

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

**In re:** § **CHAPTER 11**  
§  
**VWS HOLDCO., ET AL.,** § **CASE No. 25-10979 (JKS)**  
§  
**Debtors.** § **Related to Docket Nos. 15, 42 and 50**  
§  
§ **Obj. Deadline: 6/20/25 by 4:00 pm (ET)**  
§ **Hearing Date: 7/2/25 at 11:00 am (ET)**

**SWIFT CREEK RENEWABLES, LLC'S LIMITED OBJECTION AND RESERVATION  
OF RIGHTS IN RESPONSE TO DEBTORS' MOTION FOR ENTRY OF INTERIM AND  
FINAL ORDERS PURSUANT TO SECTIONS 105, 361, 362, 363, 364, 503, 506, 507 AND  
502 OF THE BANKRUPTCY CODE AND RULES 2002, 4001, 6004 AND 9014 OF THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE (I) AUTHORIZING THE  
DEBTORS TO (A) USE CASH COLLATERAL, (B) OBTAIN SENIOR SECURED  
SUPERPRIORITY POSTPETITION FINANCING AND GRANTING LIENS AND  
SUPERPRIORITY ADMINISTRATIVE CLAIMS AND (C) PROVIDE ADEQUATE  
PROTECTION, (II) MODIFYING THE AUTOMATIC STAY, (III) SCHEDULING  
A FINAL HEARING AND (IV) GRANTING RELATED RELIEF**

TO THE HONORABLE JUDGE J. KATE STICKLES,  
UNITED STATES BANKRUPTCY JUDGE:

Swift Creek Renewables, LLC (hereinafter referred to "SCR") files this Limited  
Objection and Reservation of Rights to Debtors' Motion for Entry of Interim and Final Orders  
Pursuant to Sections 105, 361, 362, 363, 364, 503, 506, 507 and 502 of the Bankruptcy Code and  
Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (I) Authorizing  
the Debtors to (A) Use Cash Collateral, (B) Obtain Senior Secured Superpriority Postpetition  
Financing and Granting Liens and Superpriority Administrative Claims and (C) Provide  
Adequate Protection, (II) Modifying the Automatic Stay, (III) Scheduling a Final Hearing and  
(IV) Granting Related Relief (Docket No. 15) (the "Motion") and would show the Court as  
follows:



**I. Background Facts**

1. SCR and Debtor Shoosmith Bros. (“Debtor”) are parties to a Landfill Gas Agreement effective as of April 14, 2021 (the “Agreement”). Pursuant to the terms of the Agreement, SCR invested, at significant expense, in the construction of infrastructure and a processing plant to provide for a landfill gas collection and control system to create High BTU gas (“Gas”) at Debtor’s landfill located at 11520 Ironbridge Road, Chester VA 23831 (the “Landfill”).

2. Pursuant to the terms of the Agreement, Debtor is entitled to a 25% royalty for Gas produced by SCR from the Landfill, such royalty to be reduced for the recovery of Reimbursable Costs and potentially further reduced by calculations based on production, in accordance with sections 4.2 and 4.3 of the Agreement.

3. The Reimbursable Costs are defined in the Agreement as expenditures or investments made by SCR at the Landfill. Debtor acquiesced in SCR incurring the Reimbursable Costs.

4. Debtor’s royalty income under the Agreement has resulted in income exceeding \$5,000,000 since September, 2023.

5. Currently, Debtor has a significant leachate issue at the Landfill of its own making. The excess leachate at the Landfill and Debtor’s inability to pump down the leachate prevents SCR from pumping out more significant amounts of Gas as originally projected. The most recent statement shows no positive income from the Debtor’s royalty under the Agreement due to a decrease in production of Gas at the Landfill.

6. In late 2024, SCR conducted a compliance review which identified that Debtor had been overpaid, due to royalty reductions based on decreased production pursuant to section

4.3(b) of the Agreement. Pre-petition, SCR had begun to recoup those overpayments under the Agreement.

7. SCR feels compelled to respond briefly to Debtor's various pleadings attributing its financial issues to SCR. Debtor attempts to transmogrify its dereliction of duties regarding the Agreement, leachate issues predating the Agreement, and related Landfill issues to alleged and unfounded breaches by SCR. The scope of Debtor's malfeasance with regard to the Agreement and its Landfill is best demonstrated by the facts that Debtor misrepresented the most germane premise underlying the Agreement- that it owned the Gas that SCR would be processing. Only after execution of a letter agreement (preceding the Agreement) did SCR learn that Debtor had no rights to the Gas. Consequently, Debtor would have to pay to acquire the rights to the Gas it had separately agreed to have SCR invest tens of millions of dollars to produce. In summary, SCR is not responsible for Debtor's financial issues.

8. SCR can prove that it is also not liable for Debtor's leachate issues at the Landfill. The leachate liability issue is a complex, factually intensive one that may only be resolved by extensive discovery and expert reports and cannot be summarily decided. At the appropriate time, SCR will present evidence proving it did not cause Debtor's leachate problems at the Landfill.

## **II. Limited Objection to the Proposed DIP Financing**

9. On June 3, 2025, Debtors filed the Motion seeking, inter alia, to obtain debtor in possession financing that would prime all liens, security interests and other "**claims** heretofore or hereafter granted under Bankruptcy Code section 364 **or otherwise.**"

10. On June 4, 2025, the Court entered an order approving the Motion on an interim basis (Docket No. 42) (the "Interim DIP Order"). To the extent that SCR's application of the

Reimbursable Costs to the Debtor's royalty and the recoupment of the overpayment described above based on underproduction are deemed to be either a setoff, recoupment or claim as set forth in the Interim DIP Order, SCR objects to the Interim DIP Order becoming a final order.<sup>1</sup> The Interim DIP Order becoming a final order would constitute an impermissible nonconsensual priming of SCR's claims to setoff and recoupment and there is no adequate protection to SCR.

### **III. Relief Requested**

WHEREFORE, SCR respectfully requests that any final order that grants the Motion specifically exclude SCR's setoff and recoupment rights from priming DIP liens, that all rights regarding SCR's claims and defenses relating to the leachate issues at the Landfill and the responsibility for the same be preserved, and for such other and further relief to which SCR may be entitled.

Dated: June 9, 2025

Respectfully submitted,

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<sup>1</sup> Out of an abundance of caution, SCR will be filing a motion to lift the stay to allow it to continue to recoup overpayments as described above from any royalties owed to Debtor.

-and-

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on June 9, 2025, a true and correct copy of the foregoing document was served via the Court's Electronic Case Filing (ECF) system on all parties registered to receive electronic notices in this case, and also upon the parties listed below in the manner listed below.

/s/ Karen C. Bifferato

Karen C. Bifferato (DE 3279)

**VIA ELECTRONIC MAIL**

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