

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

)	
In re:)	Chapter 11
)	
WESTMORELAND COAL COMPANY, <i>et al.</i>)	Case No. 18-35672 (DJR)
)	
Debtors.)	(Jointly Administered)
)	

**MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY’S APPLICATION
FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE CLAIM**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING. REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

Montana Department of Environmental Quality (“MDEQ”), by and through its undersigned counsel, files this Application for Allowance and Payment of Administrative Claim pursuant to 11 U.S.C. §§ 507(a)(2) and 503(b)(1) (this “Application”), and hereby seeks entry of an order for allowance and payment of an administrative claim in the amount of \$187,520.26. In support of this Application, MDEQ respectfully states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

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

BACKGROUND

3. On October 9, 2018 (the "Petition Date"), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Court"). The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered.

4. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

5. MDEQ is a governmental agency charged with protecting the environment in Montana and implementing measures to ensure a clean and healthy environment for the citizens of Montana. MDEQ is made up of multiple divisions including the Air, Energy and Mining Division and the Water Quality Division.

6. MDEQ's Air, Energy and Mining Division serves the citizens by regulating air quality, hard rock mining, and coal and open cut mining through, among other things, administering permitting programs that require control of pollutants and compliance with standards. To fund the air permitting program, MDEQ assesses and collects fees for air quality permits.

7. MDEQ's Water Quality Division issues permits to operators of certain activities to authorize the discharge of pollutants into state waters.

8. Annually, the Debtors are responsible for remitting fees for certain air and water quality permits to MDEQ to stay in compliance with Montana law as regulated by MDEQ's Air, Energy and Mining Division and Water Quality Division (the "Assessments").

9. In addition, certain amounts have accrued since the Petition Date that are due and owing pursuant to certain Memorandums of Agreement Contract Nos. 113003 and 118004 between MDEQ and the Debtors (the "Contract Amounts").

10. As of the date of this Application, Debtors have accrued but have not paid all Assessments and Contract Amounts that have arisen since the Petition Date. The Assessments are described in detail in the invoices attached hereto as **Exhibit A**. In addition, Exhibit A includes a chart showing the Contract Amounts due and owing from the Debtors. While some of these fees are not past due, the MDEQ files this Application in an abundance of caution. Further, these fees are for permits that are necessary for Debtors' mining operations associated with certain leases to be assumed and assigned to the proposed purchaser. To the extent that such fees represent amounts to be cured upon assumption and assignment, the MDEQ files this Application in the unlikely event that the sale does not close.

RELIEF REQUESTED

11. MDEQ respectfully requests that the Court enter an order for allowance and payment of its administrative priority claims in the amount of \$187,520.26 for the Assessments and Contract Amounts due and owing by the Debtors and arising since the Petition Date, pursuant to 11 U.S.C. §§ 507(a)(2) and 503(b)(1).

BASIS FOR RELIEF

12. The Debtors have an affirmative obligation to pay for actual and necessary costs and expenses of preserving the estate. *See* 11 U.S.C. § 503(b)(1)(A).

13. The Debtors are required to pay the amounts due and owing for the Assessments and Contract Amounts. The Assessments and Contract Amounts have accrued since the Petition Date and represent permit fees that Debtors are required to pay pursuant to Montana law. Accordingly, all post-petition amounts owing to MDEQ for said Assessments and Contract Amounts should be allowed as an administrative expense claim and immediately paid by the Debtors pursuant to 11 U.S.C. § 503(b)(1).

14. The Debtors' estate benefited, and will continue to benefit, from the Debtors' operations in the State of Montana and, because of such operations, Debtors are required to pay the Assessments and Contract Amounts.

15. Based upon the foregoing, MDEQ respectfully requests that the Court enter an order allowing its administrative expense claim in the amount of \$187,520.26 as set forth in Exhibit A, pursuant to 11 U.S.C. §§ 507(a)(2) and 503(b)(1).

RESERVATION OF RIGHTS

16. MDEQ hereby reserves the right to amend this Application should additional information become available warranting such action. MDEQ also reserves all of its rights, claims, defenses, and remedies under the Bankruptcy Code and other applicable law. In case the sale does not close or there are additional amounts due and owing under Montana law, MDEQ expressly reserves the right to supplement this Application.

CONCLUSION

WHEREFORE, MDEQ respectfully requests that this Court (i) grant the allowance and payment of its administrative claim in the amount of \$187,520.26; and (ii) grant MDEQ such other and further relief as this Court deems just and appropriate under the circumstances.

DATED: February 6, 2019

Respectfully submitted,

HUSCH BLACKWELL LLP

By: /s/ Lynn H. Butler

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2019, a true and correct copy of the foregoing document is being served via this Court's ECF notification system to all parties registered to receive such notice.

/s/ Lynn H. Butler
Lynn H. Butler