

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X
In re: : Chapter 11
: :
EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-11563 (KBO)
: :
Debtors. : Jointly Administered
: :
: Obj. Deadline: August 7, 2019 at 4:00 p.m. (ET)
: Hearing Date: August 14, 2019 at 11:00 a.m. (ET)
: :
: Re: Docket Nos. 6 & 61
: :
----- X

**NOTICE OF (A) ENTRY OF 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;
AND (B) FINAL HEARING THEREON**

PLEASE TAKE NOTICE that, on July 15, 2019, the above captioned debtors and debtors in possession (collectively, the “**Debtors**”), filed the *Debtors’ Motion for Entry of Orders 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* [Docket No. 6] (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”). A copy of the Motion is attached hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that, following an initial hearing to consider the Motion on July 17, 2019, the Court entered the *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*

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.



Prepetition Taxes and Fees [Docket No. 61] (the “**Interim Order**”). A copy of the Interim Order is attached hereto as Exhibit B.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Interim Order, objections or responses to the final relief requested in the Motion, if any, must be made in writing, filed with the Court on or before **August 7, 2019 at 4:00 p.m. (prevailing Eastern Time)**, 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)).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Interim Order, the final hearing with respect to the Motion, if required, will be held before The Honorable Karen B. Owens at the Court, 824 North Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801 on **August 14, 2019 at 11:00 a.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE THAT, IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE FINAL RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: July 18, 2019
Wilmington, Delaware

/s/ Brett M. Haywood

RICHARDS, LAYTON & FINGER, P.A.

John H. Knight (No. 3848)
Paul N. Heath (No. 3704)
Zachary I. Shapiro (No. 5103)
Brett M. Haywood (No. 6166)
Travis J. Cuomo (No. 6501)
One Rodney Square
920 North King Street
Wilmington, DE 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701
E-mail: knight@rlf.com
heath@rlf.com
shapiro@rlf.com
haywood@rlf.com
cuomo@rlf.com

- and -

LATHAM & WATKINS LLP

George A. Davis (admitted *pro hac vice*)
Keith A. Simon (admitted *pro hac vice*)
Hugh K. Murtagh (admitted *pro hac vice*)
Liza L. Burton (admitted *pro hac vice*)
885 Third Avenue
New York, New York 10022
Telephone: (212) 906-1200
Facsimile: (212) 751-4864
E-mail: george.davis@lw.com
keith.simon@lw.com
hugh.murtagh@lw.com
liza.burton@lw.com

*Proposed Counsel for Debtors
and Debtors-in-Possession*

EXHIBIT A

Motion

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-_____ (_____)
	:	
Debtors.	:	(Joint Administration Requested)
	:	
	X	

**DEBTORS’ MOTION FOR ENTRY OF ORDERS 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**

The debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) hereby file this motion (the “**Motion**”) for entry of interim and final orders, substantially in the forms attached hereto as Exhibit A and Exhibit B (respectively, the “**Interim Order**” and the “**Final Order**”), under sections 105(a), 363(b), 507(a)(8), and 541 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing the Debtors, in their sole discretion, to pay amounts owed on account of prepetition taxes and fees to certain international, federal, state, and local governmental and quasi-governmental units and the other Debtors. In support of the Motion, the Debtors rely upon and incorporate by reference the *Declaration of Bryan Gaston, Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the “**Gaston Declaration**”)². In

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 Gaston Declaration.

further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

JURISDICTION

1. This Court has jurisdiction to consider this Motion under 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. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 363(b), 507(a)(8), and 541 of the Bankruptcy Code. Such relief is warranted under Bankruptcy Rules 6003 and 6004.

BACKGROUND

2. On the date hereof (the "**Petition Date**"), the Debtors filed voluntary petitions in this Court commencing cases for relief under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**"). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the Gaston Declaration and is fully incorporated herein by reference.

3. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have yet been appointed.

4. Simultaneously with the filing of this Motion, the Debtors have filed a motion with this Court pursuant to Bankruptcy Rule 1015(b) seeking joint administration of the Chapter 11 Cases.

RELIEF REQUESTED

5. By this Motion, the Debtors seek entry of the Interim Order and Final Order authorizing the Debtors, in their sole discretion, to pay any prepetition tax and fee obligations consisting of international taxes, income taxes, franchise taxes, property taxes, sales and use taxes, LLC taxes, road maintenance fees, rail car import taxes and any other taxes and fees for which the Debtors' directors and officers may be liable or which may not constitute property of the Debtors' estates and any other types of taxes, fees, assessments or similar charges and any penalty, interest or similar charges in respect of such taxes and fees (collectively, the "**Taxes and Fees**")³ owing to (i) those international, federal, state and local governmental entities listed on Exhibit C attached hereto (the "**Taxing Authorities**"), and (ii) Debtor Emerge Energy Services Operating LLC ("**OLLC**") and CN Customs Brokerage Services Inc. ("**CN**") as reimbursement for amounts paid by OLLC and CN on behalf of Debtor Superior Silica Sands LLC ("**SSS**") on account of certain Taxes and Fees. The Debtors also request authority, in their sole discretion, to amend Exhibit C to add or remove any Taxing Authorities to the extent that the Debtors subsequently identify any additional governmental or quasi-governmental entities to which the Debtors owe Taxes and Fees.

³ The Debtors incur various taxes related to their employees and are separately required to withhold certain amounts from each employee's paycheck on account of things such as social security and FICA. Such payroll, withholding and other employee-related tax obligations are separately addressed in the *Motion of Debtors for Entry of Orders under 11 U.S.C. §§ 105(a), 362(d), 363(b), 363(c), 506(a), 507(a), 541, 553, 1107(a), and 1108 and Fed. R. Bankr. P. 6003 (I) Authorizing Payment of Certain Prepetition Workforce Obligations, Including Compensation, Expense Reimbursements, Benefits, and Related Obligations, (II) Confirming Right to Continue Workforce Programs on Postpetition Basis, (III) Authorizing Payment of Withholding and Payroll-Related Taxes, (IV) Authorizing Payment of Prepetition Claims Owing to Administrators of, or Third Party Providers Under, Workforce Programs, and (V) Authorizing Banks to Honor Prepetition Checks and Fund Transfers for Authorized Payments*, which is contemporaneously filed herewith.

6. Unless further authorization is obtained from this Court, the Debtors propose to limit the aggregate amount of payments to be made on account of prepetition Taxes and Fees under this Motion to (i) \$600,000 on interim basis and (ii) \$935,000 on final basis.

7. For the avoidance of doubt, the requested authorization would be discretionary, allowing the Debtors, among other things, to elect to pay Taxes and Fees as to which the Debtors' officers and directors may have personal liability in the event of nonpayment by the Debtors before other Taxes and Fees. In addition, the requested authorization would be without prejudice to the Debtors' rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate and would extend to the payment of Taxes and Fees relating to tax audits that have been completed, are in progress, or arise from prepetition periods.

8. In addition, the Debtors request that the Court authorize all banks and financial institutions to receive, process, honor, pay, and, if necessary, reissue all prepetition and postpetition checks, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the bank accounts used by the Debtors to satisfy their obligations in connection with the Taxes and Fees approved herein, upon receipt by each bank or financial institution of notice of such authorization, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. The Debtors additionally request that the Court authorize them to issue new postpetition checks to replace any checks that may nevertheless be dishonored and to reimburse any expenses that holders of claims in connection with the Taxes and Fees may incur as a result of any bank's failure to honor a prepetition check.

9. As set forth below, the Taxes and Fees at issue are appropriate for payment to the extent that they are priority or secured claims that are payable in full or, alternatively, under the

personal liability theory or the doctrine of necessity. By paying the Taxes and Fees in the ordinary course of business, as and when due, the Debtors will avoid unnecessary disputes with the Taxing Authorities—and expenditures of time and money resulting from such disputes—over myriad issues that are typically raised by the Taxing Authorities as they attempt to enforce their rights to collect Taxes and Fees.

BASIS FOR RELIEF

10. Prior to the Petition Date, the Debtors incurred obligations to international, federal, state, and local governments. As of the Petition Date, the Debtors were substantially current in the payment of assessed and undisputed Taxes and Fees. Certain Taxes and Fees attributable to the prepetition period, however, may not yet have become due. Certain prepetition Taxes and Fees may not be due until the applicable monthly, quarterly, or annual payment dates—in some cases immediately and in others not until next year. In 2018, the Debtors incurred approximately \$2,600,000 on account of Taxes and Fees. As of the Petition Date, the Debtors estimate that they have accrued liabilities, which are not yet due, in the approximate amount of \$935,000 on account of Taxes and Fees.

