

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

VWS Holdco, Inc., *et al.*,

Debtors.¹

Chapter 11

Case No. 25-10979 (JKS)

Jointly Administered

Hearing Date Requested: July 31, 2025 at 1:00 p.m. (ET)

Obj. Deadline Requested: July 30, 2025 at 12:00 p.m. (ET)

**DEBTORS' MOTION TO CONVERT THESE CHAPTER 11 CASES
TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE**

The above-captioned debtors and debtors in possession (the “Debtors”), by and through their undersigned counsel, hereby move (the “Motion”) this Court for entry of an order substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to section 1112(a) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 1017(f) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2002-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) converting each of the Debtors’ chapter 11 cases to cases under chapter 7 of the Bankruptcy Code. In support of the Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b), and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and, pursuant to Rule 9013-1(f) of the Local Rules, the Debtors consent to the

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



2510979250724000000000006

entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are section 1112(a) of the Bankruptcy Code, Bankruptcy Rule 1017(f), and Local Rule 2002-1.

BACKGROUND

4. On June 1, 2025 (the “Petition Date”), each of the Debtors commenced with this Court voluntary cases (the “Chapter 11 Cases”) under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. The Debtors’ cases are being jointly administered under lead Case No. 25-10979 (JKS) pursuant to Bankruptcy Rule 1015.

6. Information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these Chapter 11 Cases is set forth in the *Declaration of Steven Agran in Support of First Day Relief* (the “First Day Declaration”) [D.I. 12], incorporated by reference herein.²

7. As set forth in the First Day Declaration by Steven Agran as the Debtors’ chief restructuring officer (the “CRO”), effluent leachate is a toxic and contaminated liquid that is generated from landfills. As the owner and operator of a landfill (the “Landfill”), the Debtors undertake the removal of the effluent leachate generated by the Landfill. The increase in costs for

² Capitalized terms used herein and not defined herein shall have the meaning given such terms in the First Day Declaration.

the removal and treatment of the effluent leachate without a corresponding increase in revenue left the Debtors in an impossible financial position and necessitated the filing of the Chapter 11 Cases.

8. As additionally set forth in the First Day Declaration, the Debtors have a contract with Swift Creek Renewables, LLC (“SCR”) pursuant to which SCR takes the methane gas from its Landfill, treats it accordingly, sells the gas through a network of natural gas pipelines, and pays the Debtors a royalty.

9. The Debtors filed these Chapter 11 Cases with the intention of pursuing a sale process in an effort to maximize the value of the Debtors’ assets while providing for the continued operation and closure of the Landfill through a new party to replace the Debtors as the owner and operator of the Landfill. Alternatively, the Debtors attempted to negotiate a business resolution with SCR and other parties that would allow the Debtors to return to profitability and ultimately reorganize.

10. On the Petition Date, the Debtors filed standard “first day motions” to permit them to operate efficiently during the Chapter 11 Cases including without limitation, *Debtors’ Motion for Entry of Interim and Final Orders Pursuant to Sections 105, 361, 362, 363, 364, 503, 506, 507 and 552 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 “DIP Motion”).

11. On June 4, 2025, the Court entered an interim Order approving the DIP Motion on an interim basis [Docket No. 42] (the “First Interim DIP Order”).

12. On July 2, 2025, the Court entered a *second interim order* approving the DIP Motion on a further interim basis [Docket No. 146] (the “Second Interim DIP Order”).

13. On June 11, 2025, the Debtor filed *Debtors' 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* [Docket No. 67] (the “Bidding Procedures Motion”).

14. On July 1, 2025, the Court entered an order approving the Bidding Procedures Motion [Docket No. 139].

15. On June 18, 2025, the Debtors filed the *Debtors' Motion for Entry of an Order (I) Authorizing the Rejection of Executory Contract with Swift Creek Renewables, LLC and (II) Granting Related Relief* [Docket No. 85].

16. On July 1, 2025, the Court entered the *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* [D.I. 139].

17. Since the Debtors filed petitions initiating the Chapter 11 Cases, the Debtors have actively worked on parallel paths to stabilize the Debtors' estates to allow for a sale process for the landfill owned by the Debtors while simultaneously attempting to work out a long-term resolution with SCR and other parties.

18. At this juncture, despite the Debtors' extensive marketing efforts, it does not appear that there is a reasonable likelihood of a sale of the Landfill to a new owner and operator.

19. Moreover, the CRO has spent considerable time and energy attempting to negotiate a settlement among various parties that could have led to a plan of reorganization and a path forward for the Debtors. However, those negotiations reached an impasse.

