in the Budget not to exceed the amounts set forth in the Budget, subject to the Permitted Variances (defined below); *provided, however*, that in no event will the Debtor prepay any expenses, including (without limitation) vendor expenses, from

Cash Collateral without the prior written consent of the Agent; and *provided further, however*, that payment of the professional fees set forth in the Budget shall not be subject to the Permitted Variances or used for purposes of calculating the Permitted Variances; rather the aggregate professional fees incurred during the periods set forth in the Budget shall not exceed the total amount of professional fees for the total period set forth in the Budget notwithstanding in which period set forth in the Budget such professional fees are actually allowed and paid, and no professional fees may be paid from Cash Collateral (including pursuant to the Carve-Out) that do not comply with the foregoing limitation. For avoidance of doubt, aggregate professional fees paid during any period include any professional fees that may be paid from the prepetition retainers or trust account funds held by such professionals. The Debtor's compliance with the Budget will be tested weekly and the Debtor must comply with the Budget (excluding amounts for professional fees and UST Fees) such that, as of the end of each week (beginning with the week ending September 27, 2015), the aggregate amount of all expenses (exclusive of professional fees and UST Fees) actually paid by the Debtor from the Petition Date through the end of such week does not exceed by 10% or more the aggregate amount of "Total Cash Expenses" set forth in the Budget for the same period, without regard in which category such expenses are contained (the "Permitted Variances"), unless the Debtor has obtained prior written approval from the Agent. The Budget may be amended from time to time without further order of this Court upon the prior written agreement of the Debtor and the Agent, and such amended budget shall become the Budget under this Order.

5. Notwithstanding any other provision in this order, in the event the Debtor possesses any cash or cash equivalents during the pendency of the Chapter 11 Case that is not subject to the Agent's liens or security interests, such cash or cash equivalents shall be used and

expended (or deemed to have been used and expended) by the Debtor prior to the use of any Cash Collateral.

6. The Debtor shall immediately, and shall continue to, segregate, remit, and deposit all Cash Collateral in the Debtor's accounts, possession, custody, or control, and which the Debtor may receive in the future, in accordance with the applicable cash management orders entered by this Court, and consistent with the Debtor's past and ordinary business practices. The bank accounts of the Debtor (the "Accounts") shall be in the name of the Debtor, but the Debtor shall be prohibited from withdrawing funds from the Accounts except in strict compliance with the terms of this Order. The Accounts shall be maintained with the Agent.

7. Unless extended further with the written consent of the Agent (confirmed by the entry of a further order of this Court), the authorization granted to the Debtor to use Cash Collateral under this Order shall terminate immediately upon the *earliest* to occur of the following (the date of such termination being the "Termination Date"): (i) October 11, 2015, (ii) the conclusion of the Final Hearing, (iii) the entry of an order dismissing the Chapter 11 Case, (iv) the entry of an order converting the Chapter 11 Case to Chapter 7; (v) the entry of an order appointing a trustee or an examiner with expanded powers for the Debtor's estate or with respect to the Debtor's property; (vi) the entry of an order reversing, vacating, or otherwise amending, supplementing, or modifying this Order, (vii) the entry of an order granting relief from the automatic stay to any creditor (other than the Agent or the Lenders) holding or asserting a lien in the Collateral, (viii) the entry of an order for relief under Section 506(c) of the Bankruptcy Code with respect to the Collateral, (ix) the filing by the Debtor, without the Agent's and the Lenders' prior written consent, of any motion in the Chapter 11 Case: (A) to obtain financing under Section 364 of the Bankruptcy Code from any person or entity other than the

Agent and the Lenders, or (B) to grant a lien, security interest, or claim with respect to the Collateral in favor of any party other than the Agent and the Lenders; (ix) the termination of the Asset Purchase Agreement dated as of September 18, 2015, between the Debtor and ALTIVIA Petrochemicals, LLC (the "Asset Purchase Agreement"); (x) this Court has not entered an order (the "Bid Procedures Order") approving the bidding and auction procedures contemplated in the Asset Purchase Agreement within ten (10) days after the Petition Date, unless extended by written consent of the Agent; (xi) this Court has not entered an order (the "Sale Order") approving the sale transaction contemplated in the Asset Purchase Agreement (the "Sale") within forty-five (45) days after the Petition Date, unless extended by written consent of the Agent, or (xii) the Debtor's breach or failure to comply with any term or provision of this Order. Notwithstanding any such termination, the rights and obligations of the Debtor and the rights, claims, liens, priorities, and other benefits and protections afforded to the Agent on behalf of the Lenders under this Order shall remain unimpaired and unaffected by any such termination, and shall survive any such termination.

