

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
Hi-Crush Inc., <i>et al.</i> ,	§	Case No. 20-33495 (DRJ)
Debtors. ¹	§	(Jointly Administered)
Hi-Crush Permian Sand LLC,	§	
Plaintiff,	§	
v.	§	Adversary No. 20-03471 (DRJ)
EOG Resources, Inc.,	§	
Defendant.	§	

**EMERGENCY MOTION OF EOG RESOURCES, INC. TO
FILE CERTAIN EXHIBITS FOR THE HEARING SCHEDULED
FOR MARCH 30, 2021 AT 2:00 PM CT UNDER SEAL**

Emergency relief has been requested. If the Court considers the motion on an emergency basis, then you will have less than 21 days to answer. If you object to the requested relief or if you believe that the emergency consideration is not warranted, you should file an immediate response.

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the

¹ The reorganized debtors in the bankruptcy cases, along with the last four digits of each Debtor's federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors' address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.



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relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Relief is requested not later than March 30, 2021.

EOG Resources, Inc. (“Defendant” or “EOG”) hereby files this motion to seal (the “Motion to Seal”), pursuant to sections 105 and 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and General Order 2021-1, requesting that the Court enter an order, substantially in the form attached hereto (the “Proposed Order”), permitting EOG to file under seal the confidential exhibit listed on EOG’s exhibit list for the hearing scheduled for March 30, 2021 at 2:00 p.m. CT (“Exhibit List”). In support of this Motion to Seal, EOG respectfully states as follows:

RELIEF REQUESTED

1. EOG seeks entry of an order, substantially of the form of the Proposed Order, (i) authorizing EOG to file under seal the confidential exhibit listed on EOG’s Exhibit List and (ii) granting related relief.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). EOG confirms its consent, pursuant to rule 7008 of the Bankruptcy Rules, to the entry of a final order by the Court in connection with this Motion to Seal to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are Bankruptcy Code sections 105(a) and 107(b), Bankruptcy Rule 9018, and Local Rules 9037-1 and 9013-1.

EMERGENCY CONSIDERATION

5. EOG requests emergency consideration of this Motion to Seal. The hearing regarding *Defendant EOG Resources, Inc.’s Motion to Dismiss Plaintiff’s First Amended Complaint* (“Motion to Dismiss”) is presently set for March 30, 2021 at 2:00 p.m. CT (the “Hearing”). Expedited consideration of this Motion to Seal is appropriate and necessary to preserve the confidentiality of the confidential exhibit identified on the Exhibit List, including at the Hearing.

BACKGROUND

6. On July 12, 2020 (the “Petition Date”), Hi-Crush Inc. and certain of its affiliates filed voluntary petitions for relief pursuant to chapter 11 of the Bankruptcy Code. On September 23, 2020, the Court entered an order (“Confirmation Order”) confirming the *Joint Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code*.

7. On November 20, 2020, Hi-Crush Inc. (“Plaintiff” or “Hi-Crush”) filed its *Original Complaint* against EOG [AP Docket No. 1]. On the same day, Hi-Crush filed its *Motion for an Order Authorizing Hi-Crush to File Original Complaint and Certain Exhibits Under Seal and Redact Confidential Information*. [AP Docket No. 3]. In its motion, Hi-Crush sought to file the Sand Purchase Agreement dated February 13, 2017 (the “Sand Purchase Agreement”) under seal. The Court granted Hi-Crush’s motion on December 21, 2020. [AP Docket No. 11].

8. On January 7, 2021, Hi-Crush filed a redacted copy of its *Hi-Crush Permian Sand LLC’s First Amended Complaint*, with exhibits, against EOG. [AP Docket No. 14]. Hi-Crush also filed *Hi-Crush Permian Sand LLC’s Motion for an Order Authorizing Hi-Crush to File Amended*

Complaint and Certain Exhibits Under Seal and Redact Confidential Information. [AP Docket No. 15]. In its motion, Hi-Crush again sought to file the Sand Purchase Agreement under seal. The Court granted Hi-Crush's motion to seal on January 11, 2012. [AP Docket No. 17].

9. On January 29, 2021, EOG filed the Motion to Dismiss.

10. On March 10, 2021, Hi-Crush filed *Hi-Crush's Response in Opposition to EOG Resources, Inc.'s Motion to Dismiss*. [AP Docket No. 26]. Also on March 10, 2021, Hi-Crush filed *Hi-Crush Permian Sand LLC's Motion for an Order Authorizing Hi-Crush to File Response in Opposition to EOG Resources, Inc.'s Motion to Dismiss Under Seal and Redact Confidential Information*, in which Hi-Crush sought to protect confidential provisions contained in the Sand Purchase Agreement. [AP Docket No. 27].

11. On March 24, 2021, EOG filed *Defendant EOG Resources, Inc.'s Reply in Support of Motion to Dismiss Plaintiff's First Amended Complaint*. [AP Docket No. 29].