11. The Taxes and Fees accrued prior to the Petition Date are summarized in further detail below:

Category	Description	Estimated Interim Amount	Estimated Final Amount
Sales and Use Taxes	Taxes imposed on the sale and use of certain goods and services.	\$0	\$10,000
Income Taxes (Including Canadian Income Taxes)	Taxes imposed on the Debtors' income and that are required to conduct business in the ordinary course.	\$0	\$5,000
Franchise Taxes	Taxes required to conduct business in the ordinary course.	\$0	\$0
Property Taxes	Taxes and obligations related to	\$600,000	\$600,000

Category	Description	Estimated Interim Amount	Estimated Final Amount
	real and personal property holdings.		
LLC Taxes	Taxes and obligations related to the Debtors' status as limited liability corporations	\$0	\$0
Road Maintenance Fees	Taxes and obligations related to the use of certain roads in Wisconsin	\$0	\$305,000
Rail Car Import Taxes	Taxes and obligations incurred in connection with railcar crossings into Canada	\$0	\$15,000
Canadian Goods and Services Taxes	Taxes imposed on the sale and use of certain goods and services by transloading facilities in Canada.	\$0	\$0

12. The manner in which the Debtors pay the Taxes and Fees varies. With respect to certain of the Taxes and Fees, the Debtors pay the applicable Taxing Authority directly. With respect to franchise taxes in the State of Texas (the "**Texas Franchise Tax**"), Debtor OLLC makes payments to the Texas Department of Revenue on behalf of Debtor SSS. In such instances, OLLC then allocates the appropriate portion of the Texas Franchise Tax to SSS, who then simultaneously reimburses OLLC in cash as an intercompany transfer. Following the Petition Date, OLLC and SSS each intend to continue such method of payment of the Texas Franchise Taxes. With respect to railcar import taxes (the "**Rail Car Import Tax**"), the Debtors' vendor CN makes payments to the Canada Revenue Agency on behalf of Debtor SSS. In such instances, CN then allocates the appropriate portion of the Rail Car Import Tax to SSS, who then reimburses CN in cash. Following the Petition Date, CN and SSS each intend to continue such method of payment of the Rail Car Import Tax. With respect to the Canadian

Goods and Services Taxes, such taxes are included in the invoices billed to the Debtors by the transloading facilities.⁴

13. The continued payment of the Taxes and Fees on their normal due dates will ultimately preserve the resources of the Debtors' estates, thereby promoting their prospects for a successful chapter 11 process. If such obligations are not timely paid, the Debtors will be required to expend time and incur attorneys' fees and other costs to resolve a multitude of issues related to such obligations, each turning on the particular terms of each Taxing Authority's applicable laws, including whether (i) the obligations are priority, secured, or unsecured in nature, (ii) the obligations are pro-ratable or fully prepetition or postpetition, and (iii) penalties, interest, attorneys' fees and costs can continue to accrue on a postpetition basis and, if so, whether such penalties, interest, attorneys' fees and costs are priority, secured or unsecured in nature.

14. Moreover, certain of the Taxes and Fees may be considered to be obligations as to which the Debtors' officers and directors may be held directly or personally liable pursuant to applicable federal, state, or local laws in the event of nonpayment. If any such taxes or fees remain unpaid, the Debtors' officers and directors may be subject to lawsuits or even criminal prosecution on account of such nonpayment during the pendency of the Chapter 11 Cases. In such event, collection efforts by the Taxing Authorities would distract the Debtors' officers and directors from their focus on these Chapter 11 Cases.