8. Following the Termination Date, and upon four (4) business day's written notice (which may be delivered by electronic mail) to the Debtor, its counsel, the United States Trustee, and counsel for any official committee (if appointed), unless the Debtor obtains an order from the Court extending the use of Cash Collateral or otherwise maintaining the automatic stay in effect within such four day notice period, the automatic stay of Section 362(a) of the Bankruptcy Code shall be deemed terminated (and the fourteen-day stay provided by Bankruptcy Rule 4001(a)(3) shall be deemed waived) without the necessity of any further action by the Agent or any further authorization by this Court in order to permit the Agent and the Lenders to exercise all rights and remedies provided for in this Order, the Prepetition Loan Documents, and

applicable law, including, but not limited to, the Agent's rights to (a) apply the Cash Collateral and any other proceeds of the Collateral to the Prepetition Indebtedness in accordance with the terms of the Prepetition Loan Documents and applicable law, and (b) apply the L/C Cash Collateral to reimbursement of any amounts drawn under the Letter of Credit and/or to repayment of the Prepetition Indebtedness; *provided, however*, that the Agent is authorized, without the necessity for any further action by the Agent or any further authorization by this Court, to apply the L/C Cash Collateral to (x) reimbursement of amounts drawn under the Letter of Credit prior to the Termination Date, and (y) repayment of the Prepetition Indebtedness in the event of any expiration, cancellation, or termination of the Letter of Credit prior to the Termination Date. For purposes of the foregoing sentence, the Agent's right to apply the Cash Collateral in the Accounts to the Prepetition Indebtedness is subject to amounts eligible to be paid from the Carve-Out (defined below) that are in excess of any prepetition retainers or trust account funds otherwise available to pay such eligible amounts.

9. Notwithstanding anything in Section 552 of the Bankruptcy Code to the contrary, the Agent shall have, and is hereby granted, replacement liens and security interests (the "Replacement Liens") in and on all property of the Debtor and its bankruptcy estate, including property acquired by the Debtor and its bankruptcy estate after the Petition Date, to the extent necessary to adequately protect the Lenders from any diminution in the value of their interests in property of the Debtor's estates as a result of the entry of this Order, the use of Cash Collateral authorized hereby, and the imposition of the automatic stay in the Chapter 11 Case. The Replacement Liens shall be effective and perfected as of the date of the entry of this Order and without the necessity of the execution by the Debtor of any security agreement, pledge agreement, financing statement or any other documents and shall have the same validity, priority,

and enforceability as Agent's liens and security interests in and on the Collateral on the Petition Date.

10. To the extent the Replacement Liens granted to the Agent hereunder and in the Order do not provide the Lenders with adequate protection of their interests in the Cash Collateral, the Agent shall have, for the benefit of the Lenders, a super-priority administrative expense claim under Section 507(b) of the Bankruptcy Code as necessary to fully compensate the Lenders for failure of adequate protection (the "Super-Priority Claims"). The Super-Priority Claims shall have priority over all administrative expenses of any kind incurred in the Chapter 11 Case, including such administrative expenses of the kinds specified in, or allowable under, Sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b) or 726 of the Bankruptcy Code. Subject only to the Carve-Out (defined below), no costs or expenses of administration which have been or may be incurred in this Chapter 11 Case, any conversion of this Chapter 11 Case pursuant to Section 1112 of the Bankruptcy Code, or in any other proceeding related hereto, and no priority claims are, or will be, prior to or on a parity with the Super-Priority Claims.

11. As additional adequate protection for the Agent and the Lenders, the Debtor is authorized and directed to:

A. pay all reasonable fees, costs, and expenses for the professionals of the Agent and the Lenders incurred in connection with the Chapter 11 Case (whether incurred before or after the Petition Date); *provided, however*, that the use of Cash Collateral to make such adequate protection payments for the fees, costs, and expenses of the Agent and the Lenders shall not constitute a diminution in the value of the Agent's and Lenders' interests in property of the Debtor's estates giving rise to any additional adequate protection obligation; *provided further*, that the fees, costs, and expenses paid

by the Debtor for the professionals of the Agent and the Lenders shall not be applied against the Budget; and

B. maintain insurance upon all of the Collateral in such amounts and of such kinds comparable to that in effect on the Petition Date.

