

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
MUSTANG GP LTD.**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
HARVEST ONTARIO PARTNERS LIMITED PARTNERSHIP**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
HARVEST POWER MUSTANG GENERATION LTD.**

SECOND REPORT OF THE PROPOSAL TRUSTEE

December 3, 2015

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Exhibits

- A. Notices of Intent and Certificates of Filing
- B. Proposal Trustee’s First Report (without Exhibits)
- C. Administrative and Sale Process Order
- D. Sale Agreement
- E. Teaser Document
- F. Confidential Exhibit – Confidential Information Memorandum
- G. Bid Instruction Letter
- H. Globe and Mail Advertisement
- I. Updated Cash Flow Projection
- J. Affidavit of Rob Biehler
- K. Affidavit of James Fisher

INTRODUCTION

1. On September 29, 2015, Harvest Mustang GP Ltd. (“**Mustang GP**”), Harvest Ontario Partners Limited Partnership (“**Harvest Ontario**”), and Harvest Power Mustang Generation Ltd. (“**Mustang Generation**”, and collectively, the “**Debtors**”) each filed a Notice of Intention to File a Proposal (the “**NOIs**”) pursuant to Part III, Division I of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). Deloitte Restructuring Inc. (“**Deloitte**”) was named as trustee in the NOIs (the “**Proposal Trustee**”). Attached hereto collectively as **Exhibit “A”** are copies of the Debtors’ NOIs and the Certificates of Filing a Notice of Intention to make a Proposal.
2. On October 15, 2015, the Proposal Trustee filed its first report to the Ontario Superior Court of Justice – In Bankruptcy (the “**Court**”), which contained background information in respect of the Debtors, their financial difficulties, described StormFisher Environmental Inc. (“**SFE**”) in its role as the primary secured creditor, outlined the Sale Process and Stalking Horse Bid, Debtors’ cash flow and DIP Facility, Administrative Charge and D&O Charge (the “**First Report**”). A copy of the First Report, without Exhibits, is attached hereto as **Exhibit “B”**.
3. By Order of Justice Rady dated October 19, 2015 (the “**Administrative and Sale Process Order**”), this Court made an Order, *inter alia*,:
 - a. administratively consolidating the Debtors’ proposal proceedings under the BIA;
 - b. authorizing the Debtors to enter into an Interim Financing Term Sheet (the “**DIP Term Sheet**”) with SFE (in this capacity, the “**DIP Lender**”) and approving the DIP Term Sheet;
 - c. approving a charge in favour of the DIP Lender to secure the payment of the money advanced by the DIP Lender;
 - d. approving the Administrative Charge (as defined therein);
 - e. approving the D&O Charge (as defined therein);
 - f. approving the sale process described in the First Report;
 - g. authorizing the Debtors to enter into an agreement of purchase and sale with SFE (in

its capacity, the “**Stalking Horse Bidder**”) in the in the form attached as Exhibit “K” to the Affidavit of Wayne H. Davis sworn October 13, 2015 (the “**Stalking Horse APA**”); and

- h. extending the time for filing a proposal to December 11, 2015.
4. Attached hereto as **Exhibit “C”** is a copy of the Administrative and Sale Process Order.
5. A copy of the First Report, the Administrative and Sale Process Order and other relevant BIA documents are available on the Proposal Trustee’s website at <http://www.insolvencies.deloitte.ca/en-ca/Pages/HarvestOntarioPartners.aspx?searchpage=Search-Insolvencies.aspx>
6. On October 15, 2015 the Debtors and SFE executed the Stalking Horse APA.
7. The Debtors have made a motion to the Court, returnable December 10, 2015 (“**Sale Approval Motion**”), for an order:
 - a. approving the agreement of purchase and sale (“**Sale Agreement**”) between SFE and the Debtors for the sale of the Debtors’ business and assets, as described therein (the “**Purchased Assets**”) and vesting in SFE all of the Debtors’ rights, title and interest in and to the Purchased Assets free and clear of all claims and encumbrances (the “**Approval and Vesting Order**”); and
 - b. temporarily sealing the Confidential Exhibit (as defined herein).
8. The Debtors have also sought an order (the “**Extension Order**”), which among other things:
 - a. extending the Debtors time for filing a proposal pursuant to section 50.4(9) of the BIA to January 25, 2016;
 - b. approving the activities of the Proposal Trustee as set out in the First Report of the Proposal Trustee and the Second Report of the Proposal Trustee; and
 - c. approving the professional fees and disbursements of the Proposal Trustee and its counsel.