⁴ The Debtors have separately sought authorization to honor obligations to certain transloading facilities as part of the contemporaneously filed *Debtors' Motion for Entry of Orders 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 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.*

15. Although the Debtors believe that all international, federal, state, and local governmental and quasi-governmental entities to which the Debtors may be liable are described herein and listed on Exhibit C, it is possible that other Taxes and Fees owed to additional entities may be uncovered by the Debtors subsequent to the filing of this Motion. Accordingly, the Debtors request authority, in their sole discretion, to amend Exhibit C to add or delete any governmental or quasi-governmental entity as appropriate. To the extent that the Debtors subsequently identify any additional governmental or quasi-governmental entities to which the Debtors owe Taxes and Fees, the Debtors propose to add such entities to Exhibit C and to have the terms of the Interim and Final Orders apply to any such entity. The Debtors will serve on any of the subsequently identified entities a copy of this Motion and the Interim and Final Orders entered with respect to the Motion, along with an amended Exhibit C that includes such entity.

16. Certain of the Taxing Authorities may not have been paid or may have been sent checks and/or fund transfers for Taxes and Fees that may or may not have been presented or cleared as of the Petition Date. Similarly, in other cases, Taxes and Fees have accrued or are accruing, but have not yet become due and payable and, thus, any checks or fund transfers will be issued on a postpetition basis. Accordingly, the Debtors request entry of the Interim and Final Orders authorizing their banks and other financial institutions to receive, process, honor, pay and, if necessary, reissue all prepetition and postpetition checks and fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, issued by the Debtors in payment of Taxes and Fees that had not been honored and paid as of the Petition Date and authorizing the Debtors' banks and financial institutions to rely on the representations of the Debtors as to which checks and fund transfers

should be honored and paid in respect of Taxes and Fees, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

APPLICABLE AUTHORITY

A. The Majority of the Taxes and Fees Are Entitled to Payment Prior to Prepetition, Non-Priority Unsecured Claims

17. To the extent that the Taxes and Fees are priority claims pursuant to section 507(a)(8) of the Bankruptcy Code or secured claims pursuant to section 506(a) of the Bankruptcy Code, their payment should be authorized on the basis that (i) they are required to be paid in full as a condition to satisfying the plan confirmation requirements contained in section 1129 of the Bankruptcy Code, or (ii) they would be entitled to payment before any prepetition non-priority unsecured claim.

18. If the Taxes and Fees are deemed priority claims, section 1129(a)(9)(C) of the Bankruptcy Code requires that they be paid no less favorably than through regular installment payments, over a period not exceeding five years after the Petition Date, of a total value as of the effective date of the plan equal to the allowed amount of each such claim. *See* 11 U.S.C. § 1129(a)(9)(C).

19. If the Taxes and Fees are deemed secured claims that would (but for such secured status) fall under the rubric of section 507(a)(8) of the Bankruptcy Code, section 1129(a)(9)(D) of the Bankruptcy Code requires that they be paid no less favorably than through regular installment payments, over a period not exceeding five years after the Petition Date, of a total value as of the effective date of the plan equal to the allowed amount of each such claim. *See* 11 U.S.C. § 1129(a)(9)(D) (referring back to 11 U.S.C. § 1129(a)(9)(C)). Otherwise, section 1129(b)(2)(A) of the Bankruptcy Code requires that they be satisfied through deferred cash payments totaling at least the allowed amount of each such claim, of a value, as of the effective

date of the plan, equal to the value of the collateral securing the claim, with a continuation of the liens against the collateral; or, if the collateral is to be sold, that the lien securing the claim attach to the proceeds of sale; or that the holder realize the indubitable equivalent of the claim. *See* 11 U.S.C. § 1129(b)(2)(A); *see also Fed. Home Loan Mortg. Corp. v. Bugg (In re Bugg)*, 172 B.R. 781, 785 (E.D. Pa. 1994) (“The ‘fair and equitable’ standard requires that a secured claim holder retain its lien and receive deferred cash payments totaling [sic] at least the allowed amount of the claimant’s secured claim and a present value equal to the value of its collateral.”).

20. Because of the likelihood that the vast majority of the Taxes and Fees constitute priority claims under section 507(a)(8) of the Bankruptcy Code, the Debtors’ payment of the Taxes and Fees now, in all likelihood, will affect only the timing of the payments and not the amounts to be received by the Taxing Authorities (or OLLC or CN as reimbursement from SSS). Moreover, by paying legitimate tax claims now, the Debtors will avoid any unnecessary fees, interest or penalties that might otherwise be asserted. Other creditors and parties in interest, therefore, will not be prejudiced if the relief sought herein is granted by this Court.

B. Section 105 of the Bankruptcy Code and the Doctrine of Necessity Support Payment of the Taxes and Fees

21. Alternatively, authorization to pay the Taxes and Fees is appropriate under the “doctrine of necessity,” which is grounded in section 105(a) of the Bankruptcy Code. Section 105(a) provides that the Court “may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of this section is to grant bankruptcy courts the authority to take actions necessary to exercise their power under the Bankruptcy Code.

22. The doctrine of necessity is a well-settled doctrine that permits a bankruptcy court to authorize payment of certain prepetition claims prior to the completion of the reorganization

process where the payment of such claims is necessary to the reorganization. *See In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment and thereafter approving payment of key inventory suppliers’ prepetition claims when such suppliers could destroy debtor’s business by refusing to deliver new inventory on eve of debtor’s key sales season);⁵ *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (reiterating court’s own statement in a prior ruling that “[i]n the Third Circuit the law is clear that to justify payment of one class of pre-petition creditors in advance of a confirmed plan, the debtor must show that payment is essential to the continued operation of the business.”); *In re Sharon Steel Corp.*, 159 B.R. 730, 736 (Bankr. W.D. Pa. 1993) (“The Third Circuit has adopted the ‘necessity of payment’ doctrine.”); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“[T]he court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.”).

C. Section 363 of the Bankruptcy Code Supports Payment of the Taxes and Fees

23. This Court may also authorize the Debtors to pay Taxes and Fees under section 363(b) of the Bankruptcy Code, which provides that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts have indicated that the use of property of the estate outside of the

⁵ The Court’s power to utilize the doctrine of necessity in chapter 11 cases derives from the Court’s inherent equity powers and its statutory authority to “issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The United States Supreme Court first articulated the doctrine of necessity over a century ago, in *Miltenberger v. Logansport Railway Co.*, 106 U.S. 286 (1882), in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors and suppliers, among others, when such payments were necessary to preserve the receivership property and the integrity of the business in receivership. *See id.* at 309-14. The modern application of the doctrine of necessity is largely unchanged from the Court’s reasoning in *Miltenberger*. *See In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581-82 (3d Cir. 1981) (“[I]n order to justify payment under the ‘necessity of payment’ rule, a real and immediate threat must exist that failure to pay will place the continued operation of the [debtor] in serious jeopardy.”).

ordinary course of business is proper where the debtor in possession has articulated “some business justification, other than the mere appeasement of major creditors.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989); *see also Institutional Creditors of Cont’l Airlines, Inc. v. Cont’l Airlines, Inc. (In re Cont’l Airlines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (holding that section 363(b) of the Bankruptcy Code requires that “there must be some articulated business justification for using, selling or leasing the property outside the ordinary course of business”); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (“[A] judge determining a § 363(b) application [must] expressly find . . . a good business reason to grant such an application.”); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147 (D. Del. 1999) (“In determining whether to authorize the use, sale or lease of property of the estate under [Section 363], courts require the debtor to show that a sound business purposes justified such actions.”).

24. The relief requested herein easily satisfies the foregoing standards. Failure to pay the Taxes and Fees to the Taxing Authorities in full and on time, thereby risking the cessation of normal relations between the Taxing Authorities and the Debtors, will make the Debtors’ estates worse off than they will be having paid the Taxes and Fees. It is in the best interest of the Debtors’ estates that the Taxes and Fees be paid on time so as to avoid administrative difficulties. Failure to timely pay, or a precautionary withholding by the Debtors of payment of, the Taxes and Fees may cause the Taxing Authorities to take precipitous action, including an increase in audits, a flurry of lien filings and significant administrative maneuvering at the expense of the Debtors’ time and resources. Prompt and regular payment of the Taxes and Fees will avoid this unnecessary governmental action.