20. Pursuant to the DIP Credit Agreement (as defined in the DIP Motion) and the Second Interim DIP Order, a Milestone (as defined in the DIP Motion) that the Debtors are required to satisfy is to have entered into and delivered a fully executed and binding Acceptable Stalking Horse Purchase Agreement (as defined in the DIP Motion) to Volunteer Enterprises, LLC (the "DIP Lender") by July 31, 2025. The Debtors have no prospects for a stalking horse bidder and the Debtors will be in default of such Milestone as of July 31, 2025.

21. Furthermore, the Debtors have been informed by the DIP Lender that the Debtors will not receive any further funding for the Chapter 11 Cases from the DIP Lender since there is not a reasonable likelihood of a sale in the near term nor does there appear to be a viable path to a resolution that would allow for a return to profitability.

22. Based on the foregoing, unfortunately despite the Debtors' best efforts, the Chapter 11 Cases have not progressed as the Debtors intended, and the Debtors' present financial situation makes it untenable for the Chapter 11 Cases to remain in chapter 11 for the reasons set forth herein.

Simply put, the Debtors are running out of money and without further funding the Chapter 11 Cases will quickly become administratively insolvent.

23. Accordingly, it is the CRO's business judgment that it is in the best interest of the Debtors' estates, the Debtors' creditors, and all applicable stakeholders that the Chapter 11 Cases be converted to cases under chapter 7 of the Bankruptcy Code.

RELIEF REQUESTED

24. By this Motion, pursuant to section 1112(a) of the Bankruptcy Code, Bankruptcy Rule 1017(f), and Local Rule 2002-1(f), the Debtors request entry of an order, substantially in the form attached hereto as **Exhibit A**, converting the Debtors chapter 11 cases to cases under chapter 7 of the Bankruptcy Code effective as of the date an order is entered approving the conversion (the "Conversion Date").

25. The Debtors further request that the Court enter an order approving the following procedures for the conversion of the Debtors' Chapter 11 Cases (the "Conversion Procedures"):

(a) **Professional Fees**. To the extent applicable, professionals retained in the Chapter 11 Cases (excluding professionals retained in the ordinary course of business pursuant to the *Order Approving Procedures for the Retention and Compensation of Ordinary Course Professionals Nunc Pro Tunc to the Petition Date* [D.I. 114]) shall submit final fee applications (the "Final Fee Applications") in accordance with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and orders of this Court by no later than fourteen (14) days after the Conversion Date (the "Final Fee Application Deadline"). The Court will schedule a hearing, at the Court's convenience, on such Final Fee Applications on or before the date that is 28 days after the Final Fee Application Deadline. All approved amounts owed for professionals' fees and expenses shall be paid (i) first, from each professional's retainer, to the extent such retainers exist; (ii) next, from the Professional Fee Escrow; and thereafter (iii) from the Debtors' chapter 7 estates.

(b) **The Committee**. On the Conversion Date, the Committee shall be immediately dissolved, and all professionals retained by the Committee shall be immediately discharged, with no further action required by the Debtors or the Committee.

(c) **Books and Records**. As soon as reasonably practicable, but in no event more than fourteen (14) days after the assumption of duties by the chapter 7 trustee, the Debtors shall turn over to the chapter 7 trustee the books and records of the Debtors in the Debtors'

possession and control, as required by Bankruptcy Rule 1019(d). For purposes hereof, the Debtors may provide copies (including electronic copies) of such books and records to the chapter 7 trustee, or instructions for locating and accessing such books and records, and may retain copies of such books and records to the extent necessary to complete the reports required herein.

(d) Schedule of Unpaid Debts. Within fourteen (14) days of the Conversion Date, the Debtors shall file a schedule of unpaid debts incurred after commencement of the Debtors' Chapter 11 Cases, including the name and address of each creditor, as required by Bankruptcy Rule 1019(e).

(e) Final Report. Within thirty (30) days after the Conversion Date, the Debtors shall file and transmit to the chapter 7 trustee a final report and account in accordance with Bankruptcy Rule 1019(e)(4).

(f) Claims. Within 14 days of the Conversion Date Verita shall (i) forward to the Clerk of this Court an electronic version of all imaged claims; (ii) upload the creditor mailing list into CM/ECF; (iii) docket a final claims register in the Debtors' Chapter 11 Cases; and (iv) box and transport all original claims to the Philadelphia Federal Records Center, 14470 Townsend Road, Philadelphia, PA 19154.

BASIS FOR RELIEF

A. Conversion of the Chapter 11 Cases Is Appropriate

26. Section 1112(a) of the Bankruptcy Code governs the conversion of chapter 11 cases to cases under chapter 7 of the Bankruptcy Code. Specifically, section 1112(a) provides: “(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—(1) the debtor is not a debtor in possession; (2) the case originally was commenced as an involuntary case under this chapter; or (3) the case was converted to a case under this chapter other than on the debtor’s request.” 11 U.S.C. § 1112(a).

