

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: :
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LYONDELL CHEMICAL COMPANY, et al. : **Chapter 11**
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Debtors. : **Case No. 09-10023**
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**ORDER PURSUANT TO FED. R. BANKR. P. 9019 APPROVING
SETTLEMENT AGREEMENT AMONG THE DEBTORS,
THE ENVIRONMENTAL CUSTODIAL TRUST TRUSTEE, THE
UNITED STATES, AND CERTAIN STATE ENVIRONMENTAL AGENCIES**

Upon the Motion (the “Motion”)¹ of Lyondell Chemical Company (“Lyondell”) and certain of its affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) pursuant to rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for approval of the settlement agreement (the “Settlement Agreement”) among the Debtors, the trustee of the Environmental Custodial Trust, the United States, and certain state environmental agencies; all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, and notice of the Settlement Agreement having been published in the *Federal Register* for public comment, and it appearing that no other or further notice need be

¹ Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

provided; and the relief requested in the Motion being in the best interests of the Debtors and its estates and creditors; and the Court having reviewed the Motion and any opposition thereto; and the Court having reviewed the United States' memorandum of law in support of the Motion responding to public comments submitted to the United States concerning the Settlement Agreement; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that, pursuant to Bankruptcy Rule 9019, the Settlement Agreement is approved; and it is further

ORDERED that the Settlement Agreement is approved as fair, reasonable, and consistent with environmental law; and it is further

ORDERED that Debtors are authorized and directed to execute, deliver, implement, and fully perform any and all obligations, instruments, documents, and papers and to take any and all actions reasonably necessary or appropriate to consummate, complete, execute, and implement the Settlement Agreement in accordance with the terms and conditions of the Settlement Agreement; and it is further

ORDERED that upon the entry of this Order, the final form of the Environmental Custodial Trust Agreement, in the form annexed hereto, is hereby approved, and the selection of Le Petomane XXIII, Inc., not individually but solely in its representative capacity, as Environmental Custodial Trust Trustee under the Environmental Custodial Trust Agreement is hereby approved;

ORDERED that the Objections to the U.S. Proofs of Claim, the California DTSC Proofs of Claim, the California State Board Proofs of Claim, and the LA Regional Board Proofs of Claim and the United States' and Settling California Agencies' Motion to Withdraw the Reference are withdrawn, with respect to the causes of action, claims, and defenses asserted therein, without costs of attorney's fees to any party; and it is further

ORDERED that nothing in the Motion or this Order amends or limits Section 9.5 of the Plan (attached hereto as Exhibit A).

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of this Order, including without limitation, any disputes arising under the Settlement Agreement and the Environmental Custodial Trust Agreement.

Dated: April 23, 2010
New York, New York

s/ Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

9.5 Insurance.

(a) Notwithstanding anything in the Disclosure Statement, this Plan, the Plan Supplement, the Confirmation Order or any other order of this Court to the contrary (including, without limitation, any other provision that purports to be preemptory or supervening or grants a release), on the Effective Date, each of the Insurance Policies and Insurance Agreements shall, as applicable, either be (i) deemed assumed to the extent such Insurance Policies and Insurance Agreements were executory contracts of the applicable Debtor(s), Reorganized Debtor(s) or Schedule III Debtor(s) pursuant to section 365 of the Bankruptcy Code or (ii) continued in accordance with its terms, such that each of the parties' contractual, legal and equitable rights under each such assumed or continued Insurance Policy and Insurance Agreement shall remain unaltered, and the terms, conditions, and obligations of each Insurance Policy and Insurance Agreement shall apply as if the Chapter 11 Cases had not occurred. The Insurers' claims under the Insurance Policies and Insurance Agreements shall be paid in full in the ordinary course pursuant to the terms thereof without the need or requirement for the Insurers to file claims, motions or applications therefor.

(b) Nothing in the Disclosure Statement, this Plan, the Plan Supplement or the Confirmation Order amends the terms of any Insurance Settlement Agreement. Nothing herein shall preclude the jurisdiction by the Bankruptcy Court over any bankruptcy-related issue raised by any proof of claim filed by any Insurer, nor shall anything herein affect the *res judicata*, collateral estoppel or other preclusive effect of any finding, determination or ruling of the Court with respect to such issues. The Bankruptcy Court may determine any issue related to an Insurance Settlement Agreement that is necessary to resolve a proof of claim related to such Insurance Settlement Agreement in accordance with this provision, and such decision shall be binding on the parties, subject to the applicable rules of law and procedure, including the right of appeal. To the extent a Claim related to an Insurance Settlement Agreement is allowed, it shall be paid in accordance with the Plan. Issues related to an Insurance Settlement Agreement not adjudicated as part of the resolution of any proof of claim filed by an Insurer shall be determined as are issues arising under any Insurance Policy and/or Insurance Agreement, in accordance with the other provisions of this § 9.5 and non-bankruptcy law.

