SUPERFUND AND BANKRUPTCY

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Edward Putnam, NJDEP
SUMMARY OF IMPACTS, ISSUES, AND RISK ASSOCIATED WITH POTENTIAL RESPONSIBLE PARTY BANKRUPTCY

Presented in three parts by the Remedial Action Focus Group.
PURPOSE- IDENTIFY AND ADDRESS
POTENTIAL CONCERNS THAT CAN ARISE
WHEN A SINGLE POTENTIAL RESPONSIBLE
PARTY (PRP) GOES BANKRUPT DURING THE
REMEDIAL PROCESS

Most CERCLA sites have multiple PRPs, so having one go
bankrupt will usually not stop the remedial process.

BUT when a single PRP goes bankrupt the remedial
process is drastically interrupted and changed.
There are basically two types of bankruptcy:

Chapter 7

Chapter 7 bankruptcy is a total liquidation of the business.

Chapter 11

Chapter 11 is a reorganization allowing “an honest debtor to get a fresh start”.
If you were a PRP and had to settle your environmental liability, would you rather be in bankruptcy court or federal court where you’re facing CERCLA liability?
BANKRUPTCY TRUSTEE

Fiduciary duty to maximize the value for the benefit of the estate.

Remediation costs are handled as just another debtor.

Remediation costs are sometimes hard to quantify, and therefore aren’t viewed favorably by the Trustee. The other debtors are going to downplay remediation costs.
CHAPTER 7
CROWN VANTAGE BANKRUPTCY

Paper company with three facilities and two old landfills

Trustee brokered a deal to sell all three facilities, but NOT with the contaminated landfills and an old waste water treatment sludge lagoon.

The State was given only $1 million to address the landfills and lagoon. In part because we didn’t have a good cost estimate.

$500,000 alone was necessary just to handle exposed drums at one of the landfills. The remaining funds went to leachate treatment and investigations of the other landfill and lagoon.

One mill was redeveloped, another became a Superfund site, the third remains vacant. One landfill is also a superfund site, and the other landfill and lagoon is in negotiations with a former operator.
CHAPTER 11
GENERAL MOTORS – RACER TRUST

With the help of Uncle Sam, GM was able to emerge from bankruptcy a viable company after shedding almost all of it’s legacy environmental liability. A “fresh start” for the debtor.

The RACER Trust is a relatively new and innovative solution to addressing environmental contamination from a Chapter 11 bankruptcy.

Mission is to clean-up and revitalize over 60 former GM locations across the country.

The Trust was initially given about $500 million, and gets additional income form the sale of the clean property.

So far it’s working.