IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
VWS Holdco, Inc., *et al.,*	)	Case No. 25-10979 (JKS)
	)	
Debtors.	)	**Related Docket Nos. 15, 42, and 139**

OBJECTORS' OBJECTION TO ENTRY OF A FINAL ORDER 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 (C) PROVIDE ADEQUATE PROTECTION, (II) MODIFYING THE AUTOMATIC STAY, (III) SCHEDULING A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF

W. Kent Durham ("Durham"), John Douglas Collins, II ("Collins"), Marilyn E. Orcutt, as successor in interest of Eugene Orcutt ("Orcutt"), and Sam M. Kelly in her capacity as Independent Executrix of the Estate of James Fletcher Kelly ("Kelly and, (collectively with Durham, Collins, Orcutt, and Kelly, the "Objectors"), by and through undersigned counsel, submit this Objection to entry of a Final Order granting the *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 (c) Provide Adequate Protection, (II) Modifying the Automatic Stay, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket No. 15] (the "Motion"). In support of this Objection, the Objectors respectfully state as follows:

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Background

A. The Debtors' Corporate Structure

1. In 2008, the six initial members[1] of ESM Management Group, LLC ("ESM") purchased the 200-acre Shoosmith landfill in Chesterfield County, Virginia (the "Shoosmith Landfill"), via two entities: VWS Acquisitions, LLC ("VWS Acquisitions") and VWS Holdco, Inc. ("VWS Holdco").[2] ESM's purpose was to serve as an investment vehicle for the purchase of the Shoosmith Landfill.

2. ESM's operating agreement created four (4) classes of equity, starting with Class I, with each class having priority over the classes below it. Classes I, II, and III are preferred capital accounts, earning a 5% preferred return on all unreturned capital. After a partial redemption in November 2009, the Class IV common equity was owned as follows: McGee (42.55%), Nichols (36.17%), Kelly (5.32%), Orcutt (5.32%), Collins (5.32%), and Durham (5.32%).

3. In 2008, ESM contributed $5 million to VWS Acquisitions, Inc. for the purchase of the Shoosmith Landfill. To fund the remaining purchase price for the Shoosmith Landfill, (i) VWS Holdco borrowed approximately $25,000,000 in mezzanine loans from two lenders—Erie Insurance Exchange ("Erie") and PNC Mezzanine Partners III, L.P. ("PNC") (together, the "Lenders") and (ii) VWS Acquisition issued Class I Units to the Lenders in exchange for a capital contribution of $16,000,000. As part of the loan transaction, Erie and PNC collectively acquired 42.36% of the equity of VWS Acquisitions, which owns 100% of the equity of VWS Holdco. In

1 The Initial Members are Durham, Collins, Orcutt, Kelly, Fred Nichols ("Nichols"), the President of Debtor Shoosmith Bros., Inc. ("Shoosmith") and Debtor VWS Holdco, and Larry McGee ("McGee"), the Vice President of Shoosmith and VWS Holdco.

2 A corporate organization chart is attached as Exhibit A.

2011, McGee was issued Class III Units in VWS Acquisitions, which were *pari passu* with Class I Units, in exchange for a capital contribution of $1,500,000. In 2012, McGee was issued additional Class III Units in VWS Acquisitions in exchange for a capital contribution of $1,300,000. In 2020, the Class I Units and Class III Units in VWS Acquisitions were converted to subordinated debt of VWS Holdco.[3]

B. Volunteer Enterprises, LLC's Purchase of the Lenders' Debt and Equity

4. At the end of 2021, the Shoosmith Landfill's capacity was nearly exhausted, and Shoosmith planned to close the Shoosmith Landfill. The Virginia Department of Environmental Quality required Shoosmith to obtain (1) a Closure Bond, to guarantee Shoosmith closure of the landfill in accordance with the rules, regulations, and specifications of its closure plan, and (2) a Post-Closure Bond, to guarantee that Shoosmith will properly monitor and maintain the closed landfill—often for a period of 20-30 years. In or about January 2022, Evergreen National Indemnity Company ("Evergreen") issued Shoosmith the required bonds. As collateral for the required bonds, Shoosmith pledged approximately $13.3 million in cash (the "Cash Collateral") to secure its obligations to Evergreen under the bonds. The Cash Collateral was accumulated throughout Shoosmith's Landfill operations and, upon information and belief, deposited in a separate bank account for the specific purpose of collateralizing the required closure bonds.

5. In early 2023, without the Objectors' knowledge, consent, or approval—and despite that Durham was then serving as an officer, director, and/or outside legal counsel to ESM and its subsidiaries—McGee and Nichols, acting through Volunteer Enterprises, LLC

3 VWS Holdco was 100% owned by VWS Acquisitions, and, following the 2020 restructuring, VWS Acquisitions' four owners were Lenders (41.36%), ESM (55.64%), and McGee (3%). Accordingly, ESM was the indirect owner of 55.64% of the equity of Shoosmith. Each of the Objectors indirectly owned 2.96 % of the equity of Shoosmith (55.64% X 5.32%).

("Volunteer" or "VE"),[4] acquired the Lenders' debt due from VWS Holdo and the Lenders' 41.36% equity interest in VWS Acquisitions. Specifically, Volunteer acquired the approximately $140 million debt balance, 41.36% of the equity in VWS Acquisitions, and all the Lenders' other rights in VWS Holdco and VWS Acquisitions, for approximately $10 million borrowed from Shoosmith without the knowledge or approval of any disinterested directors of Shoosmith.

6. Rather than funding the purchase of the Lenders' debt and equity itself, McGee and Nichols (i) directed Volunteer to "borrow" $10 million from Shoosmith and directed Shoosmith to "lend" $10 million to Volunteer. After Volunteer's acquisition of the Lenders' debt and equity, McGee and Nichols caused Volunteer to "repay" the $10 million "loan" from Shoosmith by "reducing" the $140 million in debt, which Volunteer acquired for approximately $10 million using the funds "loaned" to it by Shoosmith, by $10 million.

7. At the completion of this transaction, McGee and Nichols, fiduciaries to ESM, purchased approximately $140 million in debt and a 41.36% equity interest in VWS Acquisitions with $10 million "borrowed" from Shoosmith. On the other hand, Shoosmith essentially gave Volunteer $10 million of the Cash Collateral to allow Volunteer to purchase the Lenders' debt and equity. In return, Shoosmith received a $10 million reduction in the "debt" it "owed" to Volunteer. In other words, Shoosmith gave Volunteer $10 million and received nothing of value in return.

8. McGee and Nichols attempted to explain this loan purchase transaction in a May 22, 2024 letter to Brent McMinn (the May 22 Letter").[5]

> On the date of acquisition by VE, the closure/post-closure fund balance was approximately $13.3 Million invested at Morgan Stanley under Evergreen's control. VE borrowed $10.0 Million of the fund's balance from Shoosmith to complete the acquisition. Two of the most significant assets VE acquired were the Senior and

4Volunteer Enterprises, LLC is a Texas limited liability company formed on or about October 25, 2000. McGee and Nichols own 100% of VE's equity.

5 A copy of the May 22 Letter is attached as Exhibit B.

> Junior notes payable by Shoosmith to PNC/Erie in the combined amount of $142.7 Million. McGee was also owed $7.9 Million from his earlier purchase of preferred stock that was converted to Junior notes in 2020. The McGee investment along with the personal guarantees by Nichols and McGee was the collateral Evergreen accepted to release the $10.0 Million from the bond fund. Upon closing the transaction, VE repaid the note payable to Shoosmith by offsetting this note against the Senior Notes then owed to VE.

May 22 Letter, pp 1-2.

9. The debt matured on June 30, 2023. On July 7, 2023, Volunteer, controlled by McGee and Nichols, sent a default notice to Shoosmith, controlled by McGee and Nichols, and demanded payment in full and increased the interest rate to 20% per annum. *See* May 22 Letter, p. 2. This equals approximately $28 million per year on debt Volunteer acquired for $10 million of Shoosmiths' cash.

C. <u>The Sale of the Quarry</u>

10. Shoosmith owned additional property adjacent to the Shoosmith Landfill. Shoosmith used some of this property as a rock quarry (the "Quarry") because it could not be permitted for use as a landfill. On April 2, 2024, without the knowledge or consent of the Objectors, McGee and Nichols caused Shoosmith to sell 148 acres of the Quarry to Vulcan Materials for $25 million. *See* May 22 Letter, p. 2. Rather than using these funds for the operation of Shoosmith's business, as one would expect a fiduciary to do, McGee and Nichols caused Shoosmith to use the proceeds of the sale to pay down the debt Volunteer purchased from the Lenders using $10 million Volunteer borrowed from Shoosmith. *See id*.

11. This transaction was an egregious breach of McGee's and Nichols fiduciary duty of loyalty to Shoosmith and its parent companies. The sale of the Quarry at McGee's and Nichol's direction, together with Volunteer's purchase of the debt from the Lenders, resulted in a $25 million windfall for McGee and Nichols at the expense of Shoosmith and its parent companies.

D. Texas Litigation

12. On May 5, 2023, Objectors sued McGee and Nichols (the "Defendants") in the 352nd Judicial District of Texas located in Tarrant County, Texas individually and derivatively on behalf of ESM, Shoosmith, VWS Holdco and VWS Acquisition alleging breaches of fiduciary duty and agreements with respect to the management of such entities, including the failure to properly account for the preferred capital accounts of ESM. Defendant's own independent expert confirmed that the Defendant's had failed to follow the ESM Company Agreement in connection with their accounting of the preferred capital accounts.

13. Despite broad discovery requests and multiple depositions of Defendants regarding the operations of Shoosmith and VWS Holdco, Defendants failed to produce any information regarding the sale of the Quarry until almost a year after the initial Quarry sale had taken place, at which time discovery had closed and Objector's final damages report had been submitted to the Court. When the disclosure was finally made, it consisted of a footnote in a document that was included in a document dump of approximately 20,000 other documents.

14. The Court ruled that Defendant's failure to disclose the Quarry sale constituted a breach of a Rule 11 Agreement and granted sanctions against Defendants, which included additional discovery of the Quarry sale, additional deposition time to question Defendants regarding the sale and leave to further supplement Objector's damages report to include the Quarry sale. The date on which these bankruptcy proceedings were filed is the date that discovery pursuant to such sanctions were due.

ARGUMENT

15. Many of the provisions in the First Interim DIP Order [Docket No. 42] and the Second Interim DIP Order Approving the Motion [Docket No. 146] should be removed from any Final Order, as set forth below.

A. The stipulations in paragraph G of the First Interim Order

16. The Debtors should not be permitted to cleanse the wrongful actions of Volunteer, McGee, and Nichols by stipulating to the facts in paragraph G. While stipulations are typical, the actions of Volunteer, McGee and Nichols raise serious questions regarding whether the stipulations are true. The Debtors should not be allowed to shirk their fiduciary obligations to maximize the value of the Debtors' estates and pass that duty onto others, who need to establish standing to pursue these actions where, as here, the facts raise serious issues regarding the prepetition conduct of Volunteer, McGee and Nichols.

B. Volunteer, Mcgee and Nichols should not be granted the Releases in paragraph G of the First Interim Order

17. The actions by Volunteer, McGee and Nichols raise facts that will likely result in plausible causes of action against them. Moreover, the Debtors are requesting approval of the releases in a final DIP order, almost two months before the challenge deadline. The Debtors should not be permitted to grant releases to Volunteer, McGee and Nichols without the ability for any third party to investigate claims against them. Accordingly, the Court should not grant the releases.

C. Volunteer should not be permitted to Credit Bid

18. Volunteer's prepetition actions raise a serious question whether Volunteer has a secured claim for the millions of dollars in debt that it purchased for $10 million with Shoosmith's cash. As a result of their prepetition actions, McGee and Nichols may well have breach their fiduciary duty of loyalty to the Debtors and taken a corporate opportunity for themselves.

Shoosmith could have purchased the debt with the $10 million it gave to Volunteer and eliminated the secured debtor for the benefit of all of its constituents. Instead, McGee and Nichols chose to purchase the debt solely for their benefit. McGee and Nichols then paid themselves $25 million from the proceeds from the sale of the Quarry as a partial paid pay down of the purchased debt. Put simply, McGee and Nichols paid themselves $25 million from the proceeds for nothing.

19. This raises serious questions about whether Volunteer has a secured claim it can bid. At a minimum, if Volunteer credit bids and is the successful purchaser, Volunteer should be required to post some type of security in the amount of the purchase price to pay to Shoosmith the purchase should this Court, or another court, rules that Volunteer does not have a secured claim.

D. Volunteer should not be permitted to roll-up any of the prepetition debt as postpetition debt

20. As discussed above, it is questionable at best whether Volunteer has a secured prepetition, or even any claim at all, against the Debtors. As a result, Volunteer should not be permitted to roll-up any of its alleged prepetition secured debt to be converted into a postpetition secured debt.

E. Adequate Protection Payments

21. Paragraph (4)(c) provides that the Debtors must pay interest on the prepetition debt and the fees and expenses of the professionals of Volunteer on the prepetition debt. Postpetition interest and professional fees and expenses (if provided for in the loan agreement) are payable only to secured creditors that are oversecured. As discussed above, it is questionable whether Volunteer has a secured claim, or any claim at all, against the Debtors. Moreover, even if the Court determines that Volunteer has a prepetition secured debt, it is not certain that the prepetition lenders are oversecured. Accordingly, the Court should not permit the Debtors to make any adequate protection payments at this time.

ADOPTION OF OTHER ARGUMENTS

22. The Objectors adopts the arguments of objectors, to the extent that they are consistent with this Objection, as fully set forth herein.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Objectors respectfully request that this Honorable Court enter a Final DIP Order consistent with this Objection and grant to the Objectors such other relief that is just and proper.

Dated: July 24, 2025
Wilmington, Delaware

SULLIVAN HAZELTINE ALLINSON LLC

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Dated: July 24, 2025
Wilmington, Delaware

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EXHIBIT A

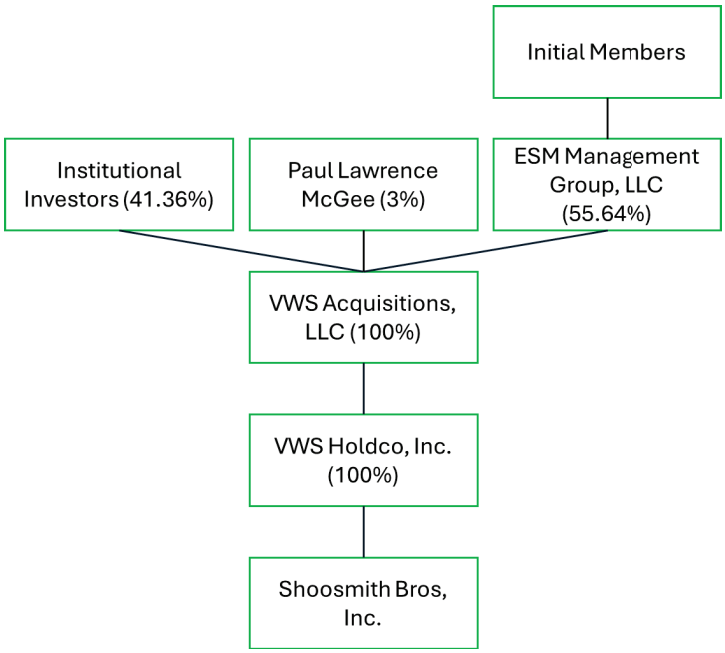
Initial Members
Institutional Investors (41.36%)
Paul Lawrence McGee (3%)
ESM Management Group, LLC (55.64%)
VWS Acquisitions, LLC (100%)
VWS Holdco, Inc. (100%)
Shoosmith Bros, Inc.

EXHIBIT B

May 22, 2024

Brent McMinn
Katzen Marshall
14800 Quorum Dr, Suite 450
Dallas, TX 75254

Dear Brent,
The following outlines the transaction whereby Volunteer Enterprises, LLC (VE) acquired the ownership of VWS Acquisitions, LLC and VWS Holdco, Inc held by PNC Mezzanine Partners III, L.P. and Eric Insurance Exchange (PNC/Erie) on January 30, 2023. VE is owned 50% by Fred Nichols and 50% by Larry McGee. Refer to the attached Ownership Organizational Chart – Attachment 1.

Predating the transaction noted above, Nichols and McGee held membership in ESM Management Group, LLC (ESM) which entered a "Partial Assignment of Gas Royalties and Assumption of Payments Agreement" with Shoosmith on August 12, 2021. This agreement assigned 95% the gas royalties that Shoosmith received from Swift Creek Renewables, LLC (SCR) to ESM for a period of 72 months and further obligated ESM to assume Shoosmith's obligation to pay a $6.5 Million note to Industrial Power Generating Company, Inc. (Ingenco) requiring a monthly payment of $126,682.20 for 64 months.

Shoosmith is required by the Virginia Department of Environmental Quality (VDEQ) to establish a trust fund or provide a surety bond to guarantee the costs associated with closing the landfill upon full utilization of the available airspace permitted for waste disposal and the post-closing expenses of monitoring and maintaining the landfill for 30 years following the VDEQ's acceptance of Shoosmith fulfilling the closing requirements. Shoosmith obtained a surety bond through Evergreen National Indemnity Company to meet this obligation in June 2008. Nichols and McGee personally guaranteed this bond as a condition of the Evergreen bond issuance. None of the minority members of ESM participated in providing personal guarantees. The minority members were paid $700,042 from four dividends issued by VWS Holdco, Inc between 10/21/10 and 3/27/14. They withdrew these funds made available from Shoosmith as soon as allocated and never reinvested in the Company. McGee personally reinvested $2.8 Million to acquire a portion of the Preferred Stock position from PNC/Erie at an interest rate substantially below the rate paid to PNC/Erie to benefit the ESM Group.

On the date of acquisition by VE, the closure/post-closure fund balance was approximately $13.3 Million invested at Morgan Stanley under Evergreen's control. VE borrowed $10.0 Million of the fund's balance from Shoosmith to complete the acquisition. Two of the most significant assets VE acquired were the Senior and Junior notes payable by Shoosmith to PNC/Erie in the combined amount of $142.7 Million. McGee was also owed $7.9 Million from his earlier purchase of preferred stock that was converted to Junior notes in 2020. The McGee investment along with the personal guarantees by Nichols and McGee was the

collateral Evergreen accepted to release the $10.0 Million from the bond fund. Upon closing the transaction, VE repaid the note payable to Shoosmith by offsetting this note against the Senior Notes then owed to VE.

On June 30, 2023, the Senior and Junior Notes matured. On July 7, 2023, VE sent a default notice to Shoosmith and demanded payment in full and accelerated the interest rate to 20% per annum. Copies of this letter were sent to the contact parties specified in the contract including Kent Durham, a member of ESM. Since the landfill's main source of revenue was for disposal of waste (remaining life of the landfill was 6 months) and the potential to receive gas royalties for up to 30 years, Shoosmith voided the executory contract with ESM for assignment of the gas royalties and retained the right to any other funds to pay operating costs, anticipated costs for leachate management/disposal and pay the debt obligation to VE.

On April 2, 2024, Shoosmith sold approximately 148 acres (rock quarry) to Vulcan Materials for $25.0 Million. The funds were used to reduce the debt to VE which was $170.8 Million on that date. Vulcan has expressed an interest in purchasing approximately 25 more prime acres on the site for $15.0 Million but the contract has not been executed. They are currently performing due diligence (Phase II) on a portion of the site previously occupied by an asphalt plant but there are no guarantees that the transaction will be consummated.

The financial exposure to Nichols and McGee through the personal guarantees are without limits. Currently, the closure/post-closure bond fund stands at $9.0 Million to secure a VDEQ approved estimate of $18.0 Million. This estimate is several years old and Shoosmith's third party engineers are currently reevaluating the costs to provide a more definitive estimate of today's expectations to meet the closure and post-closure obligations. A major concern is that the amount of landfill leachate being generated by the landfill and its associated disposal cost. This leachate is currently accepted by Chesterfield County at its POTW. If they decide to disallow the acceptance and processing of this affluent, the daily cost could rise to $50,000 per day or $1.5 Million per month at the next closest available processor. Alternatively, or in combination, pretreatment requirements by the County could be implemented requiring a special pretreatment containment operation carrying an estimated cost of $11.0 to $15.0 Million. These unknown and unforeseen costs bring Nichols and McGee's guarantee exposure to $30.0 Million or greater. Nichols and McGee are personally liable for all these costs. Without the royalties or future asset sales (land and equipment) of approximately $1.5 Million, the picture is a bit grim. The bonding company will not release our personal guarantees until the VDEQ approves a final closure/post-closure estimate and the corresponding funds have been deposited. Once funded, the reserve can remain with the bonding company for ease of withdrawing money to pay for the ongoing related expenses or the funds can be but into a trust held by the Commonwealth of Virginia.

The gas royalty contract between Shoosmith and SCR requires the repayment to SCR for "Reimbursable Costs". These costs must be repaid by future reductions of the royalty

participation rate beginning on the fourth anniversary of the operations startup and the full payment of any outstanding balance of Reimbursable Costs on the eighth anniversary. These costs currently stand more than $40.0 Million. In the current operating parameters, this debt will grow to between $60.0 and $90.0 Million. In essence, the receipt of royalties will almost certainly cease on this eighth anniversary.

CERTIFICATE OF SERVICE

I, William A. Hazeltine, hereby certify that on the 24th day of July 2025, a copy of the foregoing *Objectors' Objection to Entry of a Final Order 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 (C) Provide Adequate Protection, (II) Modifying the Automatic Stay, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* was electronically filed and served via CM/ECF on all registered users of that system in accordance with Del. Bankr. L.R. 9036-1(b), and a courtesy copy was served via Electronic Mail on the parties listed below.

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July 24, 2025
Date

/s/ William A. Hazeltine
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