(c) Except as otherwise provided in § 9.5, nothing in the Disclosure Statement, Plan, the Plan Supplement, the Confirmation Order or any other order of this Court to the contrary (including, without limitation, any other provision that purports to be preemptory or supervening or grants a release): (i) shall affect, impair or prejudice the rights and defenses of the Insurers or the Debtors, Reorganized Debtors or other insureds under the Insurance Policies and Insurance Agreements in any manner; and such Insurers, Debtors, Reorganized Debtors and other insureds shall retain all rights, obligations and defenses under the Insurance Policies and Insurance Agreements, and the Insurance Policies and Insurance Agreements shall apply to, and be enforceable by and against, the applicable Debtor(s) or Reorganized Debtor(s) or insured(s) and the applicable Insurer(s) as if the Chapter 11 Cases had not occurred or (ii) shall in any way operate to, or have the effect of, impairing or having any *res judicata*, collateral estoppel or other preclusive effect on any party's legal, equitable or contractual rights or obligations under any Insurance Policy or Insurance Agreement, if any, in any respect; or otherwise determining the applicability or non-applicability of any provision of any Insurance Policy or Insurance Agreement and any such rights and obligations shall be determined under the Insurance Policies and Insurance Agreements and applicable law. Additionally, any Coverage Claim shall be handled in the court where it is currently pending or, if not currently pending in any court, Coverage Claims shall be heard in the forum specified in the relevant Insurance Policy or Insurance Agreement or, if no forum is so specified, in a court of competent jurisdiction other than the Bankruptcy Court; *provided, however*, that

nothing herein waives any right of any Debtor or Insurer to require arbitration to the extent the relevant Insurance Policy or Insurance Agreement provides for such. Nothing herein alters, modifies or affects that certain Order: (I) Authorizing Assumption of Agreements Constituting Certain Insurance Program; (II) Authorizing the Debtors to Enter into Insurance Agreements; and (III) Granting Related Relief Entered by the Bankruptcy Court on May 19, 2009, and such Order is incorporated herein by reference.

(d) To the extent it becomes necessary to enforce the terms of Plan § 9.5 in any Coverage Claim, the party seeking to enforce this section may offer or tender the terms of § 9.5 to the judge presiding over the Coverage Claim, and the parties to the Coverage Claim shall stipulate and agree that § 9.5 is binding upon them and was approved by the Bankruptcy Court in the Confirmation Order; and

(e) With respect to any pending Coverage Claim litigation that has been stayed by operation of 11 U.S.C. § 362 or by other order of the Bankruptcy Court, the parties thereto may, upon the Effective Date of the Plan, advise the court in such pending Coverage Claim that such litigation is no longer stayed and may proceed.

(f) With respect to any pending Coverage Claim litigation that has been stayed by order of the court in which the case is pending, rather than by operation of 11 U.S.C. section 362 or by any other order of the Bankruptcy Court, the parties thereto may, upon the Effective Date of the Plan, advise the court in such pending Coverage Claim litigation that the bankruptcy plan of reorganization has been confirmed and that the bankruptcy no longer presents an obstacle to further proceedings in such Coverage Claim litigation.

(g) Except as provided in Plan § 9.5, with respect to and for purposes of construing and applying any Insurance Policy or Insurance Agreements to resolve any Coverage Claim, nothing in the Plan, the Plan Supplement, any Confirmation Order, or any other judgment, order, finding of fact, conclusion of law, determination, ruling or statement (written or oral) made or entered by the Bankruptcy Court or by any other court exercising jurisdiction over the Bankruptcy Case, including, without limitation, any judgment, order, writ or opinion entered on appeal from any of the foregoing, shall constitute an adjudication, judgment, trial, hearing on the merits, finding, conclusion, other determination, or evidence or suggestion of any such determination establishing or relating to the liability (in the aggregate or otherwise) or coverage obligation of any Insurer for any Claim(s).

(h) Nothing in the Plan, the Plan Supplement, any Confirmation Order, or any other judgment, order, finding of fact, conclusion of law, determination, ruling or statement (written or oral) made or entered by the Bankruptcy Court or by any other court exercising jurisdiction over the Bankruptcy Case, including, without limitation, any judgment, order, writ or opinion entered on appeal from any of the foregoing, shall, (i) be deemed to grant to any Person any right to sue any Insurers that such Person does not have under applicable non-bankruptcy law, or (ii) relieve the Debtors (or any other Person or entity claiming to be an insured under any Insurance Policies or Insurance Agreements or Insurance Settlement Agreements) or the Insurers from any non-monetary obligations or duties imposed by any such Insurance Policies, Insurance Agreements, or Insurance Settlement Agreements.

(i) Notwithstanding anything to the contrary in the Plan or Confirmation Order, no exculpation, release, injunction or discharge provisions in the Plan or Confirmation Order shall affect or limit the rights or obligations of, or protections afforded, the Debtors, Reorganized Debtors, Schedule III Debtors or Insurers under § 9.5 or any Insurance Policies or Insurance Agreements.

(j) To the fullest extent permitted by law, the Bankruptcy Court or District Court having jurisdiction over the Bankruptcy Cases shall retain jurisdiction to enforce this § 9.5 of the Plan. Any party to any Coverage Claim, including without limitation the Debtors, Reorganized Debtors or any

Insurers, seeking to enforce the terms of § 9.5 may seek any and all appropriate relief, whether legal or equitable, from any court having jurisdiction over such Coverage Claim or the Bankruptcy Court.

(k) No Insurer shall be deemed to have participated in nor consented to the resolution of any Claim, except for any Claim made by an Insurer against a Debtor, by virtue of either their participation in the Bankruptcy Cases or of any action taken by the Bankruptcy Court or by any court exercising jurisdiction over the bankruptcy court or by any court exercising jurisdiction over the Bankruptcy Cases. Debtor shall not contend or argue that the fact that the Bankruptcy Court, or any Court exercising jurisdiction over these Bankruptcy Cases, approved the compromise or settlement of any environmental Claim establishes for insurance coverage purposes the reasonableness of such compromise or settlement.