

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
	:	
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INTERIM ORDER UNDER 11 U.S.C. §§ 105(a), 363(b), 506(b), 541, 1107(a), AND 1108 AND FED. R. BANKR. P. 6003 (I) AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF SHIPPERS, LIEN CLAIMANTS, AND ROYALTY INTEREST OWNERS, (II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF UNDISPUTED AND OUTSTANDING PREPETITION ORDERS, AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")² of the Debtors for an Interim Order (i) authorizing the Debtors to pay the Shipping Claims, Lien Claims, and Royalty Payments; (ii) confirming the administrative expense priority status of Outstanding Orders and authorizing the Debtors to pay prepetition amounts related to the Outstanding Orders; and (iii) granting related relief, all as more fully set forth in the Motion; 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 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

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 respective meanings ascribed to such terms in the Motion.



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 Order and notice of the final hearing; 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 this Order, 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, to pay the prepetition Shipping Claims in an amount not to exceed \$473,000 in the aggregate (the “Interim Shipping Claims Cap”) absent further order of the Court.
3. The Debtors are authorized, but not directed, to pay the prepetition Lien Claims in an amount not to exceed \$57,000 in the aggregate (the “Interim Lien Claims Cap”) absent further order of the Court.
4. The Debtors are authorized, but not directed, to pay the prepetition Royalty Payments in an amount not to exceed \$186,000 in the aggregate (the “Interim Royalty Payments Cap”) absent further order of the Court.
5. All undisputed obligations related to the Outstanding Orders for goods that are delivered after the filing of the Debtors’ petitions in the Chapter 11 Cases are granted administrative expense priority status in accordance with section 503(b)(1)(A) of the Bankruptcy Code.
6. Each of the Banks at which the Debtors maintain their accounts relating to the payment of the Shipping Claims, Lien Claims, and Royalty Payments, are authorized to

(i) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts, and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

7. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of Shipping Claims, Lien Claims, and Royalty Payments as set forth herein and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

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

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

13. 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)); (v) counsel to any statutory committee appointed in these cases, if any; and (vi) 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.

14. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

15. 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