IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

UNITED STATES OF AMERICA, THE STATE OF MISSOURI, ex rel. ERIC SCHMITT, Attorney General, and the MISSOURI DEPARTMENT OF NATURAL RESOURCES,	)	
Plaintiffs,	)	
vs.	)	**Case No.: 5:08-CV-06133-DGK**
HPI PRODUCTS, INC., ST. JOSEPH PROPERTIES, LLC, and WILLIAM GARVEY,	)	
Defendants.	)	

TEMPORARY RECEIVER'S JUNE 27, 2022 STATUS REPORT

The Estate of HPI Products, Inc. et al. Receivership LLC, ("Temporary Receiver"), pursuant to Paragraph 50 of the Court's order dated January 14, 2022 (ECF 89), as extended and amended pursuant to the Court's order dated March 15, 2022 (ECF 110) (collectively, the "Orders"), and to supplement information contained within status reports dated February 3, 2022 (ECF 101), February 10, 2022 (ECF 104), March 15, 2022 (ECF 110), and April 20, 2022 (ECF 118) previously filed with the Court (individually, a "Prior Report"; collectively, the "Prior Reports"), hereby files this status report to inform the Court and the Plaintiffs of the Temporary Receiver's activities to date, assessment of assets available to fund compliance with the Consent Decree previously entered in this matter, and proposed course of action moving forward.[1]

[1] Capitalized terms not otherwise defined herein have the meanings provided for in the Orders.

1. SUMMARY OF RECEIVERSHIP ACTIVITIES TO DATE

A. Baseline Receivership-Related Activities Under the Orders

In relevant part, the Orders call for the Temporary Receiver to temporarily assume and control the operation of the Receivership Assets during the Receivership in order to ultimately assess the Receivership Defendants' financial ability to complete the compliance requirements set forth in the Consent Decree, while preserving the Receivership Assets to the extent reasonably possible. To achieve those objectives, the Temporary Receiver has taken extensive steps to secure Receivership Assets, as well as books and records of the Receivership Defendants, and to obtain information and documents from the Receivership Defendants and applicable third parties. To illustrate, the Temporary Receiver has used the powers set forth in the Orders to perform the following procedures:

- Identify the location and amount of Receivership Assets;
- Secure, and temporarily assume control over, Receivership Assets, such as bank accounts, vehicles, and real properties;
- Secure information technology systems (emails, network and domain names, etc.);
- Establish access protocols relative to the Receivership Defendants' real properties, including to allow key personnel to access such properties in support of the Temporary Receiver's activities;
- Continue to oversee the receipt and distribution of inventory and finished product as of the commencement of this Receivership, and corresponded with customers regarding the same;
- Document assets received by the Temporary Receiver and operation protocols;
- Perform inventory counts of on-site products and raw materials;

- Obtain the Initial Financial Records, evaluate documents received for accuracy and completeness, and conduct due diligence on documents received (including by contacting credit institutions regarding loan details); and
- Request additional information and documentation from the Receivership Defendants and third parties as necessary.

B. Operations-Related Activities and Associated Challenges

In strict compliance with the Orders, the Temporary Receiver initially ceased waste generation (via production) activities at all of the Receivership Defendants' facilities. Later, the Temporary Receiver facilitated the commencement of waste generation activities as described in detail below only after extensive and comprehensive consultations with the Plaintiffs (and the City of St. Joseph, Missouri ["City"] relative to the facility located at 222 Sylvanie) and disclosing the same to the Court via the Prior Reports.

In close collaboration with the Plaintiffs and with support from a third-party professional (Environmental Works, Inc. ["EWI"]) with experience and expertise in environmental compliance matters, the Temporary Receiver evaluated whether, when, and how to facilitate the resumption of the Receivership Defendants' business operations, which unavoidably involve the generation of waste, with the goal of generating income to fund environmental compliance obligations, including compliance with the 2011 Consent Decree. Due to a lapsed stormwater permit related to the Receivership Defendants' facility located at 222 Sylvanie (see next paragraph for details), in the early weeks of the Receivership, the Temporary Receiver and EWI consulted with the Plaintiffs before facilitating the resumption and oversight of operations at the Receivership Defendants' facility located at 317 W. Florence Road, along with limited operations (primarily shipping and receiving activities) at the Receivership Defendants' facility located at

1301 South 11th Street and the contiguous property located at 1421 S. 11th Street. As part of such efforts to resume operations, EWI provided notification to the Missouri Department of Natural Resources ("MoDNR") for several of the Receivership Defendants' facilities as hazardous waste generators, prepared and submitted hazardous waste reports relative to recent (past and ongoing) operations at the facilities, and assessed possible air emissions (e.g., through "potential to emit" calculations).

Subsequently, the Temporary Receiver and EWI closely coordinated with the Plaintiffs and the City about the possibility and mechanics of resuming business operations at the Receivership Defendants' facility located at 222 Sylvanie, which would also involve the generation of waste and which the Receivership Defendants maintained would generate significant revenue. To illustrate, the Temporary Receiver and EWI worked with the Plaintiffs to seek and receive a required stormwater permit relative to the 222 Sylvanie facility, which was issued by MoDNR, effective as of April 1, 2022. Following receipt of the stormwater permit, on April 19, 2022, the Temporary Receiver resumed operations at the 222 Sylvanie facility under EWI's oversight and in accordance with the conditions set forth in the City's "Temporary Authorization" letter dated April 15, 2022.

To commence the Receivership Defendants' business operations as described above, in addition to engaging EWI for compliance oversight, the Temporary Receiver undertook a variety of actions to promptly obtain financing and, due to the insufficiency of Receivership Cash or Cash Equivalents in the Receivership Estate (especially at the outset of the Receivership), to generate positive cash flow. For example, to commence business operations as described above and to fund associated expenses (including, without limitation, the Temporary Receiver's and EWI's costs to, at the Plaintiffs' request, oversee such operations and address certain of the Receivership

Defendants' environmental obligations, as described below), the Temporary Receiver, among other things: generated free cash by disposing of certain (non-real estate) Receivership Assets; sought, unsuccessfully, a capital infusion from the Receivership Defendants and instead ultimately accepted a cash advance from one of the Receivership Defendants' customers; and entered into a Court-approved stipulation and order among the Temporary Receiver and HPI Products, Inc.'s factor to continue the parties' pre-Receivership factoring agreement (ECF 106). Additionally, the Temporary Receiver implemented certain cost-cutting measures to address the Receivership Defendants' cash-starved position [redacted]

Beyond purely financial obstacles, the Temporary Receiver has had to contend with the Receivership Defendants' minimal operation planning tools, management systems, and procedures [redacted] Consequently, the Temporary Receiver has encountered a wide variety of health and safety-related issues [redacted], many of which required corrective actions. For instance:

- Health and safety issues:
  - Releases from historic hazardous waste totes occurred at the 222 Sylvanie and 317 W. Florence Road locations;

- Because the Receivership Defendants initially had minimal personal protective equipment ("PPE") available for their employees and temporary staff, the Temporary Receiver and EWI promptly coordinated to fund and provide such PPE;
- With the Plaintiffs' assistance and support, the Temporary Receiver and EWI helped to resolve a product labeling issue; and
- Due to prior payment-related concerns, critical vendors (e.g., disposal facilities) were effectively unwilling to work with the Receivership Defendants (as opposed to the Temporary Receiver and EWI) on waste handling, transportation, and disposal matters;

[redacted]

Time spent and dollars expended on mitigating situations such as those identified above translated into less money being available to satisfy the Receivership Defendants' legal obligations.

C. Environmental-Specific Activities

Despite the challenges identified above, the Temporary Receiver and EWI have managed to make meaningful progress in satisfying certain Consent Decree requirements in close collaboration with the Plaintiffs. For instance, after consultation with the Plaintiffs, the Temporary

Receiver and EWI coordinated with an off-site disposal facility to facilitate the safe and proper management, transportation, and disposal of approximately 20,000 pounds of hazardous waste generated by the Receivership Defendants in the pre-Receivership period, which (prior to the off-site shipment of hazardous waste) were located at three of the Receivership Defendants' facilities. Moreover, the Temporary Receiver and EWI have worked closely with the Plaintiffs on a number of compliance- and waste-related tasks, including:

- Setting up a centralized non-hazardous waste and container recycling staging area at one of the Receivership Defendants' facilities, which involved, among other things, consolidating historical special waste weighing approximately 21 tons.
- Establishing a collaborative, online platform to enhance the Plaintiffs' oversight capabilities (e.g., by facilitating the Plaintiffs' access to cloud-based documents, data, tables, and disposal requests);
- Starting and/or completing certain recycling activities regarding various empty containers located at the Receivership Defendants' facilities as of the commencement of the Receivership, including:
    - Cleaning and facilitating reuse of approximately 110 non-hazardous used totes;
    - Recycling approximately 2,500 used pallets, 80 pallets of cardboard, and 80 cubic yards of empty crushed drums; and
    - Identification and staging of over 200 poly drums intended for re-use with an outside vendor
- Removing and disposing of hazardous waste located at the Receivership Defendants' facilities as of the commencement of the Receivership (e.g., 1 drum of mixed solvent, 1 tote of Aromatic 150 mixture, 2 drums of 2,4-D mixture, 1 tote of 2,4-D mixture, and 1

empty tote with 2,4-D residue from the 317 W. Florence Road facility; 1 drum of Thiophanate-methyl from the 222 Sylvanie facility; and 6 pallets of Carbaryl 4L from the 1301 South 11th Street and 1421 S. 11th Street facilities.

- Starting and/or completing certain disposal activities regarding non-hazardous waste located at the Receivership Defendants' facilities as of the commencement of the Receivership (e.g., to date, approximately 4,000 fiber drums have been crushed and disposed of at an off-site landfill, and nine 25-yard roll-off boxes of special waste [pesticide drum liners] have been disposed of at an off-site landfill);
- Addressing compromised containers and leaks, spills, and releases (e.g., a punctured tote and a gear oil release at the 317 W. Florence Road facility); and
- Coordinating with the Plaintiffs on additional focus areas to pursue in order to satisfy certain of the Receivership Defendants' Consent Decree obligations.

Most recently, the Temporary Receiver and EWI have been closely working with the Plaintiffs (and EPA in particular) to begin inventorying significant quantities of pre-existing, on-site wastes.

2. <u>TEMPORARY RECEIVER'S ASSESSMENT OF ASSETS AVAILABLE TO FUND COMPLIANCE WITH THE CONSENT DECREE</u>

Based on its performance to date of the procedures identified in Section 1.A above, the Temporary Receiver has deduced, among other things, that:

[redacted]

[redacted]

[redacted] For these reasons, the Temporary Receiver: (a) was unable to fund certain of its fees and expenses incurred through the submission of the Prior Report filed with the Court on March 15, 2022 (ECF 110) from the Receivership Cash or Cash Equivalents and was therefore compelled to access the HPI Grant Funds (with the Court's approval) to pay such fees and expenses; and (b) plans to seek EPA's approval to access funds in the escrow account previously established by the Receivership Defendants in order to fund already performed and ongoing Consent Decree compliance activities described in Section 1.C above.

After performing the procedures identified in Section 1.A above, the Temporary Receiver has prepared Table 1 below to provide a snapshot of the Receivership Defendants' assets and liabilities as of May 31, 2022.

[redacted]

[redacted]

Additionally, the Temporary Receiver has prepared Table 2 below for a 5-month (January to May 2022) cash flow summary and a 7-month (June to December 2022) forecast of potential cash flows, assuming production operations (including waste generation) continue at the 222 Sylvanie facility with the City's approval but only under the Temporary Receiver's and EWI's collective oversight through June 2022.

[redacted]

[redacted] As part of the Prior Report filed with the Court on

March 15, 2022 (ECF 110), the Temporary Receiver recommended extending the Receivership beyond the initial 60-day period based on several factors and assumptions, including:

- By mid-March 2022, the Temporary Receiver and EWI had already made significant progress with respect to the Receivership Defendants' environmental compliance obligations under the Plaintiffs' oversight and in accordance with the Consent Decree (see Section 1.C above for details), and they were positioned to make additional progress in the months ahead;
- Around the same time, the Temporary Receiver was cautiously optimistic about the Receivership Defendants' short-term production and sales forecasts because that time period coincided with the businesses' busy season and because operations had yet to resume at the (historically most profitable) 222 Sylvanie facility; and
- Additional time would allow the Temporary Receiver to better evaluate whether the Receivership Defendants' business operations could meet production/sale forecasts and translate into increased revenues in the near term, which would in turn provide insight into the Receivership Defendants' financial ability to fund compliance requirements under the Consent Decree in the longer run.

