

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X
 In re: : Chapter 11
 :
 EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. 19-11563 (KBO)
 :
 Debtors. : Jointly Administered
 :
 ----- X Re: Docket Nos. 6, 61 & 71

**CERTIFICATION OF COUNSEL REGARDING
FINAL ORDER UNDER 11 U.S.C. §§ 105(A), 363(B), 507(A)(8),
AND 541 AND FED. R. BANKR. P. 6003 AND 6004 AUTHORIZING
PAYMENT OF PREPETITION TAXES AND FEES**

The undersigned hereby certifies as follows:

1. On July 15, 2019, the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**”) filed the *Debtors’ Motion for Entry of Orders Under 11 U.S.C. §§ 105(a), 363(b), 507(a)(8), and 541 and Fed. R. Bankr. P. 6003 and 6004 Authorizing Payment of Prepetition Taxes and Fees* [Docket No. 6] (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

2. On July 17, 2019, the Court entered the *Interim Order Under 11 U.S.C. §§ 105(a), 363(b), 507(a)(8), and 541 and Fed. R. Bankr. P. 6003 and 6004 Authorizing Payment of Prepetition Taxes and Fees* [Docket No. 61] (the “**Interim Order**”).

3. Pursuant to the Interim Order and the *Notice of (A) Entry of Interim Order Under 11 U.S.C. §§ 105(a), 363(b), 507(a)(8), and 541 and Fed. R. Bankr. P. 6003 and 6004 Authorizing Payment of Prepetition Taxes and Fees; and (B) Final Hearing Thereon* [Docket

¹ The Debtors in these cases, along with the last four digits of each 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 Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.



No. 71], objections to the Motion were to be filed and served by no later than August 7, 2019 at 4:00 p.m. (ET) (the “**Objection Deadline**”). The Objection Deadline was extended for the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) until August 9, 2019 at 4:00 p.m. (ET).

4. Prior to the Objection Deadline, the Debtors received informal comments (the “**Comments**”) to the relief requested in the Motion from the U.S. Trustee and the official committee of unsecured creditors (the “**Committee**”). The Comments were resolved by revising the original proposed order (the “**Original Order**”), and such revised order is attached hereto as **Exhibit A** (“**Revised Order**”).

5. The Revised Order has been circulated to counsel to the Committee, counsel to the DIP Agent and the Prepetition Agents, and the U.S. Trustee, and the aforementioned parties do not object to the entry of the Revised Order. Other than the Comments, the Debtors received no other informal responses to the Motion, and no objection or responsive pleading to the Motion has appeared on the Court’s docket in these chapter 11 cases. For the convenience of the Court and all parties in interest, a blackline of the Revised Order against the Original Order is attached hereto as **Exhibit B**.

WHEREFORE, the Debtors respectfully request that the Court enter the Revised Order, attached hereto as Exhibit A, at its earliest convenience.

Dated: August 12, 2019
Wilmington, Delaware

/s/ Travis J. Cuomo

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Proposed Counsel for Debtors and Debtors-in-Possession

EXHIBIT A

Revised Order

**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)
	:	
Debtors.	:	(Jointly Administered)
	:	
	x	Re: Docket Nos. 6 and 61

**FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 363 (b), 507(a)(8), AND 541
AND FED. R. BANKR. P. 6003 AND 6004 AUTHORIZING PAYMENT OF
PREPETITION TAXES AND FEES**

Upon the motion (the “Motion”)² of the Debtors for a Final Order authorizing the Debtors, in their sole discretion, to pay any prepetition Taxes and Fees owing to the Taxing Authorities and the other Debtors; and the Court having reviewed the Motion, the Gaston Declaration and the Interim Order entered on July 17, 2019; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and upon the Supplement to the Debtors’ Motion for Entry of Orders Under 11 U.S.C.

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² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

§§ 105(a), 363(b), 507(a)(8), and 541 and Fed. R. Bankr. P. 6003 and 6004 Authorizing Payment of Prepetition Taxes and Fees; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in the Final Order, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized, but not directed, in their sole discretion, to pay to the Taxing Authorities, the other Debtors, or CN, all Taxes and Fees relating to the period prior to the commencement of their Chapter 11 Cases (the "**Petition Date**"), *provided that* payments and setoffs on account of prepetition Taxes and Fees shall not exceed \$1,056,200 in the aggregate pursuant to this Final Order without further order of this Court. Such Taxes and Fees are summarized in further detail in the chart below:

Category	Description	Estimated Final Amount
Sales and Use Taxes	Taxes imposed on the sale and use of certain goods and services.	\$10,000
Income Taxes (Including Canadian Income Taxes)	Taxes imposed on the Debtors' income and that are required to conduct business in the ordinary course.	\$5,000
Franchise Taxes	Taxes required to conduct business in the ordinary course.	\$121,200
Property Taxes	Taxes and obligations related to real and personal property holdings.	\$600,000
LLC Taxes	Taxes and obligations related to the Debtors' status as limited liability corporations	\$0
Road Maintenance Fees	Taxes and obligations related to the use of certain roads in Wisconsin	\$305,000
Rail Car Import Taxes	Taxes and obligations incurred in connection	\$15,000

Category	Description	Estimated Final Amount
	with railcar crossings into Canada	
Canadian Goods and Services Taxes	Taxes imposed on the sale and use of certain goods and services by transloading facilities in Canada.	\$0

4. The Debtors rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to tax audits that have been completed, are in progress, or arise from prepetition periods.

