

**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)

Objection Deadline: June 25, 2025 at 4:00 p.m. (ET)

Hearing Date: July 2, 2025 at 11:00 a.m. (ET)

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING
THE REJECTION OF EXECUTORY CONTRACT WITH
SWIFT CREEK RENEWABLES, LLC AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), by and through their undersigned proposed counsel, hereby move (the “Motion”) before the United States Bankruptcy Court for the District of Delaware (the “Court”) for entry of an order pursuant to sections 105(a) and 365(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), rules 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9013-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (“Local Rules”), substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”): (i) authorizing the Debtors to reject that certain Landfill Gas Agreement between the Debtor Shoosmith Bros., Inc. and Swift Creek Renewables, LLC (“SCR”) effective April 14, 2021 (together with all amendments, modifications, supplements, and any ancillary documents related thereto, the “Contract”), and (ii) granting related relief. In support of this Motion, the Debtors incorporate by reference the *Declaration of Steven Agran in Support of*

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.

First Day Relief (the “First Day Declaration”)² filed contemporaneously herewith and respectfully represents as follows:

JURISDICTION

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a) and 365 of the Bankruptcy Code and Rules 6004, 6006 and 9014 of the Bankruptcy Rules.

3. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court if it is 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.

BACKGROUND

4. On June 1, 2025 (the “Petition Date”), the Debtors commenced the above-captioned cases (these “Chapter 11 Cases”) by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in this Court. The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. Additional details regarding the Debtors, their businesses, the events leading to commencement of these Chapter 11 Cases, and the facts and circumstances supporting the relief requested herein are set forth in the First Day Declaration and are incorporated herein by reference.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

CONTRACT TO BE REJECTED

6. Pursuant to the terms of the Contract, SCR treats and processes the Landfill Gas produced at the Landfill (excluding Non-Qualifying Gas) to create High-BTU Gas, and sells such High-BTU Gas.

7. Pursuant to the terms of the Contract, the Debtors are entitled to a 25% royalty from SCR based on revenue received by SCR from the sale of High BTU Gas.

8. Pursuant to the terms of the Contract, the royalty paid to the Debtors is to be reduced by certain Reimbursable Costs, and potentially further reduced based on levels of Landfill Gas production, in accordance with the terms of the Contract.

9. SCR has been reducing the royalties to be paid to the Debtors under the Contract by an alleged percentage of Reimbursable Costs, and to recover certain alleged overpayments of previously paid royalties. The amounts by which SCR has been reducing the royalties to be paid to the Debtors under the Contract are disputed by the Debtors and those disputes remain outstanding.

10. The Debtors commenced these Chapter 11 Cases due to their dire liquidity position and the need to position their estates for a possible sale of substantially all of their assets.

11. The Debtors are presently marketing the sale of substantially all of their assets and may identify alternative counterparties willing to enter into a contract with the Debtors at better rates and on better terms than the Contract with SCR.

12. In order to effectively market the Debtors' assets and potentially receive the benefits of a replacement contract with an alternative counterparty, the Debtors must be alleviated of their performance obligations under the Contract.

13. The Debtors have determined in their business judgment that the Contract does not and will not provide a sufficient benefit to the Debtors' estates. Absent rejection of the Contract, the Debtors would be obligated to continue to incur obligations that the Debtors have deemed are detrimental their Estates and their pending sale process.

14. Any benefit from the receipt of royalty payments from SCR is limited compared with the reductions by SCR for alleged Reimbursable Costs and debt service on the outstanding balance owed to SCR for such alleged Reimbursable Costs.

15. The Debtors have therefore determined in their business judgment that the Contract is unnecessary, burdensome, and presently provides insufficient benefit to the Debtors' estates.

16. The Debtors further believe that the transactional costs and post-petition carrying costs associated with marketing the Contract would exceed any potential benefit that might be realized from its potential assignment. Accordingly, the Debtors seek to reject the Contract.

RELIEF REQUESTED

17. By this Motion, the Debtors seek entry of the Proposed Order, pursuant to sections 105(a) and 365 of the Bankruptcy Code and Bankruptcy Rules 6006 and 9014, authorizing the Debtor to reject the Contract.