Nevertheless, the Receivership Defendants have been unable to turn the proverbial corner during the Receivership. [redacted]

[redacted] Moreover, at no point during the Receivership have the Receivership Defendants' management team (including Mr. William Garvey) stepped up in a meaningful way (with financing, environmental work, or otherwise) to take ownership over or responsibility for the legacy (i.e., pre-Receivership) environmental liabilities that are at the heart of the issues in this matter.

[redacted]

3. <u>PROPOSED COURSE OF ACTION MOVING FORWARD</u>

Bearing in mind the primary objective of this Receivership—simply put, to identify and evaluate all potential Receivership Assets and liabilities in order to assess the current and potential continuing viability of the Receivership Defendants' businesses and the likelihood that they can operate compliant with legal requirements, including making meaningful progress regarding the requirements of the Consent Decree—and based on the assessment set forth in Section 2 above, the Court, Plaintiffs, and Temporary Receiver are left with two imperfect options on a going forward basis, which are set forth below.

A. Continued Operation of Receivership Defendants' Businesses

In general, the Temporary Receiver has concluded that continued operation of the Receivership Defendants' businesses—whether by the Temporary Receiver, the Receivership Defendants, a successor receiver appointed by the Court, or another entity—cannot be done safely and legally while also generating enough free cash to fund much (or any) Consent Decree compliance over a reasonable period of time. [redacted] That said, if the Court and Plaintiffs decide to further extend the Receivership for a limited period of time in order to further assess options and make a fully informed decision on this important matter, the Temporary Receiver is willing to continue to serve in its current capacity to the extent of available funding.

B. Wind Down Business Operations of the Receivership Estate

Given the primary Receivership objective (see the beginning of this Section 3 above), after overseeing the Receivership Defendants' operations for approximately 5 months and assessing both their short-term stability and long-term viability (see Section 2 above), absent a significant infusion of capital from one or more of the Receivership Defendants, the Temporary Receiver believes that winding down the Receivership Defendants' businesses is most protective of human health and the environment. To be clear, the Temporary Receiver fully appreciates that certain problems that have been encountered are beyond the Receivership Defendants' control [redacted]

As with the continued-operation option set forth in Section 3.A above, at the Court's and Plaintiffs' request, the Temporary Receiver, which (through its parent company) has significant experience in responsibly managing the impacts of contamination and associated costs as an independent fiduciary for the benefit of government, industry, and communities but minimal experience in winding down businesses, is willing to continue to serve in its current capacity to the extent of available funding if the Receivership is further extended beyond June 30, 2022 until a successor receiver and/or liquidation specialist is appointed by the Court. [redacted]

4. **CONCLUSION**

As detailed above, after thoroughly evaluating potential Receivership Assets and liabilities and recently overseeing operations at the Receivership Defendants' facilities with

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[redacted]

support from EWI, the Temporary Receiver has determined that, without a considerable capital infusion from the Receivership Defendants, winding down the Receivership Defendants' businesses is the best of the available imperfect options from an environmental protection standpoint for several reasons, including those set forth below. [redacted]

The Temporary Receiver has not reached its conclusion lightly. However, the Receivership Defendants' inability to fully grasp the gravity of this Receivership and their persistent unwillingness to take ownership over and responsibility for their historic environmental liabilities have been particularly striking to the Temporary Receiver in light of the factual and procedural record of this case. For those reasons and as explained in detail above, the Temporary Receiver appreciates the Receivership Defendants' understandable desire to continue business operations yet believes that doing so—and kicking the can down the road relative to health and safety and environmental compliance matters—is unsustainable in the long run.

Respectfully submitted,

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COUNSEL FOR TEMPORARY RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2022, I electronically filed the foregoing document with the Clerk of the Court via the efiling system, which sent notice to all counsel of record.

/s/ *Grace Colato Martinez*
Attorney for Receiver