12. Due to the confidential nature of the Sand Purchase Agreement, which the Court has previously allowed to be filed under seal, EOG requests that the Court grant the same protections that the Court has previously afforded to the agreement.

BASIS FOR RELIEF

13. Bankruptcy Code section 105(a) codifies the inherent equitable powers of the bankruptcy court and empowers the bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Section 107(b) provides bankruptcy courts with the power to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. *See In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995). This section provides, in relevant part: "On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the

bankruptcy court may—protect an entity with respect to a trade secret or confidential research, development, or commercial information.” 11 U.S.C. § 107(b)(1).

14. Further, Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under Bankruptcy Code section 107(b), providing, in relevant part, that on motion “the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information” Fed. R. Bankr. P. 9018.

15. Commercial information is information which would result in “an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (citing *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994)). Commercial information need not rise to the level of a “trade secret” to be protected under Bankruptcy Code section 107(b). *Orion Pictures*, 21 F.3d at 28; *see also In re Faucett*, 438 B.R. 564, 567 (Bankr. W.D. Tex. 2010) (citing *In re Northstar Energy, Inc.*, 315 B.R. 425, 429 (Bankr. E.D. Tex. 2004) (“A bankruptcy court is required to seal documentary information filed in court that does not rise to the level of a trade secret but that is so critical to the operations of the entity seeking the protective order that its disclosure will unfairly benefit that entity's competitors.”)). Rather, section 107(b)’s protections extend to commercial information that, if disclosed to the public, could be used by various parties for an unfair advantage. *Orion Pictures*, 21 F.3d at 27–28. Once a court determines that a party in interest is seeking to protect “commercial information,” the court “is required to protect a requesting interested party and has no discretion to deny the application.” *Id.* at 27.

16. Here, the Sand Purchase Agreement is non-public and contains confidential and sensitive commercial, financial, and business terms negotiated by Hi-Crush and EOG. Notably, the Sand Purchase Agreement is subject to the confidentiality provision that provides that the Sand Purchase Agreement is highly confidential and that certain terms in particular are highly sensitive. *See* AP Docket No. 14, Ex. 1, §12. Public disclosure of the terms of the Sand Purchase Agreement could result in unfair competitive advantage to the competitors of both Hi-Crush and EOG. EOG therefore submits that good cause exists to authorize EOG to file the Sand Purchase Agreement under seal under section 107(b) of the Bankruptcy Code.

17. No previous request for the relief sought herein has been made by EOG to this or any other court. The Court has previously granted Hi-Crush's requests to file the Sand Purchase Agreement under seal in this matter.

RESERVATION OF RIGHTS

18. EOG expressly reserves all rights with respect to the Motion to Seal, including the right to amend, modify or supplement the motion, submit additional briefing and/or evidence, as applicable and appropriate, and to respond to any additional objections. Nothing contained herein shall constitute a waiver of any of EOG's rights or remedies, each of which is expressly reserved.

CONCLUSION

WHEREFORE, for the reasons set forth herein, EOG respectfully requests that the Court enter the Proposed Order granting the relief requested herein and provide such other and further relief as the Court deems just, proper, and equitable.

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Dated: March 26, 2021

/s/ Sarah Link Schultz

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CERTIFICATE OF SERVICE

I certify that on March 26, 2021, a true and correct copy of the foregoing pleading was served electronically via the Court's ECF system on all parties registered to receive such service and by email on the following:

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(ii) granting related relief, all as more fully set forth in the Motion to Seal; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that venue of this proceeding and the Motion to Seal in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion to Seal having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion to Seal and all objections to the Motion to Seal; and upon any hearing held on the Motion to Seal; and this Court having determined that the legal and factual bases set forth in the Motion to Seal and at any hearing held on the Motion to Seal establish cause for the relief sought by the Motion to Seal; and upon all of the proceedings had before this Court; and after due deliberation, it is **HEREBY ORDERED THAT:**

1. The Motion to Seal is granted as set forth herein.
2. Pursuant to 11 U.S.C. §§ 105(a) and 107(b) and Fed. R. Bankr. P. 9018, EOG is authorized to file the confidential exhibit identified on the Exhibit List under seal.
3. The confidential exhibit filed under seal pursuant to General Order 2021-1 shall remain confidential and under seal, and shall not be made available to anyone without the consent of the Parties or further order of the Court.
4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
5. The requirements set forth in Bankruptcy Local Rule 9013-1 and General Order 2021-1 are satisfied by the contents of the Motion to Seal.

6. Notice of the Motion to Seal as provided therein shall be deemed good and sufficient notice of such Motion to Seal.

7. EOG is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion to Seal.

8. The Court shall retain jurisdiction to resolve any dispute regarding the terms of this Order.

Dated: _____, 2021
Houston, Texas

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE