

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹)	Case No. 18-12378 (KG)
Debtors and Debtors In Possession.)	
)	(Jointly Administered)
)	
)	
WELDED CONSTRUCTION, L.P., <i>et al.</i> ,)	
Plaintiffs,)	
vs.)	
)	Adversary Proceeding
SUNOCO MARKETING PARTNERS &)	No. 18-[] (KG)
TERMINALS L.P.,)	
)	
and)	
)	
SUNOCO PIPELINE L.P.,)	
)	
Defendants.)	
)	

**DEBTORS' VERIFIED COMPLAINT FOR DECLARATORY RELIEF UNDER
SECTION 362(A) OF THE BANKRUPTCY CODE, INJUNCTIVE RELIEF
UNDER SECTIONS 105(A), 108(B) AND 362(A) OF THE BANKRUPTCY CODE, AND A
PRELIMINARY INJUNCTION UNDER RULE 7065 OF THE FEDERAL RULES
OF BANKRUPTCY PROCEDURE**

Plaintiffs, Welded Construction, L.P., and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Plaintiffs," "Debtors" or "Welded"), by and through their undersigned attorneys, for their Verified Complaint for Declaratory and Injunctive Relief against defendants, Sunoco Marketing Partners & Terminals L.P. and Sunoco Pipeline L.P. (collectively "Sunoco" or "Defendants"), pursuant to Rules 7001 and 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and sections 105(a), 108(b)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.



and 362(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), state and allege as follows:

SUMMARY OF THE ACTION

Plaintiffs seek entry of a judgment (1) declaring that Defendant’s purported immediate termination on October 19, 2018 of that certain the Master Construction Services Agreement No. 4600000999 between Welded Construction, L.P. and Sunoco (as amended or modified, the “Agreement”) shall not be effective for, at minimum, 60 days following the Debtors’ bankruptcy petition pursuant to § 108(b) of the Bankruptcy Code; (2) declaring that any efforts by Defendants to exercise control over property of the Debtors’ estates, including the Debtors’ interests in equipment owned or leased by the Debtors located on Defendants’ property and/or otherwise subject to the Agreement, are prohibited by the automatic stay; (3) enjoining and restraining Defendant from confiscating, using, exercising control over, or otherwise interfering with equipment owned or leased by the Debtors; and (4) requiring Defendants to turnover property of the Debtors’ estates in their possession or under their control. Plaintiffs have, concurrent with the filing of this Complaint, filed a Motion seeking a temporary restraining order for immediate relief to maintain the status quo pending the Court’s consideration of the Debtors’ request for entry of a preliminary injunction.

On October 19, 2018, following negotiations to reach a consensual agreement that would ensure that Welded has the liquidity necessary to expeditiously complete the contracted work on the Mariners East Pipelines project (the “Project”)—which was the subject matter of the Agreement—Welded received a letter from Sunoco (the “Notice of Termination,” attached hereto as Exhibit A) purporting to terminate the Agreement for cause “effective immediately.” By letter dated October 20, 2018, the Debtors responded to the Notice of Termination (the

“October 20 Letter,” attached hereto as Exhibit B), rejecting Defendants’ attempt to terminate the Agreement due to, among other things, failure specify asserted contractual breaches and provide the Debtors with the five (5) day notice and cure period required prior to the termination becoming effective (the “Notice and Cure Period”) as required by the Agreement.

Even assuming that cause existed to justify termination of the Agreement, the Agreement specifies that Sunoco is required to provide Welded with notice of its intent to terminate five days before putting the termination into effect, giving Welded the opportunity to cure any defaults under the Agreement. Because Welded filed the Chapter 11 Cases prior to the expiration of the Notice and Cure Period, the Debtors are entitled, at minimum, to 60 days to cure defaults or perform any similar act under section 108(b) of the Bankruptcy Code, during which time Sunoco’s purported termination of the Agreement cannot become effective, and Sunoco cannot exercise any of its purported post-termination rights.

Regardless of Sunoco’s purported post-termination rights, any efforts by Sunoco to confiscate, use, or otherwise interfere with equipment owned or leased by the Debtors would plainly represent an act to exercise control over property of the Debtors’ estates in violation of the automatic stay imposed by section 362(a)(3) of the Bankruptcy Code, and would cripple the Debtors’ efforts to preserve and maximize the value of the Debtors’ business going forward. Absent enforcement of the automatic stay, or an order otherwise enjoining Sunoco from interfering with the Debtors’ equipment, the Debtors, their estates, and their creditors will suffer immediate, irreparable, and substantial harm.

JURISDICTION AND VENUE

1. On October 22, 2018 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”) in the

United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Debtors are continuing to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. This Court has jurisdiction over the claims raised in this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157 and the *Amended Standing Order of Reference* dated as of February 29, 2012 from the United States District Court for the District of Delaware.

3. This is a core proceeding pursuant to 28 U.S.C. § 157(b) such that the Court may enter a final order consistent with Article III of the United States Constitution. Pursuant to Rule 7012-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Debtors consent to the entry of a final order by the Court in connection with this Complaint 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.

4. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. This is an adversary proceeding brought pursuant to Rule 7001 of the Bankruptcy Rules.

6. There exists a substantial controversy between Plaintiffs and Defendant of sufficient immediacy and reality to warrant the relief requested.

THE PARTIES

A. Plaintiffs/Debtors and Current Management Thereof

7. Welded Construction, L.P., a debtor and debtor in possession in the Chapter 11 Cases, is a Delaware limited partnership having its principal place of business in Perrysburg, Ohio.

8. Welded Construction Michigan LLC, a debtor and debtor in possession in the Chapter 11 Cases, is a Michigan limited liability company having its principal place of business in Perrysburg, Ohio. Welded Construction Michigan LLC is wholly owned by Debtor Welded Construction, L.P.

9. The principal business of the Debtors is serving as a general contractor on mainline pipeline construction projects in locations across the United States. Welded's Customers include some of the most prominent oil and gas pipeline operators in the country, including Sunoco, Energy Transfer Partners, TransCanada and Williams Companies. Welded is managed by its Chief Executive Officer, Stephen D. Hawkins. Effective as of the Petition Date, Frank Pometti became the Debtors' chief restructuring officer.

B. Defendants

10. The defendants in this case are Sunoco Marketing Partners & Terminals L.P. and Sunoco Pipeline L.P. Defendants are subsidiaries and/or affiliates of Energy Transfer Partners, L.P. ("ETP"), one of the largest pipeline owners and operators in the United States.

FACTUAL BACKGROUND

A. The Debtors' Business, Structure, and Assets

11. A description of the Debtors' business, their capital structure and the circumstances that prompted the commencement of the Chapter 11 Cases is set forth in that certain *Declaration of Frank Pometti in Support of Debtors' Chapter 11 Petitions and First Day Motions* [D.I. 4, the "First Day Declaration", incorporated herein by reference as if specifically set forth herein].

12. The Debtors' organizational structure is straightforward: Debtor Welded Construction Michigan, LLC (a Michigan limited liability company) is wholly owned by Debtor Welded Construction, L.P., a Delaware limited partnership.

13. Nearly all of the Debtors' business operations are conducted through Debtor Welded Construction, L.P. In addition to mainline pipeline construction, these services include: (i) fabrication welding, foundation construction, instrumentation installation, painting, and fencing for pipeline meter/regulator stations; (ii) heavy wall pipe and fabrication welding for installation of compressor stations; (iii) hydrostatic testing of existing pipelines; (iv) pre-cleaning of pipelines to meet environmental discharge requirements; (v) investigation and repair of pipeline anomalies; and (vi) the replacement or repair of pipeline segments.

14. Aside from the Debtors' corporate headquarters (which is owned, and not leased) and a leased office in Mount Joy, Pennsylvania, which currently has fewer than 10 employees dedicated to administering a certain project, the Debtors utilize certain temporary facilities at worksites, but do not lease or own any other real property.

15. Welded Construction, L.P. has two general partners and two limited partners. The general partners are Ohio Welded Company LLC (owner of 15 partnership units) and McCaig Welded GP, LLC (owner of 5 partnership units). The limited partners are Bechtel Oil, Gas and Chemicals, Inc. (owner of 735 partnership units) and McCaig US Holdings, Inc. (245 partnership units). The entity is overseen by a five-member board of managers, and governed in accordance with that certain *Second Amended and Restated Limited Partnership Agreement of Welded Construction, L.P.* dated December 1, 2015.

16. As noted above, Debtor Welded Construction Michigan, LLC is wholly owned by Debtor Welded Construction, L.P. It was formed to provide a single customer with certain of the

same services offered by its Debtor parent. As of the Petition Date, these services were concluded or substantially concluded, though certain ongoing tail obligations, such as pre-petition indemnity obligations, may remain.

B. The Debtors' Agreement with Sunoco

17. The Project is the subject of the Agreement, pursuant to which the Debtors are constructing a portion of the Mariner East Pipelines for Defendants. Within the next month, most of the Debtors' segments of work on the pipeline are scheduled to achieve "mechanical completion," meaning construction will be concluded other than cleanup and demobilization efforts.

C. Sunoco's Purported Notice of Termination and the Debtors' Response

18. As set forth in the Notice of Termination dated October 19, 2018, Defendants purported to terminate the Agreement immediately, for cause.

19. As set forth in the October 20 Letter, the Debtors rejected Defendants' purported immediate termination of the Agreement due to, among other things, Defendants' failure to specify alleged breaches of the Agreement and failure to provide the opportunity to cure such alleged breaches, as required by Article 12.2 of the Agreement.

20. The Notice of Termination failed to acknowledge, account for or otherwise provide for the Notice and Cure Period, as set forth in Article 12.2 of the Agreement.

21. The Notice of Termination did not specify the breaches Defendants are alleged to have committed and, as a result, Debtors were unable to respond to Defendants' allegations in a meaningful way or to propose a plan for cure consistent with the Agreement.

22. Notwithstanding the deficiencies in the Notice of Termination, Debtors in the October 20 Letter advised that they were prepared to open a dialogue about any concerns

Defendants had regarding the Debtors' performance under the Agreement and work in good faith to resolve the same.

23. In addition, by letter dated October 22, 2018 (the "October 22 Letter"), attached hereto as Exhibit C, received by the Debtors after the commencement of the Chapter 11 Cases, Defendants asserted that no notice of termination or opportunity to cure was required under the Agreement based on the defaults asserted in the October 19 Letter. The Debtors dispute Defendants' *post hoc*, postpetition attempt to justify their improper attempt to terminate the Agreement outside the notice and cure requirements of Section 12.2 of the Agreement.

D. The Debtors' Liquidity Crunch and Subsequent Negotiations with Sunoco

24. As set forth in the First Day Declaration, the Debtors' business historically has been fundamentally strong, but recently has been beset with challenges that have combined to impair operating cash flow and near-term liquidity. *See* First Day Declaration, ¶¶ [31-35].

25. As a consequence of these issues, the Debtors have filed their Chapter 11 Cases. Protected by the Bankruptcy Code's automatic stay, afforded a "breathing spell" from creditor collection and related efforts, and able to obtain postpetition financing, the Debtors intend to negotiate arrangements with their customers to finalize ongoing projects, including the Project, with the goal of maximizing value for the benefit of all of their stakeholders.

E. Sunoco's Post-Petition Actions and Statements Regarding Purported Post-Termination Rights

26. Upon information and belief, Defendants have, since the delivery of the October 19 Letter, taken actual or constructive possession of equipment owned and leased by the Debtors, as well as other materials and property belonging to the Debtors. Upon further information and belief, Defendants continue, postpetition, to exercise control over property of the Debtors' estates.

COUNT I:

DECLARING THAT SECTION 108(B) PREVENTS TERMINATION OF THE AGREEMENT FOR AT LEAST 60 DAYS FOLLOWING THE PETITION DATE

27. Debtors repeat and re-allege Paragraphs 1 through 26 above.

28. In the Notice of Termination, Defendants purported to terminate the Agreement, effective immediately.

29. Section 12.2 of the Agreement required Defendants to provide the Debtors “with written notice of its intent to terminate this [Agreement] . . . five (5) days before actually putting the termination into effect” during which time the Debtors may take curative actions.

30. The Notice of Termination did not provide the Debtors with five (5) days’ notice of Defendants’ intent to terminate the Agreement. Instead, Defendants in the Notice of Termination purported to terminate the Agreement immediately.

31. The Notice of Termination failed to specify with particularity the breaches of the Agreement that Defendants allege to have been committed by the Debtors. Based on the Defendant’s failure to (a) adhere to the Agreement’s Notice and Cure Period and (b) specify breaches that the Debtors’ could attempt to address, Defendants have sought to deprive the Debtors of their rights under the Agreement. In so doing, Defendants have failed to comply with the Agreement.

32. Regardless of the Defendants’ failure to comply with the Agreement, the Debtors commenced their Chapter 11 Cases on October 22, 2018, which date was during the pendency of the Notice and Cure Period.

33. Section 108(b) of the Bankruptcy Code provides, in pertinent part, that if “an agreement fixes a period within which the debtor . . . may . . . cure a default . . . and such period has not expired before the filing of the petition, the [debtor] may . . . cure . . . before the later of –

(1) the end of such period, including any suspension of such period occurring on or before the commencement of the case or (2) 60 days after the order for relief. 11 U.S.C. § 108(b).

34. The Debtors filed their Bankruptcy Cases during the pendency of the Notice and Cure Period. Thus, by virtue of section 108(b) of the Bankruptcy Code, the Debtors have, at a minimum, 60 days following the Petition Date to cure defaults, if any, set forth in the Notice of Termination.

35. Defendant's purported immediate termination set forth in the Notice of Termination is not effective and cannot be effective until at least 60 days following the Petition Date.

COUNT II:

**DECLARING THAT 11 U.S.C. § 362(A) ENJOINS SUNOCO FROM EXERCISING
RIGHTS AGAINST THE DEBTORS, INCLUDING, WITHOUT LIMITATION,
THE RIGHT TO USE OR POSSESS THE DEBTORS'
OWNED OR LEASED EQUIPMENT**

36. Debtors repeat and re-allege Paragraphs 1 through 26 above.

37. The Debtors filed their Bankruptcy Cases on October 22, 2018, during the pendency of the Notice and Cure Period.

38. Section 362(a) of the Bankruptcy Code operates as a stay that prohibits the Defendants, from, among other things, commencing or continuing any action against the Debtors that could have been commenced prior to the Petition Date, and from taking any act to obtain possession of property of the estate, or from the estate, or to exercise control over property of the estate. 11 U.S.C. §§ 362(a)(1), (3).

39. Section 362(a) of the Bankruptcy Code operates as a stay that prohibits the Defendants from, among other things, taking any act to collect, assess, or recover a claim against

the Debtors, or setoff any debt owing to the Debtors that arose prior to the Petition Date. 11 U.S.C. §§ 362(a)(6), (7).

40. Defendants have taken actions and continue after the Petition Date to take actions to possess or control property of the Debtors' estates, including owned or leased equipment, materials and other property belonging to the Debtors.

41. Defendants are prohibited by Section 362 of the Bankruptcy Code from taking or continuing any actions set forth in the Notice of Termination or otherwise with respect to the termination of the Agreement.

COUNT III:

TURNOVER PURSUANT TO 11 U.S.C. § 542

42. Debtors repeat and re-allege Paragraphs 1 through 26 above.

43. Defendants are in possession of property of the Debtors' estates, including, without limitation, equipment owned or leased by the Debtors and materials and other property belonging to the Debtors.

44. Pursuant to Section 542 of the Bankruptcy Code, Defendants are required to deliver to the Debtors and account for property of the Debtors' estate that is in the Defendants' possession.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment as follows:

(a) for a declaration that Defendants' purported termination of the Agreement is ineffective until, at the earliest, 60 days after the Petition Date pursuant to sections 105 and 108 of the Bankruptcy Code;

(b) for a declaration that any efforts by Defendants to confiscate, use, or otherwise interfere with property owned or leased by the Debtors is subject to the automatic stay pursuant to section 362(a) of the Bankruptcy Code;

(c) for an injunction pursuant to sections 105(a) and 362(a) of the Bankruptcy Code barring Defendants from taking any actions to confiscate, use, or otherwise interfere with equipment owned or leased by the Debtors;

(d) for a temporary restraining order and preliminary injunction pursuant to Bankruptcy Rule 7065 barring the taking any actions to confiscate, use, or otherwise interfere with equipment owned or leased by the Debtors;

(e) for turnover of all property of the Debtors' estate in Defendants' possession or control; and

(f) for such other and further legal and equitable relief as this Court deems just and proper.

Dated: October 24, 2018
Wilmington, Delaware

LANDIS RATH & COBB LLP



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*Proposed Special Counsel to the Debtors
and Debtors-In-Possession*

EXHIBIT A



SUNOCO PIPELINE
An ENERGY TRANSFER Partnership

October 19, 2018

Welded Construction, L.P.
ATTN: Steve Hawkins, President
26933 Eckel Road
Perrysburg, OH 43551

Via Hand Delivery
Via CM/RRR: 9414810898765020264460
Via Email: shawkins@welded.com

Welded Construction, L.P.
ATTN: Alex Epstein
26933 Eckel Road
Perrysburg, OH 43551

Via CM/RRR: 9414810898765020264590
Via Email: aepstein@welded.com

RE: Notice of Termination for Cause
Master Construction Services Agreement No. 4600000999
Project: Mariner East 2 Pipeline

Sunoco Partners Marketing & Terminals L.P. and Sunoco Pipeline L.P. (collectively "Sunoco") and Welded Construction, L.P. ("Welded") entered into the above referenced Master Construction Services Agreement effective September 8, 2015. Thereafter, Sunoco issued to Welded Service Purchase Orders Numbered 4800034231, 4800034242, and 480034243 as well as certain Change Purchase Orders for construction and installation of 20" and 16" pipelines (collectively the "Agreement") commonly known as Ohio Spread 1, Pennsylvania Spread 1, and Pennsylvania Spread 5 of Sunoco's Mariner East 2 Pipeline Project (the "Projects"). Additionally, Sunoco and Welded entered into a Completion Agreement on May 23, 2018 addressing completion of the Projects ("Completion Agreement") (Agreement and Completion Agreement are collectively referred to herein as the "Contract Documents").

This letter serves as a follow up to our October 19, 2018 meeting between Steve Hawkins on behalf of Welded and Rick Smith, and myself on behalf of Sunoco. As you know, Sunoco has repeatedly expressed to Welded its concerns regarding Welded's ongoing ability to perform in accordance with the Contract Documents. Welded's ongoing and continued performance of non-conforming and defective work, defaults and breaches of the Agreement, failure or inability to perform its work in a workmanlike manner, and failure to timely compensate subcontractors, suppliers, or laborers has jeopardized successful completion of the Projects and caused Sunoco to incur substantial financial harm. These issues include (but certainly are not limited to) frequent and repeated deviations from construction plans and specifications (some resulting in critical environmental issues and monetary penalties); ongoing and continuous welding and x-ray issues; frequent and repeated deviations from permit requirements, Sunoco's approved practices and industry standards, and frequent and ongoing calls and correspondence to Sunoco from Welded subcontractors demanding payment.

Sunoco can no longer "hurry up and wait" for its Projects to be performed in full conformity with the requirements of the Contract Documents through ultimate completion.


Therefore, effective immediately, Sunoco is terminating Welded for cause in accordance with Article XII, Sections 12.1 and 12.2 of the Agreement and Section 14 of the Completion Agreement.

Section 14 of the Completion Agreement obligates Welded to abide by Sunoco's instructions related to this termination. Accordingly, please immediately discontinue work, secure the Projects sites and ensure all material will remain and is secured at the Project Sites. Pursuant to Section 12.2 of the Agreement, effective immediately, Sunoco now takes over the Work, which includes ownership of all plans, drawings, project information and other property. Sunoco also immediately takes use of all tools, equipment, and supplies being used in connection with the Work.

Please note Sunoco disputes the amount and content of any outstanding invoice submitted by Welded and is not responsible for payment of such invoices until the dispute is resolved.

Sunoco desires an orderly transition of the Projects to a supplemental completion contractor and expects the same from Welded.

Respectfully,

A handwritten signature in black ink, appearing to read "Dave Runte", written over a horizontal line.

Dave Runte
Senior Director, Engineering

Cc: rbisnett@welded.com

Via Email

EXHIBIT B



Welded Construction, L.P.

Pipeline Professionals Since 1966

October 20, 2018

**VIA EMAIL, OVERNIGHT COURIER, and
CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Sunoco Pipeline L.P.
100 Green Street
Marcus Hook, PA 19060
Attention: Dave Runte
Dave.Runte@energytransfer.com

Sunoco Pipeline L.P.
100 Green Street
Marcus Hook, PA 19060
Attention: Patricia Flynn Henry

**Re: Master Construction Services Agreement No. 4600000999
Response to October 19, 2018 Correspondence**

Dear Mr. Runte:

We are in receipt of your purported Notice of Termination for Cause dated October 19, 2018 (the "Letter").

Your Letter purports to terminate Welded Construction, L.P. ("Welded") for cause under the Master Construction Services Agreement No. 4600000999 (the "Contract") "effective immediately." Letter p. 2. As you are well aware, the Contract requires written notice of Sunoco Pipeline L.P.'s ("Sunoco") intent to terminate the Contract "five (5) days before actually putting the termination into effect" in the absence of circumstances inapplicable here. Contract Art. 12.2. Welded's right to a "cure period" was not waived or superseded in the Completion Agreement dated May 23, 2018. Because this cure period is a condition precedent to termination for cause and that condition has not been met by Sunoco, Welded rejects Sunoco's defective purported "Notice of Termination."

Moreover, the Contract contemplates an opportunity for Welded to cure any alleged breaches of the Contract within the five-day notice period. Because the Letter is a "kitchen sink" collection of generalities purporting to be allegations of breaches of the Contract, it does not even qualify as a coherent written notice of intent to terminate Welded. Consequently, Welded rejects the Letter even as a notice of intent to terminate and provide opportunity for cure under the Contract.

The allegations of breach in the Letter are so lacking in specificity that Welded is unable to respond to them in any meaningful way, much less propose a plan for cure. Welded, therefore



Welded Construction, L.P.

Pipeline Professionals Since 1966

rejects the Letter and demands any notice of intent to terminate contain good faith, specific allegations of breach so that Welded may respond appropriately and propose a plan for cure consistent with its rights under the Contract.

Please note that this response is not intended to be a comprehensive point-by-point refutation of all of the representations and allegations contained in the Letter, nor an implied admission of any statement contained in it. Rather, it is intended to express Welded's disagreement with the assumptions and conclusions made in the Letter and to open a dialogue about any concerns Sunoco may have about Welded's work on the project. Welded reserves any and all rights related to the project and under the Contract (including the Completion Agreement), and stands by its performance. Moreover, Welded stands ready to work with Sunoco in good faith to reach an amicable resolution of the outstanding issues surrounding Welded's work.

We look forward to working cooperatively with Sunoco to finding the appropriate path forward in this matter.

Sincerely,


Stephen Hawkins

EXHIBIT C



October 22, 2018

Welded Construction, L.P.
ATTN: Steve Hawkins, President
26933 Eckel Road
Perrysburg, OH 43551

Via CM/RRR: 9407110898765020328422
Via Email: shawkins@welded.com

RE: Response to Welded's October 20, 2018 Letter

Dear Steve:

Sunoco is in receipt of your October 20, 2018 letter, which responds to Welded's termination from the Project. To be clear, Sunoco was not seeking—and the Agreement does not require—Welded's acceptance of termination. Welded was terminated from the Project immediately upon delivery of the Notice of Termination.

Section 12.2 of the Agreement states that Sunoco may terminate “without prior notice or an opportunity for Contractor to cure the default, if the default involves risk of personal injury or property damage, violation of Sunoco's Safety and Security Requirements, environmental issues or violations of any applicable laws, codes, regulations or other standards applied by any governmental entity having jurisdiction over the Work.” As stated in the Notice of Termination, among a litany of defaults and breaches, Welded frequently and repeatedly deviated from the permit requirements, the plans, and the specifications, which resulted in critical environmental issues. These issues have been well-documented. By way of example, Welded recently performed work outside of the limits of disturbance and deviated from the Erosion and Sedimentation Plan without notifying Sunoco and without following the established memorandum of change process or submitting redlines to Sunoco for any of the changes, as required by the PADEP. Noncompliance with established environmental requirements and procedures risks a shutdown of the Project by the PADEP or other state agencies. Given the fast-approaching completion deadline, these types of environmental issues and violations cannot be tolerated.

Under the circumstances, neither the Agreement nor the common law entitles Welded to a five-day cure period. As such, the Agreement was terminated on October 19, and Sunoco exercised its rights to immediately take over the Work. Sunoco continues to desire and expect an orderly transition to a supplemental completion contractor.

Respectfully,

Dave Runte
Senior Director, Engineering

VERIFICATION OF STEPHEN HAWKINS

I, Stephen Hawkins, am the Chief Executive Officer of Welded Construction, L.P., which is the equity owner of Welded Construction Michigan, LLC, both of which are debtors and debtors in possession in these chapter 11 cases jointly administered under Case No. 18-12378 (KG) in the United States Bankruptcy Court for the District of Delaware. I am authorized to make this Verification on behalf of plaintiffs. I have read the foregoing *Debtors' Verified Complaint for Declaratory Relief Under Section 362(A) of the Bankruptcy Code, Injunctive Relief Under Sections 105(a), 108(b) and 362 of the Bankruptcy Code and a Preliminary Injunction Under Rule 7065 of the Federal Rules of Bankruptcy Procedure*. I am informed and believe that the matters stated therein are true.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on October 23, 2018

