

Environmental Law Monitor: Bankruptcy and Environmental Law [PODCAST]

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In this episode of the Environmental Law Monitor, host [Daniel Pope](#) is joined by Washington, DC partner [Jason Hutt](#) and their new colleague [Steven Cook](#), who was most recently with EPA's Office of Land and Emergency Management. They discuss Chapter 11 bankruptcies, including how a variety of environmental claims and a variety of environmental requirements are treated and managed throughout the bankruptcy process.

When looking at an impending bankruptcy that a company is considering and evaluating and assessing the scope of its environmental liabilities, what does that look like from those early days of a bankruptcy?

It is actually a fascinating time if you are able to step back and just watch because it's a very different legal environment that you're operating in. But your core compliance obligations are still there. As you get close to the bankruptcy, folks are not blind to what's going on. They see the struggles and keeping people focused on ensuring they're complying with their environment obligations. The rules apply before, when and after you file, so you still have to operate in compliance. When people are distracted by whether they're going to have a job, whether their plans are going to stay open, it's very easy to lose that focus.

What do you do to sufficiently map out what those environmental liabilities are to make sure that you are taking full advantage of that process?

The current claims are easy. You know the current lawsuits and disputes with agencies and such. It's the trying to expand to the potential future claims, take potential Superfund sites or existing sites for which you are involved. You want to catalog every potential site that you might be involved in that you think you might have. Your goal here is to give notice to anybody who might have a claim that you filed and that they've got the information to when to file. As you think about the environmental aspects of your operations, you should consider who might have a claim against you for what you've done.

What do you do about the knowns, and what do you do about the unknowns? How are those treated in bankruptcy?

Part of it really lies in what your plan is. Are you planning to keep that particular site going forward? If your exit plan is going to be these 10 manufacturing sites, we want part of the ongoing business. All the contamination that's there and such is going to stay with you and pass through. But if you're abandoning the property while walking away from it and such, there are ways to effectively get that liability resolved and discharged and be done with it.

Are there any considerations on the tail end and on the exit from bankruptcy?

Just making sure that the resources are there to maintain compliance once you're out, as you put together your exit plan and such, ensuring that the capital is there for future construction, that you know about the requiring to put on various controls or changes you need to make to operations. You need to think about the exit that you can operate in compliance on day one, but also on day 30, in month 30, that it is set up for success and ensuring that that has been thought through the process.

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