MITIGATING THE IMPACTS OF FUTURE BANKRUPTCIES AT SUPERFUND SITES

What States should do to protect their interest in the event of an RP bankruptcy.

How to lessen the impact.

Especially for a single PRP.
BE INVOLVED

Start at the RI/FS
Encourage reuse- that brings more funding to the remedy.
Many PRPs like low capital high O&M remedies, but if they go bankrupt in O&M, now the State may be stuck with that high O&M.
Consider a high capital / low O&M remedy- just in case.
SETTLEMENT NEGOTIATIONS- BE INVOLVED

Many States don’t participate in EPA’s negotiations, reconsider that if you only have a few PRPs on the site.
Pay close attention to the financial assurances; does it cover long term O&M?
Will the FA be accessible by the State?
Is it bankruptcy proof?
BANKRUPTCY PROOF

EPA allows for self guarantee, they do a rigorous review to allow it, and monitor it annually.

If the company starts to fail, will EPA catch it in time.

Will the company be able to put up another form of FA if it’s not financially sound.

Will the FA requirement cause the company to go into bankruptcy.
DOES YOUR STATE HAVE IT’S OWN FINANCIAL ASSURANCE MECHANISM THAT MAKES THE STATE THE BENEFICIARY?
POST BANKRUPTCY –MITIGATE THE IMPACT

If the State is stuck with a high O&M remedy- change it.
Do a ROD amendment- is there another protective remedy that’s better.
Now have EPA make it a fund lead site.
Work with the Region-they’re there to help.
Keep property ownership and access in mind.