

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

ORIGINAL

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In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-11563 (KBO)
	:	
Debtors.	:	Jointly Administered
	:	
-----	X	Re: Docket No. 6

**INTERIM ORDER UNDER 11 U.S.C. §§ 105(a), 363(b), 507(a)(8), AND 541
AND FED. R. BANKR. P. 6003 AND 6004 AUTHORIZING PAYMENT OF
PREPETITION TAXES AND FEES**

Upon the motion (the "Motion")² of the Debtors for an Interim Order authorizing the Debtors, in their sole discretion, to pay any prepetition Taxes and Fees owing to the Taxing Authorities and the other Debtors; and the Court having reviewed the Motion and the Gaston Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary, except as set forth in the Motion with respect to entry of this Interim Order and notice of the

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors' address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



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Final Hearing (as defined below); and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in the Interim Order, therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. The Debtors are authorized, but not directed, in their sole discretion, to pay to the Taxing Authorities, the other Debtors, or CN, all Taxes and Fees relating to the period prior to the commencement of their Chapter 11 Cases (the "**Petition Date**"), *provided that* payments and setoffs on account of prepetition Taxes and Fees shall not exceed \$600,000 in the aggregate pursuant to this Interim Order without further order of this Court. Such Taxes and Fees are summarized in further detail in the chart below.

Category	Description	Estimated Interim Amount
Sales and Use Taxes	Taxes imposed on the sale and use of certain goods and services.	\$0
Income Taxes (Including Canadian Income Taxes)	Taxes imposed on the Debtors' income and that are required to conduct business in the ordinary course.	\$0
Franchise Taxes	Taxes required to conduct business in the ordinary course.	\$0
Property Taxes	Taxes and obligations related to real and personal property holdings.	\$600,000
LLC Taxes	Taxes and obligations related to the Debtors' status as limited liability corporations	\$0
Road Maintenance Fees	Taxes and obligations related to the use of certain roads in Wisconsin	\$0
Rail Car Import Taxes	Taxes and obligations incurred in connection with railcar crossings into Canada	\$0
Canadian Goods and Services Taxes	Taxes imposed on the sale and use of certain goods and services by transloading facilities in Canada.	\$0

3. The Debtors rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to tax audits that have been completed, are in progress, or arise from prepetition periods.

4. The Debtors may seek additional relief from this Court in the future in the event that the Debtors subsequently determine that additional prepetition Taxes and Fees are owed by the Debtors.

5. Nothing in the Motion or this Interim Order shall be construed as impairing the Debtors' right to contest the validity, amount, or priority of any Taxes and Fees allegedly due or owing to any Taxing Authorities or the other Debtors, or any claim or lien against the Debtors and all Debtors' rights with respect thereto are hereby reserved.

6. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors in their sole discretion, to process, honor, pay and, if necessary, reissue any and all checks or electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the prepetition Taxes and Fees, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

7. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

8. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

~~9. Notwithstanding anything to the contrary in the Motion or this Interim Order, any payment made or authorization hereunder shall be subject to the applicable budget and/or cash collateral authorization requirements imposed on the Debtors under any order(s) of the Court authorizing the Debtors' use of cash collateral and post-petition debtor-in-possession financing facilities, including any order(s) authorizing post-petition financing.~~

10. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Interim Order, shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

11. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Interim Order shall be effective and enforceable immediately upon entry hereof.

12. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

13. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

14. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

15. The final hearing (the "**Final Hearing**") on the Motion shall be held on August 14, 2019, at 11:00 a.m., prevailing Eastern Time. On or before 4:00 p.m., prevailing Eastern Time, on August 7, 2019, any objections or responses to entry of a final order on the Motion shall be filed with the Court, and served on: (i) Emerge Energy Services, LP, 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109 (Attn: Bryan Gaston (email: bgaston@sssand.com)); (ii) Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (Attn: Keith A. Simon, Esq., Hugh K. Murtagh, Esq. and Liza L. Burton, Esq. (emails: keith.simon@lw.com, hugh.murtagh@lw.com and liza.burton@lw.com)); (iii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: John H. Knight, Esq. and Paul N. Heath, Esq. (emails: knight@rlf.com and heath@rlf.com)); (iv) counsel to the DIP Agent and the Prepetition Agents, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt S. Barr, Esq., David Griffiths, Esq., and Candace M. Arthur, Esq. (emails: matt.barr@weil.com, david.griffiths@weil.com, and candace.arthur@weil.com)) and (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, Wilmington, Delaware 19801 (Attn: Laura Davis Jones, Esq. (email: ljones@pszjlaw.com)); and (v) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Juliet M. Sarkessian, Esq. (email: juliet.m.sarkessian@usdoj.gov)). In the event no objections to entry of the Final Order on the

Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

16. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: July 17, 2019
Wilmington, Delaware



THE HONORABLE KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE