ANGEL & FRANKEL, P.C.
Attorneys for Cedar Chemical Corporation
and Vicksburg Chemical Company
Debtors and Debtors-in-Possession
460 Park Avenue
New York, NY 10022-1906
(212) 752-8000
Joshua J. Angel, Esq. (JA-3288)
Bruce Frankel, Esq. (BF-9009)
Bonnie L. Pollack, Esq. (BP-3711)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	Chapter 11	
CEDAR CHEMICAL CORPORATION and VICKSBURG CHEMICAL COMPANY,	Case Nos.	02-11039 (SMB) and 02-11040 (SMB)
Debtors.	Jointly Administered	

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MOTION FOR ORDER PURSUANT TO 11 U.S.C. § 105, DETERMINING THAT RICECO IS NOT LIABLE FOR ENVIRONMENTAL CLEANUP, AND PURSUANT TO 11 U.S.C. § 362(a) OR, ALTERNATIVELY, PURSUANT TO 11 U.S.C. § 105, APPLYING AND ENFORCING THE AUTOMATIC STAY

Cedar Chemical Corporation ("Cedar") and Vicksburg Chemical Company ("Vicksburg"; together with Cedar, the "Debtors"), by their attorneys Angel & Frankel, P.C., submit this motion (the "Motion") for an order pursuant to section 105 of Title 11 of the United States Code (the "Bankruptcy Code"), determining that RiceCo, LLP ("RiceCo") is not liable for cleanup of the facility in West Helena, Arkansas formerly owned and operated by Cedar (the "Cedar Facility"), and pursuant to section 362(a) or, alternatively, section 105 of the Bankruptcy Code, applying and enforcing the automatic stay with respect to actions taken by the Arkansas Department of Environmental Quality (the "ADEQ").

In support of this Motion, the Debtors respectfully represent as follows:

Introduction

1. On March 8, 2002 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

2. Also on March 8, 2002, the Bankruptcy Court granted the Debtors' application allowing joint administration of the Debtors' cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

3. The Debtors have been authorized to remain in possession of their property and to continue in the operation and management of their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. An official committee of unsecured creditors has been appointed by the office of the United States Trustee for the Southern District of New York in the Debtors' cases and it has chosen the law firm of Satterlee Stephens Burke & Burke LLP to serve as its counsel.

5. No trustee or examiner has been appointed in the Debtors' chapter 11 cases.

6. Cedar owns 49% of RiceCo and, since last summer, has been negotiating to sell its ownership interest in RiceCo as part of the on-going liquidation of its assets. Currently Cedar is finalizing the negotiation of the sale of its interest in RiceCo with one interested buyer. See Affidavit of Philip Gund, attached hereto as Exhibit "A". As a result of a Confidentiality Agreement entered into by Cedar, Cedar is unable at this time to disclose either the identity of the prospective buyer or the exact purchase price. However, the purchase price is significant.

7. On or about November 20, 2002, RiceCo received a letter from the ADEQ regarding the Cedar Facility, notifying RiceCo of its alleged potential liability for cleanup of the

Cedar Facility (the "ADEQ Letter"). A copy of the ADEQ Letter is annexed hereto as Exhibit "B". The ADEQ letter stated that "hazardous substances were released into the environment as a result of operations" at the Cedar Facility and that "[a]s a result of RiceCo's involvement in the formulation lab [at the Cedar Facility], the [ADEQ] contends that RiceCo is a potentially responsible party concerning the abandoned chemicals located in the formulation laboratory" pursuant to Ark. Code section 8-7-512.

8. Under Ark. Code section 8-7-512, the following persons are liable to the ADEQ for all costs of remedial actions undertaken to cleanup a particular site: (a) the owner and operator of a facility; (b) any person who, at the time of disposal of any hazardous substance, owned or operated a hazardous substance site; (c) any generator of hazardous substances who, at the time of disposal, caused such substance to be disposed of at a hazardous substance site or who causes a release or threatened release of the hazardous substances; or (d) any transporter of hazardous substances who causes a release or threatened release of the hazardous substances or who, at the time of disposal, selected a hazardous substance site for disposal of the hazardous substances. Like its federal counterpart (CERCLA), clean-up liability under Arkansas environmental law is retroactive, strict, joint and several. By summarily asserting – <u>without any supporting evidence</u> – that RiceCo potentially falls within the scope of responsible parties under Ark. Code section 8-7-512, the ADEQ is threatening RiceCo (and any purchaser of a significant share of RiceCo) with the prospect of crippling liability. The chilling effect of the ADEQ's actions on Cedar's attempt to sell its interest in RiceCo leaves little to the imagination.

9. On or about December 19, 2002, James K. Hines, President and CEO of RiceCo, responded by letter to the ADEQ (the "Hines Letter"). A copy of the Hines Letter is annexed hereto as Exhibit "C". Specifically, the Hines Letter addressed the three factual concerns raised

by the ADEQ, namely (a) the presence of off-specification product at the Cedar Facility which was packaged in containers bearing RiceCo's "brand" name; (b) RiceCo's relationship with a former Cedar employee; and (c) Cedar's partial ownership interest in RiceCo. The Hines Letter responded to these issues by pointing out the following facts:

- RiceCo is an independent limited liability company incorporated in Delaware. Cedar is one of two members of the LLC and Cedar owns less than a 50% interest in RiceCo. No officers of RiceCo have ever served simultaneously as officers of RiceCo and Cedar.
- RiceCo has no ownership interest in Cedar nor has it ever had an ownership interest in Cedar. RiceCo was not involved in the operation of the Cedar Facility. It did not contract with Cedar for the use of the production or laboratory facilities at the Cedar Facility and no RiceCo employee ever worked in Cedar's production or laboratory facilities.
- RiceCo did employ Richard Fraley, a former employee of Cedar, as an independent contractor (not as an employee), after Mr. Fraley was terminated by Cedar. Mr. Fraley was contracted solely to provide RiceCo assistance during the transition to new formulators for the manufacture of propanil products after Cedar ceased producing those products for RiceCo. Mr. Fraley's consulting services terminated on December 31, 2002.
- RiceCo has no knowledge or ownership of any inventory of off-specification products at the Cedar Facility.
- RiceCo simply purchased technical propanil and finished formulated product from Cedar as a customer. Ownership of any product RiceCo bought from Cedar was transferred to RiceCo only when finished product exited the Cedar Facility.

- Had there been any off-specification product at the Cedar Facility, it would not have left the Cedar Facility. Ownership of that off-specification product would not have transferred to RiceCo because RiceCo would not be invoiced for or take title to product which did not meet the specifications set out in the designated formula for such product and which did not leave the Cedar Facility site.

10. As a result of the ADEQ Letter and its serious financial implications for RiceCo, the potential purchaser for Cedar's interest in RiceCo is threatening to walk away if the ADEQ's claim against RiceCo is not resolved immediately. See Affidavit of Philip Gund.

Relief Requested

11. By this Motion, the Debtors seek entry of an order determining that RiceCo is not liable to the ADEQ for environmental cleanup of the Cedar Facility, and applying and enforcing the automatic stay with respect to actions taken by the ADEQ to enforce liability against RiceCo for cleanup of the Cedar Facility.

12. First, it is clear that RiceCo is not liable to the ADEQ pursuant to Ark. Code section 8-7-512. RiceCo did not own or operate the Cedar facility, did not own or operate a hazardous substance site, and did not generate, release or transport hazardous substances. RiceCo is a distinct entity from Cedar. Cedar manufactured product for RiceCo, which Cedar produced, stored and shipped. Simply put, the only reason the ADEQ could be pursuing RiceCo for liability is because it is a valuable asset of the estate which the ADEQ is attempting to exert leverage over.

13. Given this, the Court should issue an order determining that RiceCo has no liability to the ADEQ. Section 105 of the Bankruptcy Code reads in pertinent part:

> (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.

11 U.S.C. § 105.

14. The ADEQ's completely unfounded actions are causing extreme harm to the estate, which is now in danger of losing the significant proceeds from the sale of Cedar's interest in RiceCo. Thus, the ADEQ's actions integrally effect the administration of the estate, and the assets and liabilities thereof. The Debtors submit that the Court should utilize its section 105 powers to avoid the impact of the ADEQ's detrimental actions by determining that such actions are without merit and that RiceCo has no liability to the ADEQ.

15. In addition, the ADEQ's actions are tantamount to a violation of the automatic stay in Cedar's case. Section 362 of the Bankruptcy Code reads in pertinent part:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of — . . .
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> (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

11 U.S.C. § 362.

16. The automatic stay in section 362 acts to prevent the ADEQ from pursuing its claim against the Debtors directly. However, the ADEQ is attempting to circumvent the automatic stay in section 362(a) by taking action against RiceCo – while the real target of its action is the Debtors.

17. Under section 105(a), the bankruptcy court has the power to extend the automatic stay to restrain activities such as the ADEQ's where it is necessary and appropriate to carry out the purposes of the automatic stay. See In re Granite Partners, L.P., 194 B.R. 318, 337-8 (Bankr. S.D.N.Y. 1996) (section 105 grants the bankruptcy court the power to extend the automatic stay under section 362 to enjoin actions by third parties against third parties); LTV

Steel Corp. v. Board of Educ. (In re Chateaugay Corp. Roemer, Inc.), 93 B.R. 26, 29 (S.D.N.Y. 1988) (the bankruptcy court has authority under section 105 broader than the automatic stay provisions in section 362); Johns-Manville Corp. v. Asbestos Litig. Group (In re Johns-Manville), 26 B.R. 420, 436 (Bankr. S.D.N.Y. 1983), aff'd in part, 40 B.R. 219 (S.D.N.Y. 1984), rev'd in part on other grounds, 41 B.R. 926 (S.D.N.Y. 1984) (Pursuant to § 105(a), the bankruptcy court may extend the automatic stay under § 362 of the Code to stay and enjoin acts against non-debtors where such actions would interfere with, deplete or adversely affect property of the debtor's estate or which would frustrate the statutory scheme of chapter 11).

18. The automatic stay may be extended to actions designed to circumvent the automatic stay by seeking recovery from third parties when the real party in interest is the debtor. Id. Moreover, the automatic stay may be extended to cover actions that threaten the orderly liquidation of the debtor's estate, that interfere with, deplete or adversely affect the debtor's assets or estate or that impair the court's jurisdiction with respect to a case before it. See In re Granite Partners, L.P., 194 B.R. at 337 n. 23 ("Under Section 105, the bankruptcy court can issue an injunction to restrain activities that threaten the reorganization process or impair the court's jurisdiction with respect to a case before it"); In re North Star Contracting Corp., 125 B.R. 368, 370 (S.D.N.Y. 1991) (bankruptcy courts can extend the automatic stay to include actions by or against non-debtors when such actions have a significant impact on, or would adversely affect, the bankrupt); In re Johns-Manville Corp., 33 B.R. 254, 263 (Bankr. S.D.N.Y. 1983) (the bankruptcy court may enjoin actions by or against non-debtors where such actions would interfere with, deplete or adversely affect property of the debtor's estate).

19. Extending the automatic stay in this case is necessary and appropriate because the ADEQ's purported action against RiceCo is in reality a thinly-veiled attempt to extract funds

from the Debtors' estates. See In re Johns-Manville, 26 B.R. at 436 (the bankruptcy court extended the automatic stay under section 105(a), finding that it was necessary and appropriate because the enjoined lawsuit was designed to circumvent the automatic stay by suing the officers and directors of the debtor when the real party in interest was the debtor); In re North Star Contracting Corp., 125 B.R. at 371 (lawsuit against president of debtor enjoined because allowing suit to proceed would harm the debtor's reorganization efforts and, if the suit were successful, it would adversely affect the debtor's assets).

20. The ADEQ, by precipitously labeling RiceCo a "potentially responsible party" without first seeking to establish some factual support for its allegations, is seriously hindering Cedar's efforts to sell its 49% stake in RiceCo. Most importantly, as demonstrated by the Hines Letter, the ADEQ simply has no factual basis to assert a claim against RiceCo. The ADEQ is well aware of Cedar's efforts to sell its interest in RiceCo. Should the ADEQ continue to press its claim against RiceCo under these circumstances, the resulting adverse impact on the Debtors' estates will be twofold: (a) the only bidder for Cedar's interest in RiceCo may walk away and Cedar may be left with no purchaser for its stake in RiceCo, having a significant financial impact on Cedar; and (b) if RiceCo ultimately pays for the remediation of the Cedar Facility (to avoid

costly litigation), it would likely attempt to recover 100% of its costs against the Debtors pursuant to Ark. Code § 8-7-520.[1]

21. For the above reasons, the ADEQ's action against RiceCo represents an "end-run" around the automatic stay. In pursuing a baseless claim against RiceCo while the Debtors are trying to complete their liquidation by selling their share of RiceCo, the ADEQ is attempting to recover money from the Debtors' estate in violation of the automatic stay and to the detriment of other creditors.

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[1] Ark. Code § 8-7-520 allows any party that has undertaken remediation at a site to seek contribution for the cost of the remediation from other responsible parties:

> "(a) Any person who has undertaken or is undertaking remedial action at a hazardous substance site in response to an administrative or judicial order initiated against such person pursuant to §§ 8-7-508 or 8-7-1104(d) may obtain contribution from any other person who is liable for such hazardous substance site.
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> (b) Any person who has resolved all or a portion of his liability for a hazardous substance site by undertaking remedial action pursuant to an administrative or judicially approved settlement may obtain contribution from any person who is liable for such hazardous substance site and is not a party to the settlement."

WHEREFORE, the Debtors respectfully request that this Court enter the proposed order, substantially in the form annexed hereto as Exhibit "D", and grant the Debtors such other and further relief as may be just and proper.

Dated: New York, New York
February 7, 2003

ANGEL & FRANKEL, P.C.
Attorneys for Cedar Chemical Corporation and
Vicksburg Chemical Corporation
Debtors and Debtors-in-Possession

By: /s/ Craig R. Nussbaum
Joshua J. Angel, Esq. (JA-3288)
Bonnie L. Pollack, Esq. (BP-3711)
Craig R. Nussbaum, Esq. (CN-8742)
460 Park Avenue
New York, NY 10022-1906
(212) 752-8000