27. Because subdivisions (1), (2), and (3) of section 1112(a) of the Bankruptcy Code are inapplicable here, the Debtors may convert these cases to cases under chapter 7 of the Bankruptcy Code as a matter of right. *See In re Dieckhaus Stationers of King of Prussia Inc.*, 73 B.R. 969, 971 (Bankr. E.D. Pa. 1987) (“[Section 1112(a)] by its terms gives the debtor an absolute

right to convert, unless the case is governed by one of the enumerated exceptions.”); *In re Schuler*, 119 B.R. 191, 192 (Bankr. W.D. Mo. 1990) (same).

28. In addition to this absolute right to convert, there is also cause to convert these cases. Bankruptcy Code section 1112(b) provides in relevant part that:

on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1) (emphasis added).

29. Section 1112(b) was enacted to avoid the costs of Chapter 11 in cases in which they are not justified. *In re Ramreddy, Inc.*, 440 B.R. 103, 115 (Bankr. E.D. Pa. 2009) (citing 7 Collier on Bankruptcy ¶ 1112.04[2], at 1112–22 (15th ed. rev. 2009) (“In order [to] avoid the costs of chapter 11 in cases in which they are not justified, section 1112(b) was designed to provide the court with a powerful tool to weed out inappropriate chapter 11 cases at the earliest possible stage.”)).

30. Following the 2005 amendments to the Bankruptcy Code, absent unusual circumstances, the Court is required to dismiss or convert a case under Chapter 11 if the elements for cause are shown under section 1112(b)(4) unless it finds that the appointment of a Chapter 11 trustee is in the best interests of creditors. *In re Dr. R.C. Samanta Roy Inst. of Sci. Tech. Inc.*, 465 F. App’x 93, 96–97 (3d Cir. 2011); *In re Riverbend Cmty., LLC*, 11-11771 (KG), 2012 WL 1030340, at *3 n.6 (Bankr. D. Del. Mar. 23, 2012) (“Congressional intent that ‘shall’ really does mean ‘must’ in the convert or dismiss provision is readily apparent. In 2005, Congress removed the word ‘may’ from Section 1112(b) and substituted ‘shall’ if a moving party establishes ‘cause.’

Congress clearly intended to make conversion or dismissal mandatory upon proof of ‘cause.’”) (internal citation omitted).

31. Bankruptcy Code section 1112(b)(4) contains a non-exclusive list of what constitutes “cause.” *In re Midwest Props. of Shawano, LLC*, 442 B.R. 278, 283 (Bankr. D. Del. 2010); *see also* 7 Collier on Bankruptcy ¶ 1112.04[6] (“Courts that have analyzed section 1112(b)(4) almost unanimously conclude that the list of the items that constitute cause is not exclusive and the use of the word ‘and’ at the end of section 1112(b)(4)(O) is a scrivener’s error.”). Upon a finding of cause, the court is empowered to either convert or dismiss the Chapter 11 case, whichever is in the best interests of creditors. 11 U.S.C. § 1112(b)(1).

32. “Cause” as defined under section 1112(b)(4) includes “substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation.” 11 U.S.C. § 1112(b)(4)(A). In general, this standard contemplates a two-fold inquiry: (i) whether the debtor has incurred a substantial loss or is continuing to incur losses, or the estate is continuing to diminish; and (ii) whether there is an absence of a reasonable likelihood of rehabilitation. *In re Gateway Access Solutions, Inc.*, 374 B.R. 556, 562 (Bankr. M.D. Pa. 2007) (“First, the Court must look at the track record of the Debtor to determine if it is suffering losses or making gains. Second, the Court must determine whether rehabilitation is likely given the evidence presented at hearing.”); *see also* 7 Collier on Bankruptcy ¶ 1112.04[6][a].

33. The first prong in the analysis looks to whether the debtor has incurred a substantial loss since filing the petition, continues to incur operating losses in operating its business, or the estate is diminishing. When estate assets continue to diminish due to increasing administrative costs, this prong will be satisfied. *See In re Gateway Access Sols.*, 374 B.R. at 560 (finding cause existed to convert the debtor’s case where the estate was diminishing rapidly at the expense of

creditors as extensive administrative costs from professional fees were accumulating while the case lingered in chapter 11).

34. The second prong in the analysis looks to whether there is an absence of a reasonable likelihood of rehabilitation. Rehabilitation implies that the debtor will be able to reestablish a sound financial basis, “a concept which necessarily involves establishing a cash flow from which current obligations can be met.” *In re Kanterman*, 88 B.R. 26, 29 (S.D.N.Y. 1986); *see also In re AdBrite Corp.*, 290 B.R. 209, 216 (Bankr. S.D.N.Y. 2003) (granting motion to convert case from chapter 11 to chapter 7 where debtor failed to sustain burden of demonstrating the possibility of rehabilitation).

