Keeping Potentially Responsible Parties (PRPs) Out of Bankruptcy Courts

Gilbert L. Hamberg

Milling, Benson, Woodward, Hillyer, Pierson & Miller
New Orleans, Louisiana

In an era when the cost of compliance with state and federal environmental laws is rapidly rising, sometimes entities, such as operators of waste sites, are unable to pay these and other operating costs and are forced to file for bankruptcy. Citing *Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Protection* and state environmental laws, bankruptcy trustees may be suing PRPs in bankruptcy courts to share the costs to clean up debtors' waste sites. This article suggests strategies by which PRPs can avoid litigating such lawsuits in the bankruptcy courts and instead resolve them before state and/or federal forums—where they properly belong.

In *Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Protection,*[1] the United States Supreme Court issued its landmark bankruptcy/environmental decision. A processor of waste oil filed for bankruptcy, a trustee was appointed, and the trustee attempted to abandon 470,000 gallons of oil contaminated with PCB, a highly toxic carcinogen. *Midlantic* held that the trustee could not abandon the oil; i.e., identifiably hazardous property, in violation of state environmental laws. *Midlantic's* restriction upon abandonment expressly was limited to: (1) where the violation of state law is designed to protect public health or safety from "identified hazards"; and (2) where there is no "speculative or indeterminate future violation."[2] With *Midlantic* in mind, imagine the following:

A waste disposal company ("the debtor") files for bankruptcy under Chapter 7 with a bankruptcy court. A trustee is appointed. The EPA has been inspecting the debtor's disposal sites for compliance with federal environmental laws. The EPA's investigation has revealed the existence of no hazardous materials at the sites, but violations of federal environmental laws do exist. The state environmental protection agency where the sites are located ("State EPA") also has launched an investigation under state environmental laws, under which the only entity authorized to institute compliance is the State EPA. The State EPA's investigation has revealed the existence of no hazardous materials at the sites, but violations of state environmental laws do exist.

The value of the debtor's land is negative—pending completion of remedial cleanup. The estate has no unencumbered assets from which to finance the cleanup. The EPA and the State EPA have contacted known entities who have deposited or shipped waste products to the sites; i.e., potentially responsible parties ("PRPs"), about contributing their share of the cleanup costs. Many PRPs are from other states.

Neither the EPA nor the State EPA has instituted formal, administrative proceedings to determine: (1) the full extent of violations of environmental laws; (2) the total costs to clean up the sites; (3) the identity of all PRPs; or (4) the allocation among PRPs to pay for the cleanup costs. Although under the federal and the state environmental laws, liability is joint and several; i.e., each PRP is liable for the total costs, regardless of how much each sends, as a practical matter, cleanup costs are apportioned *pro rata.* E.g., a PRP who shipped one hundred barrels of a substance would pay 1/10 of what another PRP, who shipped 1,000 barrels of the same substance, would pay. It is unknown whether the Court would adhere to this practical approach.

Citing the *Midlantic* restriction upon abandonment, the trustee files with the Court a complaint against known PRPs, in which he seeks to impose liability under the state environmental laws to pay for the cleanup costs.

This article is written for PRPs. They should file a motion to abstain and/or dismiss the complaint[3] raising the arguments raised herein, with the result being that the complaint should be adjudicated before the State EPA and not before the Court. There are unresolved issues arising under state environmental laws which are outside the expertise of the Court. They should not be adjudicated by the Court. To accommodate concerns about the potential existence of hazardous materials at the sites, the Court could direct that the complaint be transferred to the State EPA, and the trustee not abandon the sites—pending the issuance of final orders by the EPA and the State EPA about the full extent of violations of environmental laws. Once the environmental agencies conclude that hazardous substances are not present, then the trustee should be directed to abandon the sites.

Jurisdiction

The first steps in any bankruptcy dispute are to determine whether the court has jurisdiction to decide it and whether the dispute is a core proceeding. Because there is a pending Chapter 7 involving this trustee, and the sites are property of the estate, ultimately, the Court probably would have jurisdiction to hear the complaint, as it involves a core

proceeding.[4] A core proceeding is one "intrinsic to the adjustment of debtor-creditor relationships involved in bankruptcy relief."[5] For example, a state law breach of contract action by a trustee against a non-creditor third party is not a core proceeding.[6]

The complaint could be classified as a core proceeding under Section 157(b)(2)(A) ("matters concerning the administration of the estate"), because the cleanup and the payment affect the distribution or administration of the remaining assets of the estate. The complaint also could be classified as a core proceeding under Section 157(b)(2)(O) ("other proceeding affecting the liquidation of the assets of the estate"), because the cleanup and the payment affect the liquidation of the debtor's remaining assets.

Even with jurisdiction, there are significant reasons why the Court should not adjudicate the dispute. "Bankruptcy courts should be reluctant to entertain questions which may be equally well resolved elsewhere."[7]

Exceptions to Jurisdiction

Withdrawal of the Reference

Under Section 157(d) and Bankruptcy Rule 5011(a), a motion to withdraw is filed with the district court. It means that the initial transfer or reference of the case from the district court to the bankruptcy court is undone. The district court then would hear the matter. To prevail, the movant must show that "resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce."

Here, resolution of the Bankruptcy Code would be present. Property of the estate is at stake. Although many of the PRP's are out of state defendants and their waste products crossed state lines to reach the sites, Section 157(d) requires more. Interpretation of federal statutes directly involving interstate commerce has to be present.[8] The complaint has raised only state environmental laws, so it would be premature to seek withdrawal of the reference. However, if the EPA intervened in the dispute, or the trustee introduced federal environmental laws, then it would be appropriate for the PRPs to move to withdraw the reference.[9]

Abstention

Under Section 1334(c) and concerns for federalism, a federal court should abstain and defer to state courts or administrative agencies to resolve state law claims. Where there are only state law issues, the presumption is that only the state court or administrative agency has expertise. To promote judicial economy and uniformity of judgments, a bankruptcy court should abstain to the state forum for timely resolution of the conflict according to state laws.[10]

In *Commercial,* the state filed a lawsuit in state court against an operator of a waste center for violations of state environmental laws. The operator filed for Chapter 7. A trustee was appointed. The trustee sought to have the state lawsuit removed to the bankruptcy court. *Commercial* abstained from exercising jurisdiction. Under Section 1334(c), abstention is mandatory in a matter which would have been filed in the state forum, but for the filing for bankruptcy. *Commercial* used three factors: (1) the case is based upon a state law claim, which may be related to, but did not arise under or out of a bankruptcy case; (2) the case would not have been filed in federal court but for the bankruptcy filing; and (3) if litigated in state court, the case would be timely adjudicated.

Like *Commercial,* the three factors here are: (1) the complaint is based solely upon state environmental laws; but for the debtor being in Chapter 7, there would be no independent jurisdictional basis for jurisdiction in a federal court; (2) but for the Chapter 7, the trustee would have filed the dispute with the State EPA and not with the Court; and (3) there is no allegation that timely resolution of the dispute would not occur at the State EPA. The unresolved environmental issues require interpretation not only of state laws but also of very specialized environmental laws. The resolution does not require the bankruptcy expertise of the Court.[11] It does invoke the expertise of the State EPA—the forum to which the Court should remove the complaint by abstaining.

Prematurity

Under the doctrines of case or controversy or prematurity, every case in federal court must present an actual dispute. For judicial power to be exercised, the dispute must have matured to a point where the parties' adverse positions are established concretely.

Here, the unresolved issues are ones which the State EPA will have to resolve according to state laws. It is premature for the Court to adjudicate them. Federal courts should not decide contingent questions. "A case or controversy must exist at all stages of an action and cannot be predicated on a speculative future event."[12]

The Bankruptcy Code addresses claims for reimbursement or contribution of entities liable with the debtor, which are contingent when made: *they are disallowed.*[13] This is substantive, bankruptcy law. It does not invoke jurisdictional analysis. However, the result is the same. The complaint is based upon state laws, which would make the PRPs jointly and severally liable with the debtor for all environmental damages. But the amount of total cleanup costs has not been determined yet. Thus, the instant claims are unliquidated and contingent, and they should be disallowed.

In *In re Charter Co.,*[14] the plaintiffs had sued two corporations in federal and state courts for alleged violations of state and federal environmental laws at their waste disposal sites. A debtor had transported waste products to their sites. The two corporations filed proofs of claim against the debtor, which alleged that if the two were held liable for damages, then the debtor was jointly and severally liable to them. No judgment had been rendered against the two corporations in any of the pending environmental lawsuits, and neither had made any payments to the plaintiffs.

