

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
(Southern Division)**

In re:)	
)	
WALTER ENERGY INC., et al.,)	CASE NO. 15-02741-TOM11
)	
Debtors.)	Chapter 11
)	Jointly Administered

LIMITED OBJECTION OF THE UNITED STATES, ON BEHALF OF THE ENVIRONMENTAL PROTECTION AGENCY TO THE DEBTORS’ MOTION FOR AN ORDER APPROVING THE SALE OF NON-CORE ASSETS

The United States, on behalf of the U.S. Environmental Protection Agency (“EPA”), by and through the undersigned attorneys, hereby files a limited objection to the above-referenced motion and states its objection as follows:

STATEMENT OF RELEVANT FACTS AND PROCEDURE

1. On December 22, 2015, the United States filed an objection to the Debtors’ proposed sale of substantially all of its assets [Docket No. 1446]. At that time the Walter Coke Facility and certain mining properties were not included in the proposed Sale. The United States appeared at the Sale hearing held January 6, 2016. At the hearing the United States’ objection was reserved, to the extent there was a sale of the Walter Coke Facility, and the United States and the debtors worked out agreed upon language regarding the creation of an Environmental Response Trust in the event the Walter Coke Facility was not sold. See, *Order Approving Sale*. [Docket 1584 at ¶ 27].

2. On Monday, February 1, 2016, a Notice of Proposed Asset Purchase Agreement for the Debtors’ Non-Core Assets was filed (proposed “APA”). [Docket No. 1784]. A hearing to approve the proposed sale is scheduled for Thursday, February 4, 2016. [Docket No. 1793].

3. The United States is still in the process of reviewing the proposed APA.



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4. The Walter Coke Facility covers approximately 400 acres and has been in operation for over 90 years. In September of 2012, EPA entered into an Administrative Order on Consent (“AOC”) under RCRA with Walter Coke, Docket No. RCRA-04-2012-4255. The AOC outlines a phased approach to investigate and implement remedies to address contamination at approximately 50 specific areas at the facility within five broad areas at the Walter Coke Facility; the coke manufacturing facility; the former chemical plant; the pig iron foundry; the land disposal area; and the wastewater treatment area.

5. More specifically, under the AOC, Walter Coke is to identify and evaluate alternatives for any corrective measures (i.e., remedies) necessary to prevent, mitigate, and/or remediate any releases of hazardous wastes or hazardous constituents at or from any Solid Waste Management Units (SWMUs), Areas of Concern (ADCs) and SWMU Management Areas (SMAs) at the Walter Coke Facility; (2) to implement the remedies approved by EPA for such SWMUs, AOCs and SMAs listed at the Walter Coke Facility or identified as “new” while conducting its investigation of the Walter Coke Facility; (3) to perform any other activities necessary consistent with the AOC, including additional work and Interim Measures (IMs), to the extent necessary to address impacted environmental media to ensure it meets protective criteria or to evaluate actual or potential threats to human health and/or the environment resulting from the release or potential release of hazardous waste or hazardous constituents at or from SWMUs, AOCs and/or SMAs; 4) to implement and maintain, as appropriate, institutional controls required and approved by EPA at the Walter Coke Facility; and (5) to perform any activities required pursuant to the AOC, and to the extent otherwise consistent with the AOC.

6. In addition, Walter Coke is implementing an Interim Measure to address a contaminated groundwater plume. The plume had migrated beyond the property boundary (Near F.L. Shuttlesworth Drive and 41st Avenue North). The contaminants in the plume include, but are not limited to benzene, chlorobenzene, ethylbenzene, toluene, methylene chloride, and vinyl chloride.

7. Discontinuation of environmental obligations under the RCRA AOC could pose substantial risks to public health and safety. For example, if the above-referenced interim measure were halted, the contaminated groundwater plume will begin migrating into a residential area. Such migration also raises the possibility of vapor intrusion of the contaminants, possibly at unacceptable levels, in a certain few residential locations. Moreover, because the facility property has been in industrial use for over 90 years it is not unreasonable to be concerned that significant historical pollution could also be present and may pose additional threats to public health and safety.

8. Fortunately, the proposed APA provides that the RCRA AOC is an assumed liability of the buyers. See, Docket No. 1784 at Article 2.3(m).

The APA and/or Sale Order should Clarify Which Buyer Entity Will Operate the Walter Coke Facility and Provide That the Walter Coke Assets be Segregated.

The proposed APA does not indicate which of the Buyers will be engaging in the continued operations of the Walter Coke operations. More importantly, there does not appear to be a provision in the proposed APA which would confirm that the assets of Walter Coke will be segregated, and will be used by a Buyer for the ongoing operations of Walter Coke as well as the remediation obligations it will be assuming. In the absence of a viable buyer, these assets were going to be placed into an Environmental Response Trust that would cleanup the Walter Coke Facility. See, *Order Approving Sale*. [Docket 1584 at ¶ 27]. These assets should not be permitted to be transferred or used by the Buyers for other, non-Walter Coke, obligations or liabilities, without proper consideration. To allow such use would be tantamount to this Court approving a fraudulent transfer. Such a sale would threaten public health and safety, be against public policy, not be in good faith, and therefore should not be approved. Many courts have noted the need to take into account the public interest under non-bankruptcy law when interpreting or applying provisions of the Bankruptcy Code. See, *Midlantic Nat'l Ban v. N.J Dept. of Environmental Protection*, 474 U.S. 494 (1986) (abandonment); *In re Mirant Corp.*, 378 F.3d 511, 525 (5th Cir. 2004)

(executory contracts); *In re ATP Oil & Gas Corp.*, 2013 Westlaw 3157567, *3 (Bankr. S.D. Tex., June 19, 2013) (abandonment); *In re Pilgrim's Pride Corp.*, 403 B.R. 413, 422-25 (Bankr. N.D. Tex. 2009) (executory contracts)

CONCLUSION

For the foregoing reasons, this court should not approve the proposed Sale absent provisions to ensure the segregation of the Walter Coke assets to be used for the continued operations of Walter Coke and the performance of the Walter Coke environmental obligations.¹

¹ The United States reserves the right to supplement this objection at or prior to the hearing to consider Debtors' proposed sale.

Dated: February 3, 2016

Respectfully submitted,

FOR THE UNITED STATES:

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/s/ Karl J. Fingerhood

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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2016, a true and correct copy of the foregoing was served via ECF.

/s/ Karl J. Fingerhood

Karl J. Fingerhood