D. Certain Taxes and Fees May Not Be Property of the Estate

25. Certain of the Taxes and Fees may constitute so-called “trust fund” taxes, which are required to be collected from third parties and held in trust for payment to the Taxing Authorities. Such taxes are not considered property of the estates under section 541(d) of the Bankruptcy Code. *See Begier v. IRS*, 496 U.S. 53, 63-67 (1990) (trust fund taxes are not property of estate); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 96 (3d Cir. 1994) (withheld taxes were subject to a trust); *Official Comm. Of Unsecured Creditors of the Columbia Gas Transmission Corp. v. Columbia Gas. Sys. Inc. (In re Columbia Gas Sys. Inc.)*, 997 F.2d 1039, 1061-62 (3d Cir. 1993) (refunds required to be collected by federal law created trust fund that was not property of the debtor’s estate); *Shank v. Wash. State Dep’t of Revenue, Excise Tax Div. (In re Shank)*, 792 F.2d 829, 830 (9th Cir. 1986) (sales tax required by state law to be collected by sellers from their customers is “trust fund” tax); *DeChiaro v. N.Y. State Tax Comm’n*, 760 F.2d 432, 433-34 (2d Cir. 1985) (same); *In re Al Copeland Enters., Inc.*, 133 B.R. 837, 841-42 (Bankr. W.D. Tex. 1991) (debtor obligated to pay Texas sales taxes plus interest because such taxes were “trust fund” taxes), *aff’d*, 991 F.2d 233 (5th Cir. 1993). The Debtors, therefore, arguably have no equitable interest in the Taxes and Fees that are trust fund taxes and are obligated to pay over the collected amounts.

E. The Debtors’ Officers and Directors May Be Personally Liable for Non-Payment of Certain Taxes and Fees

26. Additionally, under the laws of many states, officers and directors may be held directly or personally liable for the nonpayment of certain types of taxes. It is in the best interest of the Debtors’ estates and consistent with the reorganization policy of the Bankruptcy Code to eliminate the possibility that officers and directors will become subject to time-consuming and potentially damaging distractions.

27. The Chapter 11 Cases are complicated due to, among other things, the nature and geographic scope of the Debtors' businesses, and the Debtors' focus should be on addressing their operational and financial issues in a manner that will maximize recoveries. In this context, the payment of the Taxes and Fees is insignificant and will have no meaningful effect on the recoveries of creditors in the Chapter 11 Cases, particularly in view of the priority or secured status of a significant portion of such obligations. Moreover, the payment amount will likely be offset in no small part by the amount of postpetition resources that the Debtors will conserve by obviating the need to spend time and money to address disputes with the Taxing Authorities that are unnecessary and wasteful of the resources of the Debtors and this Court.

F. Precedent Cases Support the Granting of the Requested Relief

28. The relief requested in this Motion is similar to relief granted by numerous courts, including this Court in other chapter 11 cases in this district. *See, e.g., In re Hexion Holdings LLC*, Case No. 19-10684 (KG) (Bankr. D. Del. Apr. 1, 2019); *In re Imerys Talc America Inc.*, Case No. 19-10289 (LSS) (Bankr. D. Del. Feb. 13, 2019); *In re J & M Sales Inc.*, Case No. 18-11801 (LLS); (Bankr. D. Del. Aug. 27, 2018); *In re Samuels Jewelers, Inc.*, Case No. 18-11818(KJC) (Aug. 8, 2018); *In re Enduro Res. Partners LLC*, Case No. 18-11174 (KG) (Bankr. D. Del. Jun. 8, 2018); *In re Claire's Stores, Inc.*, Case No. 18-10584 (MFW) (Bankr. D. Del. Apr. 17, 2018). The Debtors submit that the present circumstances warrant similar relief in the Chapter 11 Cases.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED AND
BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

29. Pursuant to Bankruptcy Rule 6003, the Court may grant relief regarding a motion to pay all or part of a prepetition claim within twenty one days after the Petition Date if the relief is necessary to avoid immediate and irreparable harm. *See Fed. R. Bankr. P. 6003(b)*. Based on

the foregoing, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003(b) because the relief set forth in Exhibit A is necessary to avoid immediate and irreparable harm.

30. To the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors request in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the fourteen day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

CONSENT TO JURISDICTION

31. Pursuant to Rule 9013-1(f) of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final judgment or order absent consent of the parties.

RESERVATION OF RIGHTS

32. Nothing contained herein is or should 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 the proposed Interim Order and Final Order once entered. Nothing contained in the Interim Order or the Final 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.

NOTICE

33. Notice of this Motion will be given to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) the creditors listed on the Debtors' consolidated list of thirty creditors holding the largest unsecured claims; (v) counsel to the DIP Agent and the Prepetition Agents; (vi) counsel to Insight Equity; (vii) the Authorities; and (viii) all parties entitled to notice pursuant to Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

34. A copy of this Motion is available on (i) the Court's website: www.deb.uscourts.gov, and (ii) the website maintained by the Debtors' proposed Claims and Noticing Agent, Kurtzman Carson Consultants LLC, at <https://kccllc.net/EmergeEnergy>.

NO PRIOR REQUEST

35. No previous request for the relief sought herein has been made to this Court or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the proposed Interim and Final Orders, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: July 15, 2019
Wilmington, Delaware

/s/ Zachary I. Shapiro

RICHARDS, LAYTON & FINGER, P.A.

John H. Knight (No. 3848)
Paul N. Heath (No. 3704)
Zachary I. Shapiro (No. 5103)
Brett M. Haywood (No. 6166)
One Rodney Square
920 North King Street
Wilmington, DE 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701
E-mail: knight@rlf.com
heath@rlf.com
shapiro@rlf.com
haywood@rlf.com

- and -

LATHAM & WATKINS LLP

George A. Davis (*pro hac vice* admission pending)
Keith A. Simon (*pro hac vice* admission pending)
Hugh K. Murtagh (*pro hac vice* admission pending)
Liza L. Burton (*pro hac vice* admission pending)
885 Third Avenue
New York, New York 10022
Telephone: (212) 906-1200
Facsimile: (212) 751-4864
E-mail: george.davis@lw.com
keith.simon@lw.com
hugh.murtagh@lw.com
liza.burton@lw.com

Proposed Counsel for Debtors and Debtors-in-Possession

EXHIBIT A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

----- X
 In re: : Chapter 11
 :
 EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-_____ (_____)
 :
 Debtors. : (Joint Administration Requested)
 :
 ----- X

**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.

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 [_____, 2019, at ____:____ .m], prevailing Eastern Time. On or before [__:__ .m.], prevailing Eastern Time, on [_____, 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: _____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	X	
In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-_____ (_____)
	:	
Debtors.	:	(Joint Administration Requested)
	:	
	X	

**FINAL 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 a Final 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, the Gaston Declaration and the Interim Order entered on [●], 2019; 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; and upon the record herein; and after due deliberation

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.

thereon; and the Court having determined that there is good and sufficient cause for the relief granted in the Final Order, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. 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 \$935,000 in the aggregate pursuant to this Final Order without further order of this Court. Such Taxes and Fees are summarized in further detail in the chart below:

Category	Description	Estimated Final Amount
Sales and Use Taxes	Taxes imposed on the sale and use of certain goods and services.	\$10,000
Income Taxes (Including Canadian Income Taxes)	Taxes imposed on the Debtors' income and that are required to conduct business in the ordinary course.	\$5,000
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	\$305,000
Rail Car Import Taxes	Taxes and obligations incurred in connection with railcar crossings into Canada	\$15,000
Canadian Goods and Services Taxes	Taxes imposed on the sale and use of certain goods and services by transloading facilities in Canada.	\$0

4. 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.

5. 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.

6. Nothing in the Motion or this Final 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.

7. 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.

8. 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 Final 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 Final Order.

9. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final 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 Final Order. Nothing contained in this Final 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.

10. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final 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 anything to the contrary in the Motion or this Final 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.

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

13. 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 Final Order.

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

Dated: _____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C**List of Taxing Authorities**

TAXING AUTHORITY NAME	ADDRESS	FOREIGN / FEDERAL / STATE / COUNTY	DESCRIPTION
Canada Revenue Agency	Post Office Box 638 Station Central Halifax, NS, B3J 2T5 Tel: 1-800-959-8281	Foreign	Canadian Goods and Services Tax
Canada Revenue Agency	Winnipeg Tax Center PO Box 14001 Station Main Winnipeg, MB, RC3 3M3 Tel: 1-800-959-8281	Foreign	Canadian Income Tax
Canada Revenue Agency	220 4th Avenue South East Calgary AB T2G0L1 Tel: (800) 267-6999	Foreign	Rail Car Import Taxes
IRS Department of Treasury	819 Taylor St. #6a14 Fort Worth, TX 76102 Tel: (682) 707-0177	Federal	Income Tax
Delaware Division of Revenue	820 N. French Street Wilmington, DE 19801 Tel: (302) 577-8200	State	LLC Tax
Texas Department of Revenue	PO Box 13528 Capital Station Austin, TX, 78711-3528 Tel: 800-531-5441	State	Sales and Use Tax
Texas Department of Revenue	PO Box 13528 Capital Station Austin, TX, 78711-3528 Tel: 800-531-5441	State	Franchise Tax
City of Barron, WI	335 East Monroe Ave Barron, WI, 54812 Tel: 715-537-6280	County	Property Tax
Town of Alma, WI	C/O Kathy Patterson N9905 Castle Hill Road, Merrillan, WI, 54754 Tel: 608-685-3330	County	Property Tax
Town of Arland, WI	905 7 1/2 Ave Barron, WI, 54812 Tel: 715-455-1231	County	Property Tax

TAXING AUTHORITY NAME	ADDRESS	FOREIGN / FEDERAL / STATE / COUNTY	DESCRIPTION
Town of Auburn, WI	23324 County Hwy Q New Auburn, WI, 54757 Tel: 715-726-7960	County	Property Tax
Town of Clinton, WI	1033 15th Ave Barron, WI, 54812 Tel: 715-418-0839	County	Property Tax; Road Maintenance Fees
Town of Dovre, WI	304 25 1/2 St. Chetek, WI, 54728 Tel: 715-237-2530	County	Property Tax
Town of Sioux Creek, WI	2077 3 1/2 Ave Chetek, WI, 54728 Tel: 715-837-1007	County	Property Tax; Road Maintenance Fees
Village of New Auburn, WI	130 E Elm St New Auburn, WI, 54757 Tel: 715-237-2223	County	Property Tax; Road Maintenance Fees

File a First Day Motion:[19-11563 Emerge Energy Services LP](#)

Type: bk

Chapter: 11 v

Office: 1 (Delaware)

Assets: y

Case Flag: VerifDue, PlnDue,
DsclsDue**U.S. Bankruptcy Court****District of Delaware**

Notice of Electronic Filing

The following transaction was received from Zachary I Shapiro entered on 7/15/2019 at 11:07 PM EDT and filed on 7/15/2019

Case Name: Emerge Energy Services LP**Case Number:** [19-11563](#)**Document Number:** [6](#)**Docket Text:**

Motion to Pay Sales and Use Taxes (*Debtors' Motion for Entry of Orders 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*) Filed By Emerge Energy Services LP (Shapiro, Zachary)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**W:\BJW\Emerge - Tax Motion - FILING VERSION.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=983460418 [Date=7/15/2019] [FileNumber=15878257-0]
][67e8bcc586923c64c640708112589cfb09ce8b2a5ddd3b80fb5a61391d16d0af1c4
73531731fd8b837e02cbeafabe4485e67ea9cacd1dc098ad361c0fdb6cdd6]]

19-11563 Notice will be electronically mailed to:

Brett Michael Haywood on behalf of Debtor Emerge Energy Services LP
haywood@rlf.com, rbgroup@rlf.com,ann-jerominski-2390@ecf.pacerpro.com

Paul Noble Heath on behalf of Debtor Emerge Energy Services LP
heath@rlf.com, RBGroup@rlf.com;ann-jerominski-2390@ecf.pacerpro.com

John Henry Knight on behalf of Debtor Emerge Energy Services LP
knight@rlf.com, RBGroup@RLF.com;ann-jerominski-2390@ecf.pacerpro.com

Juliet M. Sarkessian on behalf of U.S. Trustee U.S. Trustee
juliet.m.sarkessian@usdoj.gov

Zachary I Shapiro on behalf of Debtor Emerge Energy Services LP
shapiro@rlf.com, rbgroup@rlf.com;ann-jerominski-2390@ecf.pacerpro.com

EXHIBIT B

Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

ORIGINAL

-----	X	
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.

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.

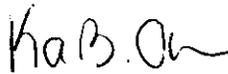
14. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

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