

UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

IN RE:	*	
	*	
FIBRANT, LLC, et. al.,	*	
	*	
Debtors,	*	
	*	Chapter 11
-----	*	
GEORGIA DEPARTMENT OF NATURAL	*	
RESOURCES ENVIRONMENTAL	*	Case No. 18-10274 (SDB)
PROTECTION DIVISION	*	
	*	Jointly Administered
Movant,	*	
	*	
vs.	*	
	*	
FIBRANT, LLC, et. al.,	*	
	*	
Respondents,	*	
-----	*	

**LIMITED OBJECTION TO PLAN OF LIQUIDATION FOR FIBRANT LLC, et al.**  
**FILED BY THE GEORGIA DEPARTMENT OF NATURAL RESOURCES**  
**ENVIRONMENTAL PROTECTION DIVISION**  
**[Docket No. #600]**

The Georgia Department of Natural Resources Environmental Protection Division, (“EPD”), files this Limited Objection to the Plan of Liquidation, (d.e. #600), for Fibrant, LLC, et al<sup>1</sup>, (“Debtors”), under Chapter 11 of the Bankruptcy Code. EPD and the Debtors have been in discussions to resolve the objections set forth herein, and will continue to do so in an effort to resolve the objections prior to the confirmation hearing. EPD files this objection out of the abundance of caution, and in support hereof, EPD respectfully shows the Court as follows:

<sup>1</sup> The Debtors in these jointly administered chapter 11 cases, are: Fibrant, LLC (6694); Evergreen Nylon Recycling, LLC(7625); Fibrant South Center, LLC (8270); and Georgia Monomers Company, LLC (0042).



1.

On February 23, 2018, Fibrant, LLC, Evergreen Nylon Recycling, LLC, Fibrant South Center, LLC, and Georgia Monomer Company, LLC filed for Chapter 11 bankruptcy protection. The cases are being jointly administered under the lead bankruptcy case of Fibrant, LLC, case no. 18-10274.

2.

On May 30, 2018, EPD filed Proof of Claim No. 27, in the amount of \$2,126,200.00 for the standby letter of credit #69607024 issued by Citibank, N.A., which covers the cost of closure, post-closure and/or corrective action on Debtors' facilities. On May 30, 2018, EPD also filed Proof of Claim No. 28, for environmental corrective action releases and known and unknown environmental compliance obligations owed by the Debtors. On July 23, 2018, EPD filed Proof of Claim No. 57, which amended Proof Claim No. 28 to add the filer's signature and to indicate that the amount was "undetermined." EPD seeks allowance of its proofs of claim. If the ELT transaction does not close, or if the case converts to one under Chapter 7, then EPD's proofs of claim No. 27 and 57 should be allowed as-filed, or should not be disallowed by virtue of entry of the confirmation order.

3.

EPD objects to any real property that the Debtors, any liquidating agent and/or any trustee may seek to abandon, now or in the future, including but not limited to the property located at 1455 Columbia Nitrogen Drive, Augusta, Georgia, 30901, parcel # 075000800, also known as the "Univar site," as abandonment would be contrary to the Supreme Court's holding in *Midlantic Nat'l Bank v. N.J. Dep't of Env't'l Prot.*, 474 U.S. 494, 507 (1986) (holding that a trustee may not abandon property in contravention of a state statute or regulation that is

reasonably designed to protect the public health or safety from identified hazards). Further, EPD opposes abandonment of any and all real property because all landowners are required to be on a permit, pursuant to 40 CFR 270.40(a)&(b) and Georgia's Rules of Hazardous Waste Management, Rule 391-3-11-.11. Since the Univar site will not be assumed and assigned to ELT and because the Debtors will cease to exist upon confirmation of the Plan, EPD will look to the liquidating agent and/or trustee to be named as landowner of the existing permit on the Univar site and on any other site where the existing landowner-permittee or a new landowner-permittee ceases to exist.

4.

EPD objects to any release language in the Plan, including but not limited to language in sections 10.3, 10.4, 10.5, and 10.7 of the Plan, to the extent that it releases from liability any person or entity other than ChemicalInvest Parties or ChemicalInvest Affiliated Parties. EPD expressly reserves all claims, demands, and causes of action, either judicial or administrative, past, present, or future, in law or equity, which it may have against all other persons, firms, corporations, entities, or predecessors of the Debtors, including, but not limited to DSM Entities, for any matter arising at or relating in any manner to the contaminated site(s) in Augusta, Georgia that is/are the subject of these bankruptcy cases. Nothing in the Plan or confirmation order should be construed as a waiver or release of EPD's right to take any action based on any person's or entity's failure to comply with the confirmation order. Nothing in the Plan or confirmation order should be construed as a giving immunity from criminal action against any person or entity. Nothing in the Plan or confirmation order should be construed to release any person or entity from any liability it may have to any third parties, including, but not limited to,

liability it may have to the United States, or to any agency thereof, including the Environmental Protection Agency.

5.

EPD objects to any injunction language in the Plan, including but not limited to language in 10.8.c of the Plan, to the extent that it affects environmental interests or encumbrances that currently exist or that may arise in the future, such as environmental deed restrictions which restrict the way land can be used. For example, the deed restriction on the Fibrant South Property is currently restricted to non-residential use only.

6.

EPD objects to any language in the Plan to the extent that it modifies EPD's ability to enforce its regulatory power and oversight. Debtors and ELT shall comply with the rules, laws, and regulations regarding the transfer of the EPD Permit, including but not limited to 40 CFR 270.40(b). EPD seeks to maintain its regulatory power and oversight over the corrective action required on the property transferred from Debtors to ELT. Nothing in the Plan or confirmation order shall be deemed to limit the authority of EPD to take responsive action or to enforce federal or state law, regulation, or rule. Nothing in the Plan or confirmation order shall be deemed to limit the information-gathering authority of EPD or to excuse any person or entity, including, but not limited to, the Debtors, ELT or the Liquidating Agent, from any disclosure or notification requirements imposed by federal or state law, regulation or rule.

7.

EPD objects to any language in the Plan to the extent that it negates the Debtors' and ELT's obligation to comply with Georgia's environmental rules, laws, and regulations. Debtors and

ELT shall comply with the rules, laws, and regulations regarding the transfer of the EPD Permit, including, but not limited to, 40 CFR 270.40(b) which deals with transfer of permits and the timing of said transfer.

8.

EPD seeks additions, deletions, and/or revisions to certain portions of the Form of the Environmental Trust Agreement, specifically to §§ 3.a, 6, and 14.

9.

EPD seeks more information regarding the Property Transfer Agreement, specifically regarding Exhibit A (pertaining to parcel numbers 9600006001 and 090-0-006-02-0); Exhibit A-1 (pertaining to the property boundaries depicted on the map versus the Richmond County Tax Assessor's records of property owned by Debtors); and Exhibit A-2 (permitted title exception as to the Praxair Ground Lease).

10.

EPD reserves the right to supplement this Objection.

WHEREFORE, EPD respectfully requests that this Court deny confirmation of the Plan of Liquidation for Fibrant, LLC, et al., that EPD be allowed to supplement this Objection at a later date, and for such other and further relief as the Court deems just and proper.

Dated: April 5, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I am over the age of 18 and that on the date written below a copy of the foregoing **Limited Objection to Plan of Liquidation of Fibrant, LLC, et al., filed by Georgia Department of Natural Resources Environmental Protection Division [Docket Nos. #600]** was served by email or by first class U.S. Mail, with adequate postage prepaid on the following persons or entities at the addresses stated:

The following parties have been served via U.S. Mail:

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Fibrant, LLC  
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Dated: April 5, 2019.

/s/ Bernadett Rosszer  
BERNADETT ROSSZER 141640  
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