5. The Debtors may seek additional relief from this Court in the future in the event that the Debtors subsequently determine that additional prepetition Taxes and Fees are owed by the Debtors.

6. The Debtors shall promptly provide notice to the Official Committee of Unsecured Creditors of any subsequently identified entities to which the Debtors owe Taxes and Fees and the amounts owed.

7. Nothing in the Motion or this Final Order shall be construed as impairing the Debtors' right to contest the validity, amount, or priority of any Taxes and Fees allegedly due or owing to any Taxing Authorities or the other Debtors, or any claim or lien against the Debtors and all Debtors' rights with respect thereto are hereby reserved.

8. Any and all payments made by the Debtors for which the Debtors' directors and officers may be liable shall only be paid to the extent that the director or officer's liability arises in connection with his or her capacity as a director or officer of the Debtors.

9. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors in their sole discretion, to process, honor, pay and, if necessary, reissue any and all checks or electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn

on the Debtors' bank accounts relating to the prepetition Taxes and Fees, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

10. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

11. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

12. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

13. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

14. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

15. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

EXHIBIT B

Blackline

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X
 In re: : Chapter 11
 :
 EMERGE ENERGY SERVICES LP, *et al.*,¹ : Case No. ~~19~~ 19-11563
 : [\(KBO\)](#)
 :
 Debtors. :
 : (Joint Administration Requested)
 ----- X

Re: Docket Nos. 6 and 61

**FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 363 (b), 507(a)(8), AND 541
AND FED. R. BANKR. P. 6003 AND 6004 AUTHORIZING PAYMENT OF
PREPETITION TAXES AND FEES**

Upon the motion (the “Motion”)² of the Debtors for a Final Order authorizing the Debtors, in their sole discretion, to pay any prepetition Taxes and Fees owing to the Taxing Authorities and the other Debtors; and the Court having reviewed the Motion, the Gaston Declaration and the Interim Order entered on ~~{●}~~ July 17, 2019; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and upon the Supplement to the Debtors’ Motion for Entry of Orders Under

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² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

[11 U.S.C. §§ 105\(a\), 363\(b\), 507\(a\)\(8\), and 541 and Fed. R. Bankr. P. 6003 and 6004 Authorizing Payment of Prepetition Taxes and Fees; and](#) it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in the Final Order, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized, but not directed, in their sole discretion, to pay to the Taxing Authorities, the other Debtors, or CN, all Taxes and Fees relating to the period prior to the commencement of their Chapter 11 Cases (the "**Petition Date**"), *provided that* payments and setoffs on account of prepetition Taxes and Fees shall not exceed ~~\$935,000~~ \$1,056,200 in the aggregate pursuant to this Final Order without further order of this Court. Such Taxes and Fees are summarized in further detail in the chart below:

Category	Description	Estimated Final Amount
Sales and Use Taxes	Taxes imposed on the sale and use of certain goods and services.	\$10,000
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4. The Debtors rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to tax audits that have been completed, are in progress, or arise from prepetition periods.

5. The Debtors may seek additional relief from this Court in the future in the event that the Debtors subsequently determine that additional prepetition Taxes and Fees are owed by the Debtors.

6. The Debtors shall promptly provide notice to the Official Committee of Unsecured Creditors of any subsequently identified entities to which the Debtors owe Taxes and Fees and the amounts owed.

7. ~~6.~~ Nothing in the Motion or this Final Order shall be construed as impairing the Debtors' right to contest the validity, amount, or priority of any Taxes and Fees allegedly due or owing to any Taxing Authorities or the other Debtors, or any claim or lien against the Debtors and all Debtors' rights with respect thereto are hereby reserved.

8. Any and all payments made by the Debtors for which the Debtors' directors and officers may be liable shall only be paid to the extent that the director or officer's liability arises in connection with his or her capacity as a director or officer of the Debtors.

9. ~~7.~~ The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors in their sole discretion, to process, honor, pay and, if necessary, reissue any and all checks or electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition,

drawn on the Debtors' bank accounts relating to the prepetition Taxes and Fees, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

10. ~~8.~~The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

11. ~~9.~~Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

12. ~~10.~~Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

~~11. Notwithstanding anything to the contrary in the Motion or this Final Order, any payment made or authorization hereunder shall be subject to the applicable budget and/or cash collateral authorization requirements imposed on the Debtors under any order(s) of the Court authorizing the Debtors' use of cash collateral and post-petition debtor-in-possession financing facilities, including any order(s) authorizing post-petition financing.~~

13. ~~12.~~ Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

14. ~~13.~~ The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

15. ~~14.~~ The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: _____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE