

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re:	:	Chapter 11
	:	
EMERGE ENERGY SERVICES LP, <i>et al.</i> , ¹	:	Case No. 19-11563 (KBO)
	:	
Reorganized Debtors.	:	Jointly Administered
	:	
	:	Obj. Deadline: May 26, 2020 at 4:00 p.m. (ET)
-----	X	Hearing Date: June 4, 2020 at 10:00 a.m. (ET)

**MOTION OF THE REORGANIZED DEBTORS FOR ENTRY OF A FINAL DECREE
(I) CLOSING THE SUBSIDIARY CASES AND (II) GRANTING RELATED RELIEF**

The reorganized debtors in the above-captioned cases (collectively, the “**Reorganized Debtors**”),² by and through their undersigned counsel, respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction to consider this motion (the “**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)(2). Venue of the Chapter 11 Cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

¹ The Reorganized Debtors in these cases, along with the last four digits of each Reorganized 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 Reorganized Debtors’ address is 6500 West Freeway, Suite 800, Fort Worth, Texas 76116.

² Prior to the occurrence of the Effective Date (as defined below), the Reorganized Debtors were debtors and debtors-in-possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”).



RELIEF REQUESTED

2. By this Motion, pursuant to section 350(a) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), rule 3022 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rule 3022-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Reorganized Debtors seek the entry of an order closing the Chapter 11 Cases of Emerge Energy Services GP LLC (Case No. 19-11564 (KBO)); Emerge Energy Services Operating LLC (Case No. 19-11565 (KBO)); Superior Silica Sands LLC (Case No. 19-11566 (KBO)); and Emerge Energy Services Finance Corporation (Case No. 19-11567 (KBO)) (collectively, the “**Subsidiary Cases**”). The Chapter 11 Case of Reorganized Debtor Emerge Energy Services LP (Case No. 19-11563 (KBO)) (“**Emerge**”), will remain open to provide the Reorganized Debtors the opportunity to finalize the process of resolving any contested matters and reconciling, objecting to, and resolving claims, all of which the Reorganized Debtors anticipate will be completed in the near term.

3. Upon the filing of a further motion to close the remaining Chapter 11 Case of Emerge, the Reorganized Debtors will file a final report with respect to all of the above-captioned Chapter 11 Cases pursuant to Local Rule 3022-1(c). Accordingly, the Reorganized Debtors in the Subsidiary Cases do not intend to file a final report at this time.

4. A proposed form of final decree order granting the relief requested in the Motion is attached hereto as Exhibit A (the “**Proposed Final Decree Order**”).

EFFECTIVE DATE HAS OCCURRED AND PLAN IS SUBSTANTIALLY CONSUMMATED

5. On December 18, 2019, the Court entered an order [Docket No. 721] (the “**Confirmation Order**”) confirming the *Modified Second Amended Joint Plan of Reorganization*

for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code, which was attached to the Confirmation Order as Exhibit 1 thereto (the “**Plan**”).³ The Plan became effective, and was substantially consummated, on December 20, 2019 (the “**Effective Date**”). See Docket No. 733.

BASIS FOR RELIEF

6. Section 350(a) of the Bankruptcy Code provides that “[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case.” 11 U.S.C. § 350(a). Bankruptcy Rule 3022 implements the Bankruptcy Code’s requirements, providing similarly that, “[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.” Fed. R. Bankr. P. 3022. Rule 3022-1(a) of the Local Rules provides that, “[u]pon written motion, a party in interest may seek the entry of a final decree at any time after the confirmed plan has been fully administered provided that all required fees due under 28 U.S.C. § 1930 have been paid.” Del. Bankr. L.R. 3022-1(a).

7. The term “fully administered” is not defined in either the Bankruptcy Code or the Bankruptcy Rules. The Advisory Committee Note to Bankruptcy Rule 3022 (the “**Advisory Committee Note**”), however, sets forth the following non-exclusive factors to be considered in determining whether a case has been fully administered:

- a. whether the order confirming the plan has become final;
- b. whether deposits required by the plan have been distributed;
- c. whether the property proposed by the plan to be transferred has been transferred;

³ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Confirmation Order or the Plan, as applicable.

- d. whether the debtor or its successor has assumed the business or the management of the property dealt with by the plan;
- e. whether payments under the plan have commenced; and
- f. whether all motions, contested matters, and adversary proceedings have been finally resolved.

Advisory Committee Note.

8. The Advisory Committee Note also indicates that the entry of a final decree “should not be delayed solely because the payments required by the plan have not been completed,” and the Court “should not keep the case open only because of the possibility that the court’s jurisdiction may be invoked in the future.” *See* Fed. R. Bankr. P. 3022 Advisory Committee’s Note to 1991 Amendment. Additionally, “a final decree closing the case after the estate is fully administered does not deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to § 350(b) of the [Bankruptcy] Code.” *Id.*

- 9. Indeed, Bankruptcy Rule 3022 was amended in order to:

set forth a flexible Rule to permit the court to determine that an estate is fully administered and should be closed even though payments or other activities involving the debtor and its creditors might continue. . . . As is evident by the Committee note, the Advisory Committee interprets “fully administered” very loosely and encourages courts to use substantially more discretion in deciding whether to close a [c]hapter 11 case th[a]n Code § 350 and the Rule literally read.

In re Gould, 437 B.R. 34, 37–38 (Bankr. D. Conn. 2010) (emphasis added) (citation omitted).

10. Bankruptcy courts have adopted the view that “these factors are but a guide in determining whether a case has been fully administered, and not all factors need to be present before the case is closed.” *In re SLI, Inc.*, Case No. 02-12608 (WS), 2005 WL 1668396, at *2 (Bankr. D. Del. June 24, 2005) (citing *In re Mold Makers, Inc.*, 124 B.R. 766, 768-69 (Bankr. N.D. Ill. 1991)); *see also In re Federated Department Stores, Inc.*, 43 Fed. Appx. 820, 822 (6th Cir.

2002) (“A court should review each request for entry of a final decree on a case-by-case basis and analyze the factors set forth in Rule 3022, along with any other relevant factors, in determining whether an estate has been fully administered.”); *In re Kliegl Bros. Universal Elec. Stage Lighting Co., Inc.*, 238 B.R. 531, 542 (Bankr. E.D.N.Y. 1999) (recognizing that bankruptcy courts weigh the factors contained in the Advisory Committee Note when deciding whether to close a case); *Ericson v. IDC Servs., Inc. (In re IDC Servs., Inc.)*, Case No. 93 B 45922 (SMB), 1998 WL 547085, at *3 (S.D.N.Y. Aug. 28, 1998) (“[T]he approach that looks to the Advisory Note provides a more complete and flexible standard for determining when to close a chapter 11 case, and is therefore preferable.”); *In re Jay Bee Enters., Inc.*, 207 B.R. 536, 538 (Bankr. E.D. Ky. 1997) (“Rule 3022 allows the court flexibility. It does not require that a chapter 11 case be kept open until all awarded fees and allowed claims have been paid in accordance with the confirmed plan or until the statutory fees . . . have been paid.”); *Walnut Assocs. v. Saidel*, 164 B.R. 487, 493 (E.D. Pa. 1994) (“[A]ll of the factors in the Committee Note need not be present before the Court will enter a final decree.”); *In re Gibson Brands, Inc.*, No. 18-11028 (Bankr. D. Del. 2019) (CSS) (Docket No. 1107) (granting a motion to close certain chapter 11 cases over the objection of the United States Trustee).

11. In addition to the factors set forth in the Advisory Committee Note, courts have considered whether the plan has been substantially consummated. *See In re Gates Cmty. Chapel of Rochester, Inc.*, 212 B.R. 220, 224 (Bankr. W.D.N.Y. 1997) (considering substantial consummation as a factor in determining whether to close a case); *Walnut Assocs.*, 164 B.R. at 493 (same).

12. Further, courts have also noted that entry of a final decree is appropriate to stop the accrual of Section 1930 Fees (as defined below). *In re Junior Food Mart of Arkansas*,

Inc., 201 B.R. 522, 524 (Bankr. E.D. Ark. 1996) (closing case “in order that no further [Section 1930] [F]ees accrue”); *Jay Bee*, 207 B.R. at 539 (concluding that “it seems appropriate to close this case to stop the financial drain on the debtor” on account of the continuing accrual of Section 1930 Fees).

13. The Subsidiary Cases have been “fully administered” within the meaning of section 350 of the Bankruptcy Code, making it appropriate for the Court to enter a final decree closing such cases. Among other things:

- a. the Confirmation Order has become final and non-appealable;
- b. the Reorganized Debtors have emerged from chapter 11 as reorganized entities;
- c. the transactions contemplated by the Plan have been substantially consummated;
- d. the Reorganized Debtors have assumed the business and management of the assets of the Debtors as reorganized entities and the New Board has been appointed and has assumed governance over the Reorganized Debtors;
- e. the Debtors and Reorganized Debtors have paid substantially all Cure Claim Amounts in accordance with the Plan; and
- f. substantially all Claims have received the treatment to which they are entitled and provided for under the Plan with any remaining distributions or treatment to be made in accordance with the terms of the Plan:
 - i. Each Holder of an Allowed Prepetition Credit Agreement Claim (Class 4) has received payment in full in Cash from proceeds of the Exit Facility Loans on account of such claims;
 - ii. Each Holder of an Allowed Prepetition Notes Claim (Class 5) has received its Pro Rata share of, among other things, New Emerge GP Equity Interests, the Preferred Interests, and one hundred percent of the New Limited Partnership Interest on account of such claims;
 - iii. General Unsecured Claims (Class 6) have been discharged without any distribution; and

- iv. Other Priority Claims (Class 1), Other Secured Claims (Class 2), and Secured Tax Claims (Class 3) will receive the treatment to which they are entitled in accordance with the Plan. Mediation of certain of these claims and reconciliation of these claims are ongoing and can be administered through the Chapter 11 Case of Emerge, which will remain open.

14. The foregoing factors support closing the Subsidiary Cases. The fact that the Reorganized Debtors are still reviewing and resolving certain Claims does not require the Subsidiary Cases to remain open until all such claims are resolved and final distributions are made. *In re Jay Bee Enters., Inc.*, 207 B.R. at 539 (finding that Bankruptcy Rule 3022 “does not require that a chapter 11 case be kept open until all awarded fees and allowed claims have been paid in accordance with the confirmed plan or until the statutory fees . . . have been paid”).

15. Notably, to the extent necessary, the Court will retain jurisdiction over any issues relating to the Subsidiary Cases, including the resolution of claims and any pending contested matters, given that the Chapter 11 Case of Emerge will remain open. Therefore, no party in interest will be prejudiced if the Subsidiary Cases are closed because Emerge’s Chapter 11 Case will provide an avenue for resolving any issues that relate to the Subsidiary Cases.

16. Further, all fees under 28 U.S.C. § 1930(a)(6) (“**Section 1930 Fees**”) that are due and owing in these Chapter 11 Cases have been paid. Any further Section 1930 Fees that may arise in the Reorganized Debtors’ Chapter 11 Cases (including the Subsidiary Cases) will be paid as and when such fees come due. As such, closing the Subsidiary Cases complies with Local Rule 3022-1.

17. Finally, closing the Subsidiary Cases will relieve the Court, the Office of the United States Trustee and the Reorganized Debtors from each of their administrative burdens with respect to the Subsidiary Cases. Indeed, closing the Subsidiary Cases will alleviate the Reorganized Debtors’ obligation to pay Section 1930 Fees for the Subsidiary Cases. *See In re*

A.H. Robins Co., Inc., 219 B.R. 145, 149 (Bankr. E.D. Va. 1998) (finding that “the obligation to pay UST fees terminates upon closure, dismissal, or conversion of a Chapter 11 case, and will not be paid ad infinitum”). To date, the Reorganized Debtors have paid \$704,782.03 in Section 1930 Fees in these cases. The Reorganized Debtors estimate that if the Subsidiary Cases remain open they will incur substantial Section 1930 Fees. Closing the Subsidiary Cases will save the Reorganized Debtors a substantial expense that they would otherwise continue to incur while the Subsidiary Cases unnecessarily remain open. That fact further supports the relief requested in this Motion. *See Junior Food Mart*, 201 B.R. at 524; *Jay Bee*, 207 B.R. at 539.

NOTICE

18. Notice of this Motion shall be provided to (a) the U.S. Trustee; and (b) any other party entitled to notice pursuant to Bankruptcy Rule 2002 or order of the Court. The Reorganized Debtors submit that, under the circumstances, no other or further notice is required.

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

NO PRIOR REQUEST

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

WHEREFORE the Reorganized Debtors respectfully request entry of the Proposed Final Decree Order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: May 12, 2020
Wilmington, Delaware

/s/ Travis J. Cuomo

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

Counsel for the Reorganized Debtors

**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. 19-11563 (KBO)
	:	
Reorganized Debtors.	:	Jointly Administered
	:	
	:	Obj. Deadline: May 26, 2020 at 4:00 p.m. (ET)
-----	X	Hearing Date: June 4, 2020 at 10:00 a.m. (ET)

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that, on May 12, 2020, the reorganized debtors in the above-captioned cases (collectively, the “**Reorganized Debtors**”) filed the *Motion of the Reorganized Debtors for Entry of a Final Decree (I) Closing the Subsidiary Cases and (II) Granting Related Relief* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that, any responses or objections to the Motion must be in writing and filed with the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **May 26, 2020 at 4:00 p.m. (Prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that, if any objections to the Motion are received, the Motion and such objections shall be considered at a hearing before The Honorable Karen B. Owens, United States Bankruptcy Judge for the District of Delaware, at the Court, 824 North Market Street, 6th Floor, Courtroom 3, Wilmington, Delaware 19801 on **June 4, 2020 at 10:00 a.m. (prevailing Eastern Time)**.

¹ The Reorganized Debtors in these cases, along with the last four digits of each Reorganized 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 Reorganized Debtors’ address is 6500 West Freeway, Suite 800, Fort Worth, Texas 76116.

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 RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

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Dated: May 12, 2020
Wilmington, Delaware

/s/ Travis J. Cuomo

RICHARDS, LAYTON & FINGER, P.A.

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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

Counsel for the Reorganized Debtors

Exhibit A

Proposed Final Decree Order

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

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In re: : Chapter 11
: :
EMERGE ENERGY SERVICES LP, : Case No. 19-11563 (KBO)
: :
Debtor. : Tax I.D. No. 90-0832937
: :
----- X

----- X
In re: : Chapter 11
: :
EMERGE ENERGY SERVICES GP LLC, : Case No. 19-11564 (KBO)
: :
Debtor. : Tax I.D. No. 45-5174683
: :
----- X

----- X
In re: : Chapter 11
: :
EMERGE ENERGY SERVICES OPERATING : Case No. 19-11565 (KBO)
LLC, : :
: Tax I.D. No. 61-1682511
Debtor. : :
X

----- X
In re: : Chapter 11
: :
SUPERIOR SILICA SANDS LLC, : Case No. 19-11566 (KBO)
: :
Debtor. : Tax I.D. No. 90-0389889
: :
----- X

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In re:	: Chapter 11
	:
EMERGE ENERGY SERVICES FINANCE	: Case No. 19-11567 (KBO)
CORPORATION,	:
	: Tax I.D. No. 46-5769875
Debtor.	:
	:
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**FINAL DECREE (I) CLOSING THE
SUBSIDIARY CASES AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)¹ of the Reorganized Debtors for entry of an order, pursuant to section 350(a) of the Bankruptcy Code, Bankruptcy Rule 3022 and Local Rules 2002-1(f) and 3022-1, for entry of a final decree (i) closing the Subsidiary Cases and (ii) granting related relief, all as more fully described in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 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 consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Reorganized Debtors, their estates, creditors, and all parties in interests; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

¹ Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as provided herein.
2. The Chapter 11 Cases of Emerge Energy Services GP LLC (Case No. 19-11564 (KBO)); Emerge Energy Services Operating LLC (Case No. 19-11565 (KBO)); Superior Silica Sands LLC (Case No. 19-11566 (KBO)); and Emerge Energy Services Finance Corporation (Case No. 19-11567 (KBO)) are hereby **CLOSED**.
3. The case of Emerge Energy Services LP (Case No. 19-11563 (KBO)) shall remain open pending further order of this Court.
4. The Clerk of this Court shall enter this order and final decree individually on each of the dockets of the above-captioned Chapter 11 Cases and each of the dockets of the Subsidiary Cases shall be marked as “Closed.”
5. The Reorganized Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this order and final decree in accordance with the Motion.
6. Entry of this order and final decree (a) is without prejudice to the rights of the Reorganized Debtors or any other party with requisite standing to (i) commence, prosecute and/or resolve any claim or Cause of Action, or (ii) object to claims filed against any Debtor or Reorganized Debtor; (b) is without prejudice to the rights of the Reorganized Debtors or any party in interest to reopen the Subsidiary Cases for cause; and (c) shall have no effect whatsoever on any contested or other matters pending before this Court.

7. Following entry of this order and final decree, the caption for Case No. 19-11563 (KBO) shall read as follows:

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In re:	: Chapter 11
	:
EMERGE ENERGY SERVICES LP,	: Case No. 19-11563 (KBO)
	:
Reorganized Debtor. ¹	:
	:
-----	X

¹ The Reorganized Debtor in this case, along with the last four digits of the Reorganized Debtor's federal tax identification number, is Emerge Energy Services LP (2937). The Reorganized Debtor's address is 6500 West Freeway, Suite 800, Fort Worth, Texas 76116.

8. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.