

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

In re:	§	Chapter 11
	§	
SHERWIN ALUMINA COMPANY, LLC, <i>et al.</i> , ¹	§	Case No. 16-20012
	§	
Debtors.	§	(Jointly Administered)
	§	David R. Jones

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY’S
LIMITED OBJECTION TO BID PROCEDURES MOTION**

Comes now the Texas Commission on Environmental Quality (“TCEQ”), by and through the Texas Attorney General’s Office, and respectfully files this Limited Objection to the Debtors’ *Motion for Entry of an Order (a) Authorizing the Debtors to Enter into and Perform Under the Stalking Horse Purchase Agreement, (b) Approving Bidding Procedures, (c) Approving Contract Assignment Procedures, (d) Approving Bid Protections, (e) Scheduling Bid Deadlines and Auction, and (f) Approving the Form and Manner of Notice Thereof* (Dkt. no. 25) (the “Bid Procedures Motion”). In support of its Limited Objection, TCEQ states as follows:

1. Debtors gave TCEQ an extension of time (until February 19, 2016) to Object to the Bid Procedures Motion. The hearing on the Bid Procedures Motion has now been adjourned until March 1, 2016. (Dkt. 308).

2. TCEQ objects to the Bid Procedures Motion to the extent that Schedule 4.01(l) to the Asset Purchase Agreement has not been filed with the Court or provided to TCEQ. Section 4.01(l) to the Asset Purchase Agreement states that the Seller is and has been complying with “all

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Sherwin Alumina Company, LLC (2376); and Sherwin Pipeline, Inc. (9047). The debtors’ service address is: 4633 Highway 361, Gregory, Texas 78359.



Environmental Laws” except as described on that Schedule. (Dkt. 25-1 at pg. 49 of 95). Counsel for TCEQ has asked Debtors’ counsel in writing for this Schedule several times, but, to date, has not been provided with a copy.

3. TCEQ objects to the Bid Procedures Motion to the extent that it would be unclear to any potential bidder that any Purchaser will be obligated to comply with all applicable environmental laws and regulations as the post-acquisition owner or operator of potentially contaminated property or equipment, just as if the property had been purchased outside of bankruptcy. *See generally, Ohio v. Kovacs*, 469 U.S. 274, 285 (1985) (“[A]nyone in possession of the site . . . must comply with . . . environmental laws . . . Plainly that person . . . may not maintain a nuisance, pollute the waters . . . or refuse to remove the source of such conditions.”).

4. In order to avoid any ambiguity and ensure that any potential Purchaser is aware of these obligations and TCEQ’s position with respect to the ultimate sale of any property in this case, TCEQ respectfully requests the inclusion of the following language into the Sale Notice the Court will approve in connection with the approval of the Bid Procedures motion:

TCEQ has advised the Debtors that it will object to any sale if the order approving the sale does not include language to the effect of the following:

Notwithstanding any provision of this sale order, Asset Purchase Agreement or other document(s), nothing in this Order or the Asset Purchase Agreement: (1) releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under police and regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the date of entry of this Order. The Purchaser reserves all rights and defenses other than asserting that it is free of such liability on account of such Sale Order with respect to any liability to a governmental unit under police and regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the date of entry of such order; and (2) Nothing in this Order or the Asset Purchase Agreement authorizes the transfer or assignment of any governmental (a)

license, (b) permit, (c) registration, (d) authorization or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements under police or regulatory law.

Respectfully submitted,

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/s/ Hal F. Morris

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ATTORNEYS FOR THE TEXAS COMMISSION ON
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served via the Court's Electronic Filing System on all parties requesting notice in this proceeding and that copies were mailed to the counsel and parties listed below, via first class U.S. Mail, postage prepaid on February 19, 2016.

Sherwin Alumina Company, LLC
4633 Highway 361
Gregory, TX 78359

Debtor

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