PURPOSE OF REPORT

9. The purpose of this report, (the “**Second Report**”) is to provide the Court with:
 - a. information on the sale and marketing process (“**Sale Process**”) undertaken by the Debtors with the assistance of Deloitte Corporate Finance Inc., an affiliate of Deloitte, to market and sell the Debtors’ assets;
 - b. information on the proposed sale of the Debtors’ assets (the “**Asset Sale**”) pursuant to the Sale Agreement;
 - c. the Proposal Trustee’s view on the Sale Process and the Asset Sale;
 - d. the actual cash flow results for the Debtors for the period September 26, 2015 to November 20, 2015;
 - e. the updated cash flow projections for the period November 21, 2015 to February 5, 2016;
 - f. a summary of the Proposal Trustee’s activities since the filing of the First Report;
 - g. affidavits of Rob Biehler and James Fisher of Deloitte and Brown Beattie O’Donovan LLP, respectively, in support of the approval of the professional fees and disbursements; and
 - h. the Proposal Trustee’s recommendation in respect of the Sale Approval Motion and additional relief sought by the Debtors, including the stay extension until January 25, 2016.

TERMS OF REFERENCE

10. In preparing this Second Report, the Proposal Trustee has relied upon unaudited financial information, other information available to the Proposal Trustee and, where appropriate, the Debtors’ books and records and discussions with various parties (collectively, the “**Information**”).
11. Except as described in this Second Report:
 - a. The Proposal Trustee has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with

Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook;
and

- b. The Proposal Trustee has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the CPA Canada Handbook.
12. Future oriented financial information reported or relied on in preparing this report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.
 13. Unless otherwise stated, capitalized terms not otherwise defined in this Second Report are as defined in the First Report or the Stalking Horse APA.
 14. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

SALE PROCESS

15. As discussed in greater detail in the First Report and the Affidavit of Wayne H. Davis sworn October 13, 2015 (the “**First Davis Affidavit**”), the Debtors operate a biogas electricity generation facility in London, Ontario. The Debtors sell their energy to the Independent Electricity System Operator (“**IESO**”) (formerly Ontario Power Generation Inc.) through London Hydro pursuant a Renewable Energy Standard Offer Program agreement. In addition, the Debtors earn revenues from waste providers for tipping fees and the sale of a fertilizer bi-product.
16. Following the Administrative and Sale Process Order, the Proposal Trustee engaged Deloitte Corporate Finance professionals to undertake the activities in the Sale Process to test the market following execution of the Stalking Horse APA with SFE.
17. As part of the Sale Process, the Debtors entered into the Sale Agreement with SFE which acted as the Stalking Horse Bidder. Pursuant to the Sale Agreement, SFE offered to purchase the business and assets of the Debtors on a going-concern basis pursuant to the terms of the Sale Agreement for a purchase price (the “Purchase Price”) equal to: (i) \$250,000 of the Debtors’ total secured obligations to SFE (plus the DIP Loan); (ii) any

amounts ranking in priority to SFE's security, including the amounts secured by: (a) the Administration Charge; (b) the D&O Charge; (c) the amount estimated by the Proposal Trustee to be the aggregate fees, disbursements and expenses for the period from and after closing of the transaction for the sale the Debtors' business to the completion of the BIA Proceedings and the discharge of Deloitte Restructuring Inc. as trustee in bankruptcy of estate of the Debtors. A copy of the Sale Agreement is attached hereto as **Exhibit "D"**.

18. Due to the significant negative EBITDA performance, funding requirements and environmental risk, the process for the sale of the Debtors' business assets as a going concern was condensed.
19. The Administrative and Sale Process Order and Sale Agreement and outlined the sale process the minimum criteria of a Superior Bid to the Stalking Horse Bidder. In summary, a Superior Bid must be an all-cash offer for a value greater than SFE's secured indebtedness, DIP Loan and all priority claims, Court-approved charges and aggregate professional fees.
20. The Debtors, with the assistance of the Proposal Trustee engaged in Sale Process activities and completed key milestones described herein.
 - a. Developed a list of prospective purchasers consisting primarily of strategic buyers in the industry based on input from the Debtors, parties that contacted the Proposal Trustee or the Debtors to express interest in the business assets and industry research conducted by the Proposal Trustee.
 - b. Contacted 37 prospective purchasers by telephone and email to assess the level of interest in the Debtors' assets.
 - c. Drafted the the Non-disclosure Agreement ("**NDA**") in consultation with legal counsel to the Debtors.
 - d. Prepared a one-page Teaser document ("**Teaser**") outlining an overview of the facility, financial summary and investment profile. Attached hereto as **Exhibit "E"** is a copy of the Teaser.
 - e. With assistance with Debtors' management, compiled financial information, legal

and regulatory agreements, facility and operations documents and created a data room for the prospective purchasers who signed a NDA.

- f. With assistance of the Debtors' management, prepared a confidential information memorandum ("CIM") providing detailed information on the assets, operations and financial statements and schedules in respect of the Debtors' assets. A copy of the CIM will be filed with the Court as **Confidential Exhibit "F"**.
- g. Upon execution of an NDA, distributed the CIM to 13 prospective purchasers.
- h. Prepared and distributed a letter to six parties who received the CIM and who had not declared that they were no longer interested in purchasing the assets, communicating the Bid Deadline of November 24, 2015, the detailed criteria of a Superior Bid and instructions for prospective purchasers to make a bid on the assets ("**Bid Instruction Letter**"). A copy of the Bid Instruction Letter is attached hereto as **Exhibit "G"**.
- i. Attended plant tours and management presentations for two prospective purchasers who made the request.
- j. Drafted and arranged for an advertisement published in the Globe and Mail - National Edition on November 10, 2015 ("**Globe and Mail Advertisement**"). A copy of the Globe and Mail Advertisement is attached hereto as **Exhibit "H"**.

21. The Proposal Trustee did not receive any offers as a result of the Sale Process.

PROPOSED ASSET SALE

22. Set out below is a summary of the principal terms and conditions of the Sale Agreement.

Assets

23. Purchased Assets are defined very broadly in the Sale Agreement meaning collectively, all of the Debtors' right, title and interest in all of the assets, properties and undertakings related to the Business.

24. Excluded Assets in the Sale Agreement are comprised of:

- a. Contracts that are not Assumed Contracts;

- b. Tax records and books and records pertaining thereto, minute books and documents related to the organization;
- c. Refunds of tax and reassessments of taxes paid or payable before the closing; and
- d. Any assets specifically excluded by SFE.

Assumed Obligations

25. Assumed Obligations on Closing by SFE will include:

- a. the Debtors' Liabilities arising out of Assumed Contracts that arise out of, are incurred, or relate to the period from and after the Closing;
- b. the Debtors' Liabilities under the D&O Charge incurred during the BIA Proceedings which are not otherwise covered by the Debtors' insurance coverage; and
- c. the Debtors' Liabilities for Priority Payables on Closing.

26. It is the Proposal Trustee's view that the Assumed Obligations are appropriately defined to encompass the Debtors' priority creditors.

Consideration and Proposed Closing

27. As described in paragraph 17 above and in the Sale Agreement, the Purchase Price reflects \$250,000 of SFE's secured indebtedness and full value of the DIP Loan, assumption of all priority payables and professional fees.

28. The Proposal Trustee has been advised by SFE representatives that the Purchase Price consideration represents only part of SFE's secured indebtedness was for tax planning purposes.

29. The Sale Agreement is conditional upon the Approval and Vesting Order being made by the Court within ten days of SFE becoming the Winning Bidder (as such term is defined in the Sale Agreement) or such later date agreed upon by the parties to the Sale Agreement. The Debtor and SFE have agreed to extend the deadline by which the Approval and Vesting Order.

30. Subject to this Court granting the Approval and Vesting Order, all other conditions in

the Sale Agreement have been either satisfied or waived.

31. If this Court grants the Approval and Vesting Order, the transaction contemplated by the Sale Agreement is expected to close during week of December 14, 2015. Due to the upcoming holidays and the potential for transaction and priority issues (including liens), the Debtors will be seeking an extension of the statutory limit of 45 days to allow for time to close the Asset Sale.

PROPOSAL TRUSTEE'S VIEW OF THE SALE PROCESS AND ASSET SALE

32. As discussed earlier in this Second Report, due to certain time sensitivity and a need to market the Debtors' assets to maximize the realization value, a condensed Sale Process was conducted by the Debtors with assistance from the Proposal Trustee. The Proposal Trustee is not aware of any party participating in the Sale Process that required a longer timeframe to consider making a Superior Bid.
33. Notwithstanding the condensed timeframe, the Proposal Trustee is of the view that the Sale Process was conducted in a commercially reasonable manner and the market was extensively canvassed.
34. There was significant interest in acquiring the Debtors' assets, as evidenced by the number of NDAs signed and CIMs distributed during the period of the Sale Process.
35. The Proposal Trustee completed the Sale Process, which was approved by the Court in the Administrative and Sale Process Order and no offers or expressions of interest of any kind were provided by any interested party. Consequently, the Stalking Horse Bidder, SFE, appears to be the most viable purchaser for Purchased Assets.
36. Section 65.13(4) of the BIA sets out the following list of non-exhaustive factors for the Court to consider in determining whether to approve a debtor's sale of assets outside the ordinary course of business:
 - a. Whether the process leading to the proposed sale or disposition was reasonable in circumstances;
 - b. Whether the trustee approved the process leading to the proposed sale or disposition;

- c. Whether the trustee filed with the Court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than sale or disposition under a bankruptcy;
- d. The extent to which the creditors were consulted;
- e. The effects of the proposed sale or disposition on the creditors and other interested parties; and
- f. Whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

a. The sale process was reasonable

37. The Sale Agreement is the result of the Debtor and the Proposal Trustee undertaking a robust and Court-approved Sale Process for a very specialized asset, which was performing at significant negative EBITDA. As described herein, key activities included contacting several prospective purchasers over a five week process, providing appropriate Information for due diligence, providing interested parties access to the facility for a tour and an opportunity to interview key management and advertising in the Globe and Mail - National Edition to solicit interested parties not initially identified by the Debtors or the Proposal Trustee.

b. Whether the Trustee approved the sale process

38. As described herein, the Proposal Trustee was extensively involved in all discussions and information disclosure with interested parties and engaged in all marketing activities throughout the Sale Process.

c. Sale under proposal more beneficial than bankruptcy

39. The Debtor has continued to operate the business following the NOI and due to the environmental risks and funding requirements of the Debtors, it is the Proposal Trustee's view that a bankruptcy and possession and control of the property by a bankruptcy trustee would have not been a viable option to sell the assets as a going-concern.

40. Further, it is the Proposal Trustee's view that achieving a successful completion of the Sale Agreement will benefit a broad group of stakeholders, including, the employees, customers, suppliers and the regulators given the environment concerns. In addition, it will minimize professional fees due to the shorter timeframe than a wind-down and the Debtor remains in possession of the facility and operating in the ordinary course of business until the closing of the Sale Agreement rather than a bankruptcy.

d. The extent to which the creditors were consulted

41. The primary secured creditor will be assuming the higher priority secured debts and charges as part of the Purchase Price pursuant to the Sale Agreement and therefore the degree of consultation with creditors has been limited.

42. Secured creditors have been included in the Service List and have received materials about the Sale Process throughout the proceeding.

43. The Proposal Trustee and the Debtor engaged in many discussions with suppliers and other creditors to communicate the status of the business, the impact on their unpaid liabilities and disclose the divestiture plan and Sale Process. The Proposal Trustee is not aware of any creditors that have expressed concerns about the Sale Process.

e. The effects of the proposed sale on the creditors and interested parties

44. As a result of completing the Sale Agreement with the Stalking Horse Bidder, upon the Closing, there will be no subordinate creditors or equity holders with Pre-NOI indebtedness or equity receiving a financial recovery.

45. The transaction contemplated by the Sale Agreement would see the continuation of the Debtors' business for the benefit of all of the Debtors' stakeholders, including its employees, suppliers and customers. The assets are being purchased by SFE on "as is where is" basis. As a consequence, SFE is assuming the risk of any environmental liabilities associated with the Property, discussed in greater detail in the First Davis Affidavit.

f. Whether consideration is reasonable and fair

46. As described herein, the Purchased Assets were exposed to the market pursuant to the Sale Process and there was no party prepared to offer more than the secured indebtedness of the Debtors. Consequently, it is the Proposal Trustee's view that the value was maximized.
47. As described in the First Report and the First Davis Affidavit, the secured indebtedness was sold and assigned between arm's length parties prior to the NOI proceedings.
48. Based on the foregoing, it is the Trustee's view that the consideration is fair and reasonable.
49. In conclusion, the Proposal Trustee supports the Debtors' motion for the Approval and Vesting Order.

CASH FLOW ANALYSIS

50. A comparison of the actual cash flows for the Debtors for the period from September 26, 2015 to November 20, 2015 (“**Actual Cash Flow Period**”) to the projected cash flows for the same period contained in the First Report, is summarized below.

Consolidated Cash flow forecast

Harvest Mustang GP Ltd., Harvest Ontario Partners Limited Partnership, and Harvest Power Mustang Generation Ltd.

Week Ending:	Actual	Projected	Variance
	9/25 to 11/20		
Beginning Cash	\$ 123,292	\$ 127,900	(4,608)
Receipts			
London Hydro Electricity Generation	240,714	246,200	(5,486)
Tipping Fees on Inbound Material	155,848	135,000	20,848
Outbound Fertilizer Sales	-	-	-
DIP Funding - SFE	146,927	-	146,927
Total Receipts	\$ 543,490	\$ 381,200	162,290
Disbursements			
Payroll	\$ 100,146	\$ 112,000	(11,854)
Insurance	26,625	26,600	25
Materials and Equipment	107,647	264,200	(156,553)
Services and Maintenance	304,871	394,700	(89,829)
Utilities	6,302	87,300	(80,998)
Other Expenses	27,254	47,000	(19,746)
Expense Contingency	917	104,000	(103,083)
Disbursements for Operations	\$ 573,762	\$ 1,035,800	(462,038)
Filing Expenses - Professional Fees	\$ -	\$ 105,000	(105,000)
Total Disbursements	\$ 573,762	\$ 1,140,800	(567,038)
Net Cash Flow	\$ (30,272)	\$ (759,600)	(729,328)
Ending Cash	\$ 93,020	\$ (631,700)	724,720

51. During the Actual Cash Flow Period, the Debtors reported net, negative cash flow of approximately \$30,000 (including approximately \$147,000 of DIP Funding) as compared to projected negative cash flow of approximately \$760,000. The variance of approximately \$730,000 was due to the following:

- a. higher than projected receipts of approximately \$21,000 as a result of favourable timing of payments of tipping fees;
- b. actual DIP funding of approximately \$147,000 (note that the initial cash flow

projection calculated negative cash flow which demonstrated the DIP financing requirement);

- c. in aggregate, lower operating and capital expenditure funding of \$462,000, principally due to cost reduction improvements implemented by management of the Debtors with consultation from SFE representatives, in their capacities as DIP Lender and Secured Creditor; and
- d. lower professional fees by \$105,000 as the accrued professional fees have not yet been funded.