12. The liens and claims of the Agent and the Lenders (including those liens and claims granted to the Agent pursuant to this Order but excluding those liens and claims in the L/C Cash Collateral) shall be subject only to the following (collectively, the “Carve-Out”): (a) the payment of allowed fees and expenses for the Debtor’s professionals retained in the Chapter 11 Case pursuant to Section 327 of the Bankruptcy Code (only to the extent that the foregoing fees and expenses were incurred prior to the Termination Date and in accordance with the Budget and only to the extent that such fees and expenses remain unpaid subsequent to the payment, pro rata with other nonpriority administrative creditors, of such fees and expenses from available funds remaining in the Debtors’ estates for such creditors) in an aggregate amount not to exceed \$250,000.00 for the Debtor’s professionals (collectively, the “Professional Fees/Reimbursements”), which shall be the maximum amount available for allowed professional fees and disbursements of any kind in the Chapter 11 Case eligible to be paid from the Carve-Out; and (b) quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6) (the “UST Fees”); *provided, however*, that any Professional Fees/Reimbursements payable from the Carve-Out shall be paid first from prepetition retainers or trust account funds held by such professionals, *provided further, however*, that nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation described in clauses (a) and (b) above. Any prepetition retainers and trust account funds held by

a professional after payment in full of all amounts eligible to be paid to such professional from the Carve-Out shall be remitted to the Agent for application to the Prepetition Indebtedness.

13. None of the Cash Collateral or the Carve-Out may be used to: (i) object to, contest, challenge, or raise any defenses to the validity, perfection, priority or enforceability of the Prepetition Indebtedness, or the liens in favor of the Agent securing the Prepetition Indebtedness; (ii) object to or contest in any manner, or raise any alleged defenses to the validity, perfection, priority or enforceability of the Prepetition Indebtedness owing to the Lenders, or the liens in favor of the Agent or the Lenders securing the Prepetition Indebtedness; (iii) assert any claims or causes of action against the Agent or the Lenders of any type, including, without limitation, any avoidance actions or requests for subordination under Chapter 5 of the Bankruptcy Code, or any claim or cause of action related to the Prepetition Loan Documents or otherwise; or (iv) prepare or prosecute any adversary proceeding or contested matter in which the Agent or any of the Lenders is named as the defendant or respondent (which shall include the service of discovery or the conduct of Bankruptcy Rule 2004 examinations in connection with the preparation of any contemplated adversary proceeding or contested matter).

14. No later than the earlier of (a) the forty-fifth (45th) day after the date of entry of this Order, and (b) the date of entry of the Sale Order (the "Challenge Period"), any party in interest (including any official committee appointed in the Chapter 11 Case), other than the Debtor, may commence an adversary proceeding or other contested matter objecting to, contesting, or challenging the amount, validity, priority, or enforceability of the Prepetition Indebtedness or the liens in favor of the Agent and the Lenders securing the Prepetition Indebtedness. If no such adversary proceeding or contested matter is commenced within the Challenge Period, the Prepetition Indebtedness will be deemed and adjudicated finally and

indefeasibly as valid and enforceable, and the liens in favor of the Agent and the Lenders securing the Prepetition Indebtedness will be deemed and adjudicated finally and indefeasibly as valid, enforceable and perfected liens in the Collateral as set forth in the Prepetition Loan Documents, which adjudication shall be binding any trustee or examiner with expanded powers appointed for the Debtor's estate or the Debtor's property. The Debtor hereby waives and releases any right to challenge the amount, validity, or enforceability of the Prepetition Indebtedness or the liens in favor of the Agent and the Lenders securing the Prepetition Indebtedness.

15. The Debtor shall make available to the Agent, its counsel, and consultants, upon reasonable request, the Debtor's books and records and other financial information. The Debtor shall also provide the following to the Agent:

- (i) Beginning on September 24, 2015 and continuing on each Thursday thereafter, a variance report (in similar format as the Budget) comparing actual cash receipts and cash disbursements for the preceding week to projected cash receipts and cash disbursements for the same week contained in the Budget;
- (ii) Beginning on September 24, 2015 and continuing on each Thursday thereafter, an end-of-week "flash" report as of the end of the preceding week that details accounts receivable balances by vendor, the aging of such receivables, a description of collection efforts for all receivables greater than \$100,000 in amount and greater than 30 days past due, a listing of all deposits and prepaid items requested or posted, and such other financial information as reasonably requested by the Agent; and

- (iii) Beginning on September 24, 2015 and continuing on each Thursday thereafter, an end-of-week accrued liabilities report as of the end of the preceding week, setting forth (without limitation) accounts payable detail and all other material unpaid post-bankruptcy liabilities (excluding professional fees).

16. In the event of the sale of any of the Collateral pursuant to Section 363 of the Bankruptcy Code or under a bankruptcy plan, the Agent, on behalf of the Lenders, shall have the right (at an auction or otherwise) to credit bid an amount equal to all or any portion of the Prepetition Indebtedness. Upon the closing of the sale of any of the Collateral (including the Sale) pursuant to Section 363 of the Bankruptcy Code or under a bankruptcy plan, the net proceeds (i.e., net of the costs associated with such closing that the Debtor is obligated to pay) of such sale shall be deposited into the Accounts for immediate application to the Prepetition Indebtedness.

