

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In Re:

WILSON CREEK ENERGY, LLC, *et al.*,¹
Debtors.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Movant,

v.

WILSON CREEK ENERGY, LLC, *et al.*
Debtors-Respondents.

Case No.: 25-70001-JAD

Chapter 11

Jointly Administered

Hearing Date:

Hearing Time:

Response Deadline:

**COMMONWEALTH MOTION FOR ORDER THAT AUTOMATIC STAY DOES NOT
EXCUSE DEBTOR’S COMPLIANCE WITH STATE’S ENVIRONMENTAL LAWS**

The Commonwealth of Pennsylvania, Department of Environmental Protection (“PA DEP” or “the Department”), through the undersigned counsel, hereby files this *Motion for Order that Automatic Stay Does Not Excuse Debtor’s Compliance with State’s Environmental Laws* (“Motion”), and in support thereof states as follows:

PRELIMINARY STATEMENT

1. The Department requests an order from this Court confirming that an action by the Department requiring Debtor, RoxCoal, Inc. (“RoxCoal”), to provide for the permanent payment

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number are: Wilson Creek Energy, LLC (6202); Wilson Creek Holdings, Inc. (7733); Maryland Energy Resource, LLC (5299); Mincorp Acquisition Corp. (4858); Mincorp Inc. (5688); PBS Coals, Inc. (2413); Roxcoal, Inc. (3768); Quecreek Mining, Inc. (1745), Croner, Inc. (0529); Elk Lick Energy, Inc. (8551); and Corsa Coal Corp. (0027). The Debtors’ address is 1576 Stoystown Road, Friedens, Pennsylvania 15541.

of the ongoing and future costs to operate and maintain replacement drinking water supplies that were contaminated by RoxCoal's mining operations, as required by state environmental laws, falls within the police power exception to the automatic stay under 11 U.S.C. § 362(b)(4).

FACTUAL BACKGROUND

2. PA DEP is an executive agency with the duty to administer and enforce the environmental and public health and safety laws of the Commonwealth of Pennsylvania, including but not limited to The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§ 691.1-691.1001; the Surface Mining Conservation and Reclamation Act, Act of Dec. 18, 1992, P.L. 1384, *as amended*, 52 P.S. §§ 1396.1-1396.31 ("Surface Mining Act"); The Bituminous Mine Subsidence and Land Conservation Act, Act of Apr. 27, 1966, P.L. 31, *as amended*, 52 P.S. §§ 1406.1-1406.21 ("Mine Subsidence Act") (collectively, "Pennsylvania Mining Laws"); and the regulations promulgated under those statutes ("Regulations").

3. RoxCoal operates several active and inactive underground mines in the Commonwealth pursuant to permits issued by the Department, including the Kimberly Run Mine.

4. RoxCoal began coal mining activities at Kimberly Run in May 2008. Coal extraction at Kimberly Run ceased in December 2014, and the mine was sealed in June 2015. RoxCoal remains obligated to reclaim the affected surface areas and otherwise comply with the Pennsylvania Mining Laws and Regulations.

5. RoxCoal's ongoing environmental obligations at the Kimberly Run Mine include ensuring that the users of at least fifteen private drinking water supplies that were contaminated by RoxCoal's mining operations continue to have available replacement water supplies despite RoxCoal's bankruptcy.

6. Under Section 5.1(a)(1) of the Mine Subsidence Act, “any mine operator who, as a result of underground mining operations, affects a public or private water supply by contamination, diminution or interruption shall restore or replace the affected supply with an alternate source which adequately services in quantity and quality the premining uses of the supply or any reasonably foreseeable uses of the supply.” 52 P.S. § 1406.5a(a)(1).

7. Under the Regulations promulgated under the authority of Section 7(b) of the Mine Subsidence Act, 52 P.S. § 1406.7(b), a restored or replaced water supply may not cost the landowner more to operate and maintain than the previous supply. 25 Pa. Code § 89.145a(f)(5)(i). If the operation and maintenance (“O&M”) costs of the restored or replaced supply are more than the costs of the previous supply, “the operator shall provide for the permanent payment of the increased operating and maintenance cost of the restored or replacement water supply.” *Id.* § 89.145a(f)(5)(ii); *Maple Creek Mining, Inc. v. Lang*, 968 A.2d 854, 858 (Pa. Cmwlth. 2009); *Maple Creek Mining, Inc. v. Lang*, No. 650 C.D. 2006, 2006 WL 6353277, at *5 (Pa. Cmwlth. Dec. 28, 2006) (affirming Environmental Hearing Board order requiring underground mine operator to provide for the permanent payment of any increase in operating and maintenance costs for restored water supply).²

8. Section 9 of the Mine Subsidence Act authorizes the Department to issue orders to aid in the enforcement of the Act. 52 P.S. § 1406.9.

9. RoxCoal’s operation of the Kimberly Run Mine contaminated at least fifteen private water supplies (“Water Supplies”). The Water Supplies are identified in Table 1, below.

10. RoxCoal restored or replaced the Water Supplies by installing new wells and, where appropriate, water treatment systems, but it has not provided financial assurance that any future

² This is an unreported panel decision of the Commonwealth Court cited for its persuasive value.

costs to operate and maintain the Water Supplies will not be shifted to the users and families who were harmed by RoxCoal's operations, as required by 25 Pa. Code § 89.145a(f)(5)(ii).

11. After restoring or replacing the Water Supplies, RoxCoal determined the future O&M costs for the Water Supplies, which the Department reviewed and approved.

12. On December 4, 2024, the Department requested that RoxCoal submit bonds that would continue to cover O&M costs for providing water supplies to the affected users as shown in Table 1, below.

13. As of the filing of this Motion, RoxCoal has not provided O&M bonds for the Water Supplies or otherwise provided for the permanent payment of the increased O&M costs for the Water Supplies.

Table 1 – Water Supplies

Claim No.	Property Owner	Bond Amount
WL1914	Listie Grove	\$28,985.00
WL1917	Zola Baker	\$8,320.00
WL1920	Welsh	\$17,702.00
WL1930	Layman	\$19,566.00
WL1943	Maust	\$23,348.00
WL2006	Pohlit	\$48,122.00
WL2008	Holt	\$24,644.00
WL2011	Slingluff	\$40,701.00
WL2033	Walker	\$35,780.00
WL2042	Porter	\$20,035.00
WL2134	Thomas Baker	\$23,324.00
WL2203	Coleflesh	\$40,880.00
WL2205	Weigle	\$66,550.00
WL2207	Herbert Baker	\$23,725.00
P1910	Steinkirchner	\$36,997.00
	Total Amount	\$458,679.00

GROUND FOR RELIEF

14. When a party files a bankruptcy petition, 11 U.S.C. § 362(a) imposes an automatic stay, which bars the commencement or continuation of an administrative proceeding against a debtor that could have been initiated before the petition was filed, or to recover on a claim that arose pre-bankruptcy. 11 U.S.C. § 362(a).

15. Congress, however, created several statutory exceptions to the automatic stay. 11 U.S.C. § 362(b). “To combat the risk that the bankruptcy court would become a sanctuary for environmental wrongdoers, among others, Congress enacted the police and regulatory power exception to the automatic stay.” *U.S. v. Nicolet, Inc.*, 857 F.2d 202, 207 (3d Cir. 1988).

16. The police and regulatory power exception to the automatic stay allows “the commencement or continuation of an action or proceeding by a governmental unit...to enforce such governmental unit’s...police or regulatory power....” 11 U.S.C. § 362(b)(4).

17. The United States Court of Appeals for the Third Circuit has consistently held that regulatory proceedings related to environmental hazards and public health and safety fall within the police power exception to the automatic stay. *E.g., In re Mystic Tank Lines Corp.*, 544 F.3d 524, 527 (3d Cir. 2008) (state action to recover the costs of cleanup of contaminated site falls within police power exception); *Nicolet, Inc.*, 857 F.2d at 207 (federal action to recover cleanup costs for contaminated site within police power exception); *Brock v. Morysville Body Works, Inc.*, 829 F.2d 383, 388-90 (3d Cir. 1987) (enforcement of Occupational Safety and Health Administration order to abate violations of safety and health standards within police power exception); *U.S. v. Wheeling-Pittsburgh Steel Corp.*, 818 F.2d 1077, 1087 (3d Cir. 1987) (Chapter 11 status did not relieve debtor from obligation to install air pollution controls); *Penn Terra Ltd.*

v. Dep't of Env'tl. Resources, 733 F.2d 267, 278-79 (3d Cir. 1984) (enforcement of state injunction to abate violations of environmental law within police power exception).

18. The Third Circuit applies two tests to determine whether governmental action falls within the police power exception to the automatic stay: the pecuniary purpose test and the public policy test. *In re Nortel Networks, Inc.*, 669 F.3d 128, 139 (3d Cir. 2011).

19. “The pecuniary purpose test asks whether the government primarily seeks to protect a pecuniary governmental interest in the debtor’s property, as opposed to protecting the public safety and health.” *Id.* at 139–40.

20. The public policy test asks:

whether the government is effectuating public policy rather than adjudicating private rights. If the purpose of the law is to promote public safety and welfare or to effectuate public policy, then the exception to the automatic stay applies. If, on the other hand, the purpose of the law is to protect the government’s pecuniary interest in the debtor’s property or primarily to adjudicate private rights, then the exception is inapplicable.

Id. at 140.

21. The Department’s action to require that RoxCoal provide financial assurance to cover the future costs of operating and maintaining the Water Supplies for users and families affected by RoxCoal’s coal mining operations satisfies both the pecuniary interest and public policy tests.

22. The Department’s purpose in enforcing the O&M cost requirement is to ensure that Water Supplies affected by RoxCoal’s underground mining are *permanently* restored or replaced with an alternate source that is adequate in quality and quantity, as required by 52 P.S. § 1406.5a. For a restored or replacement supply to be adequate, the operator must provide for future O&M costs. *See* 25 Pa. Code § 89.145a(f)(5); *Carlson Mining Co. v. Dept. of Env'tl. Res.*, 639 A.2d

1332, 1334 (Pa. Cmwlth. 1994) (affirming Department order requiring permanent payment of increased O&M costs for water supply affected by surface mining).

23. The Mine Subsidence Act is explicitly deemed “to be an exercise of the police powers of the Commonwealth for the protection of the health, safety, and general welfare of the people of the Commonwealth,” by providing, among other things, “the preservation of surface water drainage and public and private water supplies” and “to provide for the restoration or replacement of water supplies affected by underground mining.” 52 P.S. § 1406.2.³ The Mine Subsidence Act also “is intended as remedial legislation designed to cure existing evils and abuses.” *Id.* § 1406.19. The Department’s enforcement of regulations requiring a mine operator to pay for the permanent replacement of water supplies harmed by their operations constitutes an exercise of the police power:

[The mine operator’s] assertion that compensation for the increased operation and maintenance costs associated with the replacement supply constitute damages is incorrect... The water supply replacement order is not a civil action based on tort; it is based on the Commonwealth’s police power under Section 1 of the [Surface Mining Act], 52 P.S. § 1396.1.

Carlson Mining. Co., 639 A.2d at 1337. *See also Penn Terra*, 733 F.2d at 278 (3d Cir. 1984) (Department action to enforce injunction to compel debtor to expend money to correct environmental violations falls within police power exemption under automatic stay).

24. The fact that PA DEP’s action here benefits private individuals does not disqualify it from the police power exception. *See Stewart v. Holland Acquisitions, Inc.*, No. 15-01094, 2021 WL 1037617, at *5 (W.D. Pa. Mar. 18, 2021) (holding Fair Labor Standards Act suit seeking injunctive relief and backpay falls within police power exception because, despite benefitting

³ Similarly, the Surface Mining Act, which regulates impacts to private water supplies from surface mining activities, is explicitly “an exercise of the police powers of the Commonwealth for the general welfare of the people of the Commonwealth, by providing...,” among other things, “to protect and maintain water supply.” 52 P.S. § 1396.1.

individuals, its primary purpose was to vindicate public policy); *Solis v. Makozy*, No. 09-01265, 2012 WL 1458232, at *2 (W.D. Pa. Apr. 27, 2012) (same).

25. A governmental unit's enforcement of bonding requirements, such as the Department's action requiring RoxCoal to submit bonds to cover the future costs to operate and maintain water supplies for persons harmed by their operations, is an exercise of the state's police power excepted from the automatic stay. *See Safety-Kleen v. Wyche*, 274 F.3d 846, 866 (4th Cir. 2001) (state order requiring a landfill to post bond to ensure environmental obligations falls within police power exception to automatic stay), *Bickford v. Lodestar Energy*, 310 B.R. 70, 72 (E.D. Ky. 2004) (state action to require coal company to post bond to ensure reclamation of mine site falls within police power exception to automatic stay).

26. The Department's action to require RoxCoal to provide a bond to cover the future costs of operating and maintaining drinking water supplies for users and families harmed by its operations constitutes an exercise of the state's police power to protect the public health, safety, and welfare, and is not subject to the automatic stay provision of the Bankruptcy Code.

NOTICE FOR HEARING

27. Contemporaneously with this Motion, the Department will file and serve a Notice of Hearing setting a response deadline of March 3, 2025 at 4:00 p.m. (prevailing Eastern Time) and a hearing date of March 12, 2025 at 9:00 a.m.

28. The Department has conferred with counsel for the Debtors, the Committee, and the U.S. Trustee and the Debtors, the Committee, and the U.S. Trustee have no objection to scheduling the hearing on this Motion on March 12, 2025, in lieu of the next applicable Omnibus Hearing date of March 27, 2025.

CONCLUSION

For the foregoing reasons, the Department asks this Court to issue an order that the automatic stay does not excuse RoxCoal's compliance with state environmental laws, which require the submission of a bond to cover the future operation and maintenance costs associated with the Water Supplies in the amounts set forth in Table 1, above.

Respectfully submitted,

/s/ Brian L. Greenert

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Dated: February 14, 2025

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In Re: WILSON CREEK ENERGY, LLC, <i>et al.</i> , ¹ Debtors.	Case No.: 25-70001-JAD Chapter 11 <i>Jointly Administered</i>
COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION, Movant, v. WILSON CREEK ENERGY, LLC, <i>et al.</i> Debtors-Respondents.	Hearing Date: Hearing Time: Response Deadline:

ORDER

Upon consideration of the Commonwealth of Pennsylvania, Department of Environmental Protection's *Motion for Order that Automatic Stay Does Not Excuse Debtor's Compliance with State's Environmental Laws*, any response thereto, and after notice and hearing:

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED.
2. The Department's action to require Debtor RoxCoal, Inc. to provide for the permanent payment of operation and maintenance costs for replaced water supplies that were

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harmd by Debtor's mining operations falls within the police power exception to the stay under
11 U.S.C. § 362(b)(4).

Prepared by: */s/ Brian L. Greenert*
Counsel to the PA DEP

BY THE COURT:

Honorable Jeffrey A. Deller
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In Re:

WILSON CREEK ENERGY, LLC, *et al.*,¹

Debtors.

Case No.: 25-70001-JAD

Chapter 11

Jointly Administered

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
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WILSON CREEK ENERGY, LLC, *et al.*

Respondents.

CERTIFICATE OF SERVICE

I, Brian L. Greenert, hereby certify that on February 14, 2025, I served a true and correct copy of the foregoing *Motion for Order that Automatic Stay Does Not Excuse Debtor's Compliance with State's Environmental Laws* on persons registered to receive electronic case filing notifications via CM/ECF.

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FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Dated: February 14, 2025