Charter held that the proofs of claim violated Section 502(e)(1)(B). Bankrupt estates "should not be burdened by estimated claims contingent in nature." By disallowing these contingent claims, *Charter* concluded that it was promoting environmental protection. Thereafter, parties would have to resolve environmental violations before asserting claims in bankruptcy courts.[15]

In *In re Hemingway Transp., Inc.,*[16] the owner of a waste disposal site was required by the EPA to clean up the site, which it had bought from the debtor. Then, the EPA sued the owner and the debtor under federal environmental law for contributions as PRPs. The owners sought contribution and indemnification from the trustee of the Chapter 7 debtor for money already paid to the EPA and for any future costs it might have to pay the EPA. *Hemingway* disallowed the claim for future costs, because the claim of a co-debtor was contingent—until the main debtor's liability was established, and the debtor paid. Being labeled a PRP by the EPA is not definitive on the question of liability. Neither the debtor nor the owner had been held liable yet; nor had they paid any future cleanup costs. Thus, Section 502(e)(1)(B) applied.[17]

Standing

Is the trustee the proper party to raise the state environmental laws to assess liability thereunder against the PRPs? A plaintiff "must assert his own legal rights and interest, and cannot rest his claim to relief on the legal rights or interests of third parties."[18]

Here, the state environmental laws authorized only the State EPA to enforce them. In that private parties are not granted standing under the state laws, the trustee has no standing to prosecute the complaint.

Primary Jurisdiction

A federal court should not decide a case when initially it should be referred to an administrative agency, which was created to resolve specialized disputes of that nature.[19] The primary jurisdiction doctrine defers controversies from federal courts to administrative agencies, where they properly belong.[20] This doctrine has been applied in bankruptcy cases too.[21]

Accordingly, the Court should not decide the complaint, but should remove it to the State EPA for proper resolution according to state environmental laws.

Substantive Issues

Abandonment

Post-*Midlantic* abandonment cases[22] have emphasized the "identified hazards" limitation in *Midlantic*. Where there are no "identified hazards" at a debtor's property, they have authorized abandonment. To determine whether hazards exist, they have focused upon whether the EPA or the State EPA has instituted formal proceedings in courts or in administrative agencies to remedy the environmental damages. Where the government has not, this is indicative of no imminent danger or "identified hazards." Then abandonment is authorized.

Under these authorities, the Court now could authorize the trustee to abandon the debtor's sites, as neither the EPA nor the State EPA has found, so far, any "identified hazards" at the sites or has instituted formal litigation to remedy the environmental violations. Because abandonment of the debtor's sites could be ordered now, this further suggests that the Court should not be adjudicating state environmental issues.

In *Smith-Douglass,* there were no unencumbered assets from which to finance the cleanup of the debtor's property. There were non-hazardous violations of state environmental laws on the property. *Smith-Douglass* authorized the abandonment of the property, as *Midlantic* applied only where "conditions on property pose a danger of imminent death or illness" (abandonment presented "risk of explosion, fire, contamination of water supplies, genetic damage, death and other dangers").

In *Ferrante,* a debtor owner and operator of a water supply system to about fifty customers had been supplying contaminated water for years—with the knowledge of the state EPA and the customers, who had been warned to use the water only to flush toilets. *Ferrante* authorized the abandonment of the entire system. *Midlantic* was inapplicable, because there were no identified hazards.

In *Better-Brite,* the trustee had no unencumbered assets from which to finance the cleanup of land, upon which there were non-hazardous, environmental violations. The cleanup costs vastly exceeded the value of the debtor's remaining assets. Citing the narrow application of *Midlantic, Better-Brite* sanctioned abandonment.

In *Franklin,* the cost to make barrels of hazardous waste products comply with state environmental laws exceeded the value of the debtor's assets. The effect of abandonment would have removed the barrels from the estate and would have reverted ownership interest to the debtor itself, subject to any secured claims of secured creditors. The trustee had commissioned an expert to do an environmental analysis of the barrels, the environmental specialist had advised the state of the existence of the environmentally dangerous products, and the state had taken no formal action. *Franklin* interpreted this to mean that there was no immediate threat to health and safety; therefore, *Midlantic* was inapplicable.

Exceptions from the Automatic Stay

A debtor generally is guaranteed an automatic stay by 11 U.S.C. §362 against any pending lawsuits, whether before administrative agencies or courts. The stay applies only to suits against the debtor, not to suits by the debtor against others. The stay is of a limited duration. Other parties can file motions for relief from the stay to permit them to proceed with lawsuits against the debtor in other forums.

There are some blanket exceptions to Section 362. The ones primarily involved in the environmental cases are Sections 362(b)(4) and 362(b)(5). Debtors or trustees raise Section 362 to try to halt pending environmental lawsuits filed against them by governmental entities.

Generally, the automatic stay restrictions of Section 362 are inapplicable to pending environmental litigation against a debtor by state or federal agencies. The strongest authority for why Sections 362(b)(4) and (b)(5) permit the continuation of pending environmental proceedings is their legislative history: "where a governmental unit is suing a debtor [about] . . . environmental protection, the action or proceeding is not stayed under the automatic stay."[23] Equally compelling is the reasoning in *Midlantic,* which embraced this same legislative intent. So have other cases, which have concluded that environmental actions are brought by the government pursuant to their police and regulatory powers and not to enforce money judgments.[24]

Sections 362(b)(4) and (b)(5) are significant from the perspective of exceptions to jurisdiction. If a governmental action to enforce environmental laws is *per se* exempt from the automatic stay, then this is a recognition by Congress that such litigation is to proceed without interference from a bankruptcy court and without having to stop to obtain relief from the automatic stay. The State EPA's efforts to clean up the sites should be permitted to continue in due course before the State EPA—without interference from the Court.