BASIS FOR RELIEF

Rejection Of the Contract Is Appropriate and Is a Valid Exercised the Debtors' Business Judgment.

18. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any . . . executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). This is a vital provision for debtors seeking to reorganize under chapter 11 because "rejection can release the debtor's estate from burdensome obligations that can impede a successful reorganization." *Nat'l Labor Relations Bd. v. Bildisco & Bildisco*, 465 U.S. 513, 528

(1984); *see also In re Exide Techs.*, 607 F.3d 957, 967 (3d Cir. 2010) (“Courts may use § 365 to free a [debtor] from burdensome duties that hinder its reorganization”).

19. A debtor’s decision to reject an executory contract under § 365 is governed by the business judgment test, which requires a debtor to have determined that the requested rejection would benefit its estate. *See In re HQ Glob. Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003); *see also In re Bildisco*, 682 F.2d 72, 79 (3d Cir. 1982), *aff’d sub nom. Nat’l Labor Relations Bd. v. Bildisco & Bildisco*, 465 U.S. 513 (1984) (“The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgment’ test.”).

20. Bankruptcy courts generally defer to a debtor’s decision to assume or reject executory contracts when applying the business judgment standard. *See Comput. Sales Int’l, Inc. v. Fed. Mogul Glob., Inc. (In re Fed. Mogul Glob., Inc.)*, 293 B.R. 124, 126 (D. Del. 2003) (“The business judgment test dictates that a court should approve a debtor’s decision to reject a contract unless that decision is the product of bad faith or a gross abuse of discretion”); *In re Physiotherapy Holdings, Inc.*, 506 B.R. 619, 622 (Bankr. D. Del. 2014) (“[The debtor’s] decision is entitled to great deference from the Court”).

21. The Debtors have validly exercised their business judgment by electing to reject the Contract. The Debtors have determined in their business judgment that the Contract is not and will not be a source of sufficient value for the Debtors’ estates or stakeholders going forward. Moreover, as stated above, in connection with marketing the sale of the Debtors’ assets, the Debtors may identify alternative counterparties willing to enter into a contract with the Debtors at better rates and on better terms than the Contract with SCR. As such, the Debtors’ continuing obligations incurred in performing under the Contract exceeds any potential value the Contract might present to the Debtors’ estates, including any to be attained from an assignment of the

Contract. Accordingly, the Debtors submit that rejection of the Contract reflects sound exercise of the Debtors' business judgment.

WAIVER OF BANKRUPTCY RULE 6004 REQUIREMENTS

22. Given the nature of the relief requested herein, the Debtors respectfully request a waiver of (i) the notice requirements under Bankruptcy Rule 6004(a) and (ii) the 14-day stay under Bankruptcy Rule 6004(h), to the extent that either rule is applicable.

DEBTORS' RESERVATION OF RIGHTS

23. Nothing contained in this Motion or any actions taken by the Debtors pursuant to relief granted in the Proposed Order is intended or should be construed as: (a) an admission as to the validity of any particular claim against the Debtors; (b) a waiver of any of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

NOTICE

24. Notice of this Motion will be provided to: (i) counsel to SCR, (ii) the Office of the United States Trustee for the District of Delaware; (iii) counsel to the DIP Lenders, (iv) the Virginia Department of Environmental Quality, Piedmont Regional Office; (v) counsel to

Chesterfield County; (vi) the Debtors' consolidated twenty (20) largest unsecured creditors; and (vii) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

25. The Debtors have not previously sought the relief requested herein from this Court or any other court.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (a) enter the Proposed Order substantially in the form annexed hereto as **Exhibit A** granting the relief requested in this Motion, and (b) grant such other and further relief as may be just and proper.

Dated: June 18, 2025
Wilmington, Delaware

PASHMAN STEIN WALDER HAYDEN, P.C.