35. Both prongs are met in the present cases. As discussed above, there is no prospect for the sale of the Landfill and the Debtors have been unable to reach agreement on an alternative path forward in the Chapter 11 Cases. Moreover, the DIP Lenders are not willing to provide further funding to the Debtors and the Debtors are not in a position to generate positive cash flow or obtain additional debtor-in-possession financing in order to fund the Chapter 11 Cases.

36. As such, the burden on the Debtors’ estates only grows as each day passes with the Debtors in Chapter 11 and the situation is unlikely to improve. As a result, the Debtors are likely to become administratively insolvent and not in a position to rehabilitate themselves. Accordingly, these cases must be converted to cases under chapter 7 of the Bankruptcy Code.

B. The Conversion Procedures and Other Related Relief Should be Approved

37. Pursuant to Local Rule 2002-1(f)(xi), “[u]pon conversion of a chapter 11 case to a chapter 7 case, if there are more than 200 creditors, the claims agent appointed in the chapter 11 case shall (i) continue to serve all notices required to be served, at the direction of the chapter 7 trustee or the Clark’s Office or (ii) submit a termination order.” *See Del. Bankr. L.R. 2002- 1(f)(xi)*.

The Debtors respectfully request that any Order approving this Motion also provide for the termination of Verita's services as claims and noticing agent in these Chapter 11 Cases. For the avoidance of doubt, this shall include any services being performed by Verita pursuant to the *Order Authorizing the Debtors to Employ and Retain Kurtzman Carson Consultants, LLC DBA Verita Global as Administrative Advisor Effective as of the Petition Date* [D.I. 121].

38. The Debtors also believe that the Conversion Procedures are appropriate under the facts of these Chapter 11 Cases, consistent with the requirements of the Bankruptcy and Local Rules and should be approved.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, and grant such further relief that the Court deems just and proper under the circumstances.

[Remainder of the Page Intentionally Left Blank]

Dated: July 24, 2025
Wilmington, Delaware

PASHMAN STEIN WALDER HAYDEN, P.C.

/s/ Richard W. Riley

John W. Weiss (No. 4160)
Richard W. Riley (No. 4052)
824 North Market Street, Suite 800
Wilmington, DE 19801
Telephone: (302) 592-6496
Email: jweiss@pashmanstein.com
rriley@pashmanstein.com

-and-

Leah M. Eisenberg (admitted *pro hac vice*)
David E. Sklar (admitted *pro hac vice*)
Court Plaza South, East Wing
21 Main Street, Suite 200
Hackensack, NJ 07601
Telephone: (201) 488-8200
Email: leisenberg@pashmanstein.com
dsklar@pashmanstein.com

Counsel to the Debtors and Debtors in Possession

Exhibit “A”

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

In re

VWS Holdco, Inc., *et al.*,

Debtors.¹

Chapter 11

Case No. 25-10979 (JKS)

Jointly Administered

Re: D.I. ____

**ORDER GRANTING DEBTORS' MOTION TO CONVERT THESE CHAPTER 11
CASES TO CASES UNDER CHAPTER 7 OF THE BANKRUPTCY CODE**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an order converting these Debtors’ cases to cases under chapter 7 of the Bankruptcy Code, approving the Conversion Procedures, and granting related relief; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that the venue of the chapter 11 case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157; and this Court having determined the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and all applicable stakeholders in the Chapter 11 Cases; and it appearing that proper and adequate notice of the Motion has been given and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

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

² Capitalized terms used herein and not defined herein shall have the meaning given such terms in the Motion.

2. These above-captioned cases shall be immediately converted to cases under chapter 7 of the Bankruptcy Code upon entry of this Order.

3. Notice of this Motion was adequate, and no other or further notice is necessary.

4. The Conversion Procedures, as set forth in the Motion, are hereby approved.

5. Subject to its compliance with Local Rules 2002-1(f)(x)–(xi), on the Conversion Date, Verita shall be relieved of its responsibilities as the Debtors’ claims and noticing agent in the Debtors’ Chapter 11 Cases and will have no further obligations to the Court, the Debtors, the chapter 7 trustee (once appointed), or any party in interest with respect to the Debtors’ Chapter 11 Cases or the chapter 7 cases.

6. A representative of the Debtors, and, if so requested by the chapter 7 trustee, counsel to the Debtors in these cases, shall appear at the meeting of creditors pursuant to section 341(a) and 343 of the Bankruptcy Code, and such representative of the Debtors shall be available to testify at such meeting of creditors.

7. Nothing in this Order or the conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code shall affect or modify any order of this Court (or documents related thereto) entered during the Chapter 11 Cases.

8. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation and/or interpretation of this Order.