52. Based on discussions with the DIP Lender and Debtors representatives there are approximately \$60,000 of post-NOI liabilities for unpaid supplier invoices rendered (excluding professional fees), which is due to the timing lag of the Debtors' payment processing.

UPDATED CASH FLOW PROJECTION

53. The Debtors, with the assistance of the Proposal Trustee, have prepared an updated cash flow projection to cover the period of the proposed stay extension. Copy of the updated cash flow projection is attached hereto as **Exhibit "I"**.

54. As of November 20, 2015, the DIP Facility is approximately \$147,000 (before accrued interest).

55. Lower expense level assumptions have been reflected in the updated cash flow projection model. Based on the updated assumptions in the cash flow projection, the operations will continue in the ordinary course and the projected DIP Facility as of February 5, 2016 will be \$497,000.

PROPOSAL TRUSTEE'S ACTIVITIES

56. Since the date of the First Report, the Proposal Trustee has been engaged in the following activities:

- a. Undertaking all the activities related to the Sale Process as described herein;
- b. Attending in Court;

- c. Monitoring cash flow and operations of the Debtors and communications with representatives of the Debtors' and DIP Lender;
- d. Attending to email correspondence and calls with unsecured creditors and other interested parties inquiring about the BIA proceedings;
- e. Instructing counsel to respond to counsel to lien claimant;
- f. Attending to discussions with Debtors' representatives with respect to transaction transition matters;
- g. Providing the Debtors' counsel with updates on the status of the Sale Process; and
- h. Drafting and finalizing this Second Report.

DEBTORS' REQUEST FOR AN EXTENSION

57. In order to complete the Asset Sale, the Debtors are seeking an extension of the stay of proceedings from December 12, 2015 to January 25, 2016, inclusive.
58. The Proposal Trustee is satisfied that the Debtors have acted and are acting in good faith and with due diligence in these proceedings to date. If the extension sought is granted, it will allow the Proposal Trustee and the Debtors to complete the sale for the benefit of all of the Debtors' stakeholders. The Proposal Trustee is satisfied that none of the Debtors' creditors will be materially prejudiced by the extension of time sought by the Debtors to make a proposal.
59. In the event an extension is not granted and the Debtors are deemed bankrupt which would be to the detriment of all of its stakeholders, including its customers, employees, suppliers and secured creditors.

APPROVAL OF THE PROPOSAL TRUSTEE'S ACCOUNTS

60. The Proposal Trustee and its legal counsel maintained detailed records of their professional time and costs since the preparation and filing of the NOIs.
61. The total fees of the Proposal Trustee for the period ending November 16, 2015 amount to \$70,353.00 together with HST in the amount of \$9,145.89 totalling \$79,498.89. The

time spent by the Proposal Trustee is described in the affidavit of Rob Biehler of Deloitte Restructuring Inc., sworn on December 3, 2015 and attached hereto as **Exhibit “J”**.

62. The total fees of the counsel to the Proposal Trustee for the period ending October 29, 2015 amount to \$13,924.50 together with disbursements of \$439.40 and HST in the amount of \$1,865.10 totalling \$16,229.00. The time spent by the counsel to the Proposal Trustee is described in the affidavit of James Fisher of Brown Beattie O’Donovan LLP, sworn on December 1, 2015 and attached hereto as **Exhibit “K”**.

CONCLUSIONS AND RECOMMENDATIONS

63. For the reasons set out herein, the Proposal Trustee supports the relief sought by the Debtors in the Approval and Vesting Order and the Extension Order.

64. The Proposal Trustee is of the view that it is preferable that the CIM remain confidential until the completion of the Asset Sale. Accordingly, the Proposal Trustee requests that Confidential Exhibit F remain sealed by the Court.

All of which is respectfully submitted this 3rd day of December, 2015.

DELOITTE RESTRUCTURING INC.
in its capacity as the Proposal Trustee under NOI
filed by Harvest Mustang GP Ltd..
Harvest Ontario Partners Limited Partnership, and
Harvest Power Mustang Generation Ltd.



Per:

Rob Biehler, CPA, CA, CIRP
Senior Vice President