/s/ John W. Weiss
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 (*pro hac vice* forthcoming)
David E. Sklar (*pro hac vice* forthcoming)
Court Plaza South, East Wing
21 Main Street, Suite 200
Hackensack, NJ 07601
Telephone: (201) 488-8200
Email: leisenberg@pashmanstein.com
dsklar@pashmanstein.com

Proposed Counsel to the Debtors and Debtors in Possession

**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)

Objection Deadline: June 25, 2025 at 4:00 p.m. (ET)

Hearing Date: July 2, 2025 at 11:00 a.m. (ET)

**NOTICE OF HEARING REGARDING DEBTORS' MOTION FOR ENTRY OF AN
ORDER (I) AUTHORIZING THE REJECTION OF EXECUTORY CONTRACT WITH
SWIFT CREEK RENEWABLES, LLC AND (II) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on June 18, 2025, the above captioned debtors and debtors in possession (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* (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Court").

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion must (a) be in writing, (b) be filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **June 25, 2025 at 4:00 p.m. (ET)** (the "Objection Deadline"), and (c) served as to be received on or before the Objection Deadline upon the proposed counsel to the Debtors, Pashman Stein Walder Hayden, P.C., 824 N. Market Street, Suite 800, Wilmington, Delaware 19801, Attn: John W. Weiss (jweiss@pashmanstein.com), Leah M. Eisenberg (leisenberg@pashmanstein.com), Richard W. Riley (rriley@pashmanstein.com) and David E. Sklar (dsklar@pashmanstein.com).

PLEASE TAKE FURTHER NOTICE that only objections made in writing and timely filed and received, in accordance with the procedures above, may be considered by the Bankruptcy Court at such hearing.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION, IF NECESSARY, WILL BE HELD ON JULY 2, 2025 AT 11:00 A.M. (ET) BEFORE THE HONORABLE J. KATE STICKLES, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, WILMINGTON, DELAWARE 19801.

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IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: June 18, 2025
Wilmington, Delaware

PASHMAN STEIN WALDER HAYDEN, P.C.

/s/ John W. Weiss

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

Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Order

**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)

D.I.

**ORDER (I) AUTHORIZING THE REJECTION OF
EXECUTORY CONTRACT WITH SWIFT CREEK RENEWABLES, LLC
AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an order (this “Order”), pursuant to sections 105(a) and 365(a) of the Bankruptcy Code, rules 6004, 6006 and 9014 of the Bankruptcy Rules, and rule 9013-1 of the Local Rules: (i) authorizing the rejection of the Contract with Swift Creek Renewables, LLC and (ii) granting related relief, all as more fully described in the Motion; and upon consideration of the First Day Declaration; and this Court having found that it has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012; and this Court having found that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b); and that the Debtors consent to entry of a final order under Article III of the United States Constitution; and this Court having found that venue of this chapter 11 case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and

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² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and this Court having reviewed the Motion and having had the opportunity for a hearing held before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors’ rejection of the Contract between Debtor Shoosmith Bros., Inc. and SCR effective April 14, 2021, including all amendments, modifications, supplements, and any ancillary documents related thereto, is hereby approved, and, pursuant to Section 365 of the Bankruptcy Code, the Contract is rejected as of the date of this Order.
3. Any claims arising as a result of or in relation to rejection of the Contract must be filed on or before the later of (i) thirty (30) days after entry of this Order and (ii) the deadline established by the Court for filing proofs of claims in these cases. The Debtor reserves all rights to contest any claims by SCR including, without limitation, rejection damages claims, and to assert any and all related defenses or counterclaims thereto.
4. The Debtors reserve and do not waive any claims or causes of action that they may have against SCR, whether or not such claims or causes of action are related to or arise from the Contract.
5. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity, priority, or amount

of any particular claim against Debtors; (b) a waiver of the Debtors' or any other party-in-interest's right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order of the Motion; (e) a request or authorization to assume any agreement, contract, lease, or sublease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' or any other party-in-interest's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Order are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection or to seek avoidance of all such liens. Any payment made pursuant to this Order should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

6. Nothing in the Motion or this Order shall be deemed or construed as an approval of an assumption of any contract or lease pursuant to section 365 of the Bankruptcy Code.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

9. The Debtors are authorized to take all necessary actions to effectuate the relief granted pursuant to this Order and in accordance with the Motion.

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