

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	§ Chapter 11
VWS HOLDCO, INC., <i>et al.</i> ¹	§
	§ Case No. 25-10979
	§
Debtors.	§ Related to Docket Nos. 15, 42 and 50
	§
	§ Objection Deadline: 7/21/25 by 4:00 pm
	§ (ET)
	§ Hearing Date: 8/20/25 at 11:00 am (ET)

SWIFT CREEK RENEWABLES, LLC'S OBJECTION TO DEBTORS' NOTICE OF
POTENTIAL ASSUMPTION OF EXECUTORY CONTRACTS OR UNEXPIRED
LEASES AND CURE AMOUNTS

Swift Creek Renewables, LLC ("SCR") files this Objection to the *Notice of Potential Assumption of Executory Contracts or Unexpired Leases and Cure Amounts* [Dkt. No. 152] ("Assumption Notice") which proposes a potential assumption of SCR's Agreement (as defined below) with Shoosmith Bros., Inc. ("SBI") and would show the Court as follows:

I. Background Facts

1. Landfills are significant sources of greenhouse gases, primarily methane, which have a potent impact on climate change. SCR is engaged in the business of designing and operating cutting-edge facilities for landfill gas conversion. SCR focuses on the conversion of landfill gas into clean and renewable natural gas, a sustainable energy source that can be used to power homes, businesses, and vehicles.

2. SCR and SBI are parties to a Landfill Gas Agreement effective as of April 14, 2021 (the "Agreement"). SCR invested in excess of \$40 million dollars ("Reimbursable Costs")

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number are as follows VWS Holdco, Inc. (5412) and Shoosmith Bros., Inc. (6914). The Debtors' mailing address is P.O. Box 2770, Chesterfield, VA 23832.



in improving the Debtor's gas collection facility and 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").

3. As set forth in the Agreement, SCR owns the processing plant and the infrastructure that allows for Gas to be processed at the Landfill ("SCR's Facility") and SCR is entitled to remove such plant and the infrastructure as SCR deems fit.

4. Pursuant to the terms of the Agreement, SCR is granted an exclusive right to processes and sell the Gas. In exchange, SBI is paid a royalty of varying percentage of the Gas sale revenue in accordance with the terms of the Agreement. The Agreement provides for reductions of royalty due SBI to allow SCR to recoup the Reimbursable Costs over the term of the Agreement.² Royalties due SBI are calculated on a monthly basis and paid in arrears.

5. On June 1, 2025 (the "Petition Date"), SBI and other related entities (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

6. On June 11, 2025, the Debtors filed the *Debtor's Motion for Entry of (I) an Order (A) Authorizing and Approving Bidding Procedures in Connection with the Sale of the Debtors' Assets, (B) Approving Certain Bid Protections in Connection with the Debtors' Entry Into a Stalking Horse Agreement, (C) Scheduling the Auction and Sale Hearing, (D) Approving the Form and Manner of Notice Thereof, and (E) Granting Related Relief; and (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of All Encumbrances; and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases* [Dkt. No. 67] ("Sale Motion"). On July 1, 2025, the Court entered the *Order Authorizing and*

² The current outstanding Reimbursement Costs to be recouped aggregate approximately \$40 million.

Approving Bidding Procedures in Connection with the Sale of the Debtors' Assets, (B) Approving Process for Designation of Stalking Horse Bidder and Provision of Bid Protections, (C) Scheduling the Auction and Sale Hearing, (D) Approving the Form and Manner of Notice Thereof, and (E) Granting Related Relief [Dkt. No. 139] ("Bid Procedures Order").

7. In accordance with the Bid Procedures Order, on July 7, 2025, the Debtors filed and served the Assumption Notice.³

8. SCR's Agreement with SBI is listed on Exhibit 1 to the Assumption Notice as one of the contracts which "May be Assumed and Assigned to Successful Bidder". The Debtors acknowledge in the Assumption Notice that "[t]he presence of an Assigned Contract listed on Exhibit 1 attached hereto does not constitute an admission that such Assigned Contract is an executory contract or unexpired lease..." With respect to the Agreement, the Debtors show the Cure Amount for the assumption and assignment of the Agreement to be \$0.

II. Objection

A. The Agreement is a covenant running with the land that is not subject to assumption or rejection.

9. SCR contends the Agreement creates a covenant running with the land ("CRWL") and thus does not constitute an executory contract subject to assumption or rejection.

10. SCR spent tens of millions of dollars to construct gas processing facilities at the Landfill. In exchange, SBI granted SCR the exclusive rights to process, transport and sell the Gas. These rights constitute a CRWL, a real property interest which is not subject to assumption or rejection as an executory contract. Contracts forming real property covenants are not executory. *See, e.g., In re Alta Mesa*, 613 B.R. 99 (Bankr. S.D. Tex. 2019).

³ The Debtors have also filed a separate motion to reject the SCR Agreement [Dkt. No. 85], which SCR also opposes on the basis that the Agreement is either a CRWL or an equitable servitude and, thus, not subject to assumption or rejection.

11. Virginia law requires the following elements to create a CRWL: (1) privity between the original parties; (2) privity between the original parties and their successor entities; (3) an intent by the original covenanting parties that the benefits and burdens of the covenants will run with the land; (4) that the covenant “touches and concerns” the land; and (5) the covenant must be in writing. *Tuscarora Marketplace Partners, LLC v. First National Bank*, 906 S.E.2nd 171, 274-275 (Va. App. 2024), citing *Sonoma Dev., Inc. v. Miller*, 258 Va. 163, 167, 515 S.E. 2^d 577 (1999). These elements are clearly met by the facts in this case. The parties intended that SCR’s interest run with the land as the Agreement requires expressly states that “The Agreement shall inure to the benefit of and shall be binding upon SCR and Landfill Owner and their authorized successors and assigns. Agreement, p.32 ¶10.3.

12. To the extent the Agreement is not a CRWL, it is clearly an equitable servitude. The Eighth Circuit in *Sw. Pipe Line Co. v. Empire Nat. Gas Co.*, 33 F.2d 248 (8th Cir. 1929) found that a party who constructed a gas gathering system acquired a real property interest, whether that be a covenant running with the land or an equitable servitude. The Virginia Supreme Court in *Sloan v. Johnson*, 491 S.E.2d 725, 727, 728 (Va. 1997) recognized equitable servitudes as enforceable when “there is a covenant or even an informal contract or understanding that certain restriction in the use of the land conveyed shall be observed, the restrictions will be enforced by equity, at the suit of the party or parties intended to be benefitted thereby, against any subsequent owner of the land except a purchaser for value without notice of the agreement.”

13. Based upon the foregoing, the Agreement is a covenant running with the land, or constitutes an equitable servitude, and thus not an executory contract subject to assumption or

rejection. Accordingly, any purchaser of the Landfill would take the Landfill subject to the Agreement and SCR's rights thereunder.

B. If the Agreement constituted an executory contract, SCR objects to the proposed Cure Amount.

14. Pursuant to Section 365 of the Bankruptcy Code, a debtor may not assume and assign an executory contract without providing adequate assurance: (a) that the debtor will promptly cure all defaults; (b) of the future performance of any proposed assignee; (c) that the assumption and assignment of the contract/lease is subject to all terms, conditions, and restrictions in such contract/lease to be assumed and the non-debtor party to the contract/lease will receive the full protections of Sections 365(b)(1) of the Bankruptcy Code. *See e.g. In re CellNet Data Systems, Inc.*, 327 F.3d 242, 249 (3d Cir. 2003) (“Under the Bankruptcy Code, a trustee may elect to reject or assume its obligations under an executory contract. This election is an all-or-nothing proposition—either the whole contract is assumed or the entire contract is rejected.”).

15. SCR does not believe the Agreement is an executory contract. But, if the Agreement were to constitute an executory contract, SCR is not opposed to the assumption and assignment of the Agreement to a buyer of the Landfill so long as the requirements of section 365(b)(1) of the Bankruptcy Code are satisfied and SCR retains, unaltered, all rights and remedies under the Agreement.

16. The Assumption Notice proposes that the Cure Amount for the Agreement is \$0. SCR objects to the Debtors' proposed Cure Amount as it is incorrect.

17. From September 2023 to March 2025 SBI received royalty payments that exceeded the amounts it is entitled to under the Agreement. Over that period, SBI was overpaid by an aggregate amount of \$619,187. Prior to the Debtors' bankruptcy filing, SCR

recovered/was repaid \$275,000, leaving a net amount of royalty overpayment remaining due and owing to SCR as of the Petition Date of \$344,187 (the “Overpayment Due”). The table below summarizes the overpayments received by SBI and the recoveries by SCR made prior to the Petition Date to result in the net Overpayment Due of \$344,187.

	Royalty Owed to Shoosmith	Royalty Paid to Shoosmith	Royalty Over/(Under) Payment	Aggregate Royalty Over/(Under) Payment
Sep-23	\$123,485	\$140,928	\$17,443	\$17,443
Oct-23	\$285,304	\$267,861	(\$17,443)	\$0
Nov-23	\$344,121	\$344,121	\$0	\$0
Dec-23	\$379,942	\$379,942	(\$0)	\$0
Jan-24	\$416,938	\$441,644	\$24,706	\$24,706
Feb-24	\$312,696	\$348,671	\$35,975	\$60,681
Mar-24	\$335,684	\$380,959	\$45,275	\$105,956
Apr-24	\$337,706	\$375,126	\$37,420	\$143,376
May-24	\$349,292	\$383,747	\$34,455	\$177,831
Jun-24	\$242,317	\$347,878	\$105,561	\$283,392
Jul-24	\$269,006	\$335,732	\$66,726	\$350,118
Aug-24	\$290,337	\$360,667	\$70,330	\$420,448
Sep-24	\$235,593	\$314,932	\$79,339	\$499,787
Oct-24	\$235,347	\$354,747	\$119,400	\$619,187
Nov-24	\$165,148	\$165,164	(\$55,000)	\$564,187
Dec-24	\$133,395	\$210,722	(\$55,000)	\$509,187
Jan-25	\$91,981	\$36,981	(\$55,000)	\$454,187
Feb-25	\$99,379	\$44,379	(\$55,000)	\$399,187
Mar-25	\$83,068	\$28,068	(\$55,000)	\$344,187
Apr-25	\$863	\$863	\$0	\$344,187
May-25	\$56,926	\$56,926	\$0	\$344,187

18. The Overpayment Due was due and owing to SCR as of the Petition Date. Pursuant to Section 365(b)(1), the Overpayment Due must be cured before the Agreement may be assumed or assumed and assigned.

III. Reservation of Rights

19. In addition to paying and Overpayment Due in full, the Debtors must also provide “adequate assurance of future performance” of the terms of the Agreement by the buyer of Landfill before the Agreement may be assumed and assigned.

20. As no Stalking Horse Bidder or a Successful Bidder for the purchase of the Landfill has been identified at this time, SCR reserves the right to object on the basis of lack of adequate assurance of future performance when a Successful Bidder has been identified.

21. SCR further reserves the right to supplement or otherwise modify this Objection and to raise such other and further objections to any proposed assumption and assignment for any other reason.

IV. Conclusion

WHEREFORE, for the reasons set forth above, SCR respectfully requests that the Court (a) require that the Overpayment Due be paid in full prior to any assumption or the assumption and assignment of the Agreement; (b) require that the Debtors provide adequate assurance of future performance by the buyer of the terms of the Agreement; and (c) provide such other and further relief as the Court may deem just as proper.

Dated: July 21, 2025

Respectfully submitted,

/s/ Brian J. McLaughlin

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