17. The Debtor, on behalf of itself and its bankruptcy estate, waives any and all claims, rights, and powers to surcharge the Agent, the Lenders, the Collateral, and any other property or assets of the Debtor subject in any manner whatsoever to the liens and security interests of the Agent and the Lenders (including the Replacement Liens) pursuant to Section 506(c) or Section 105(a) of the Bankruptcy Code. The foregoing waiver shall be binding upon any trustee or examiner with expanded powers appointed for the Debtor's estate or with respect to the Debtor's property.

18. Subject to paragraph 8 of this Order, the automatic stay of Section 362(a) of the Bankruptcy Code is hereby vacated and modified to the extent necessary to permit the Agent and the Lenders to take all actions necessary to implement this Order prior to the occurrence of the Termination Date. In the event that the fourteen-day stay provided by Bankruptcy Rule

4001(a)(3) is applicable to any actions necessary for the Agent or the Lenders to take in order to implement this Order prior to the occurrence of the Termination Date, such stay is hereby waived.

19. The provisions of this Order shall be binding upon and inure to the benefit of all parties in interest in this Chapter 11 Case, including the Agent, the Lenders, the Debtor and its bankruptcy estate, and their respective successors and assigns, including any trustee or examiner with expanded powers appointed for the Debtor's estate or with respect to the Debtor's property.

20. Nothing in this Order will be deemed or construed as an admission or waiver by the Agent or the Lenders as to adequate protection, or any other issue in this Chapter 11 Case. Nothing in this Order shall prejudice the Agent's or the Lenders' right to seek an order of this Court prohibiting the Debtor's use of Cash Collateral or seek any other or supplemental relief that the Agent or the Lenders may deem necessary and appropriate under the circumstances; and nothing in this Order prejudices the Debtor's or any other party in interest's right to oppose such relief requested by the Agent or the Lenders.

21. Neither the Agent nor the Lenders shall be required to file a proof of claim in the Chapter 11 Case for their claims to be allowed, and the Debtor's stipulations in Paragraph J of this Order shall be deemed to constitute a timely filed proof of claim. Any order entered by this Court in relation to the establishment of a bar date for any claim (including, without limitation, administrative claims) in the Chapter 11 Case shall not apply to the Agent or the Lenders.

22. A final hearing on the Motion is set before this Court in its Houston, Texas courtroom for October 7, 2015 at 10:00 a.m. (the "Final Hearing"). If any party in interest has an objection to any of the provisions of this Order, such party shall be authorized to assert such objection at the Final Hearing, provided that a written objection is filed with the Court, and

concurrently served upon the Office of the U.S. Trustee for the Southern District of Texas: 515 Rusk Street, Suite 3516, Houston, TX 77002, proposed counsel for the Debtor: Diamond McCarthy, LLP, 909 Fannin, Suite 1500, Houston, TX, 77010 Attn: Kyung S. Lee and Charles Rubio, and counsel for the Agent: Bryan Cave LLP, One Metropolitan Square, 211 North Broadway, Suite 3600, St. Louis, MO 63102 Attn: David Unseth, in each case so that such objections and responses are filed on or before 5:00 p.m. (Central time) at least three business days prior to the Final Hearing. Unless an objecting party appears at the Final Hearing to assert the basis for such objection before the Court, such objection shall be deemed to have been waived and abandoned by such objecting party.

23. This Court has and will retain jurisdiction to enforce this Order according to its terms.

SIGNED: September 22, 2015.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1**(Budget)**

(all amounts except # of employees in 000's)

	Week End 9/27/2015	Week End 10/4/2015	Week End 10/11/2015
# of employees	53	53	53
Plant Labor		\$89	
Management/Admin Labor		\$60	
Benefits - Payroll		\$10	
Vacation/PTO			
Contract Labor		\$20	
Medical & Prescription Drug Costs	\$81	\$81	
Professional Fees	\$100	\$75	\$75
Utilities - Electricity (AEP, EDF)	\$500		
Utilities - Gas			
Railcar Leases	\$74	\$100	\$75
Nitrogen	\$7	\$7	\$7
Operating Chemicals	\$7	\$7	\$7
Railcar Other			
US Trustee Fee			
Data Room Fee		\$10	
Security Services	\$22		\$22
Waste Disposal	\$9	\$9	\$9
Other (IT, Protective clothing, safety)	\$15	\$15	\$15
Accrued Tax Liabilities			\$45