28 U.S.C. §959(b)

Section 959(b) applies whenever a bankruptcy court contemplates interfering with the laws of a state in which a debtor's property is located. A bankruptcy court *must* comply with applicable state laws. Here, Section 959(b) would require the Court, in deference to the state environmental laws, to remove the complaint to the State EPA, as the Court is not equipped to adjudicate the unresolved environmental issues. A review of some Section 959(b) cases substantiates this view.[25]

Midlantic interpreted Section 959(b) to mean that the Bankruptcy Code was *not* intended to preempt *all* state laws. Consequently, a trustee sometimes must comply with non-bankruptcy laws; e.g., state environmental laws, when abandonment of identified hazards is an issue.

In *Robinson,* an involuntary Chapter 7 was filed against the owner of apartments. The bankruptcy court issued an order appointing a trustee and permitting a gas utility to terminate service upon five days notice if the trustee failed to pay. The trustee failed to pay, and the utility terminated. Under state law, there were specific procedures whereby

tenants were to be notified and given an opportunity to pay the utility bills if their landlord were unable to do so—prior to termination. Tenants sued the utility and the trustee for alleged violations of those state procedures. *Robinson* reversed the bankruptcy court and held that under Section 959(b), a debtor must comply with state law procedures regarding post petition termination of utility service.

Saravia held that Section 959(b) meant that even upon rejection of a lease, a debtor still must comply with local housing code provisions. Debtors "are not excepted from local law by virtue of federal bankruptcy law." Although there are instances when federal bankruptcy law might preempt state laws, public health and safety laws are not.

Charles George cited Section 959(b) as one reason for dismissing the Chapter 7 altogether, rather than require the trustee to comply with onerous state environmental laws, especially where there were not enough assets in the estate to comply with state environmental laws.

Dismissal

Dismissal of the Chapter 7 case entirely under 11 U.S.C. §707 "for cause" is the ultimate remedy to resolve the complaint. The arguments would be that the estate is so hopelessly insolvent that it could not possibly comply with the state environmental laws, continuation of the bankruptcy would be fruitless, and there is no expertise of the Court in managing waste sites. Dismissal would mean that the EPA and the State EPA would apply the environmental laws to clean up the sites. Hopeless insolvency and total inability to comply with environmental laws are key factors relied upon in the cases[26] sanctioning dismissal where the estate contained hazardous property. Although hazardous property may not have been found yet at the sites, these principles support the argument that the Court is no place to decide the complaint.

In *Commercial,* state and federal environmental agencies were aware of the hazardous problems affecting the debtor's estate and were prepared to take action to remedy them—as soon as they were free from the automatic stay. The debtor's sites had become stabilized, and no additional waste materials were being accepted. *Commercial* dismissed the case. It ruled that if it exercised jurisdiction, then the trustee would be obligated under *Midlantic* to clean up the sites.[27] Due to the serious problems posed by the hazardous property, *Commercial* wanted to put the environmental authorities in charge as soon as possible, without having to deal with a bankruptcy trustee, who only would have slowed down the cleanup and increased the chances of harm and injury to the public.

In *Mattiace,* a Chapter 11 was dismissed because the estate was hopelessly insolvent and did not have the ability to comply with the state environmental laws and to manage the debtor's property. Chapter 7 was no alternative, because a trustee could do no better than the debtor. *Mattiace* found that the debtor had no acceptable means of disposing of the hazardous materials and did not have the finances to implement a plan to clean up the site, as required under state law.[28]

In *Charles George,* the debtor operator of a waste disposal facility filed for Chapter 11. It faced insurmountable state and federal environmental violations and had insufficient resources to pay therefor. Before bankruptcy, the state had instituted an environmental proceeding against the debtor. The state argued that a trustee would be liable personally if he were unable to clean up the property in accordance with state environmental laws. No trustee was willing to serve. *Charles George* held that dismissal was warranted, because the place to resolve the environmental problems in the most expeditious manner was the state forum.[29]

Conclusion

Those who thought environmental disputes are complicated are correct, but when coupled with a financially-distressed company with environmentally-contaminated property which files for bankruptcy, the complexities are compounded.[30] Trustees who seek to impose liability upon PRPs under state environmental laws when there are not enough unencumbered assets in the estate to fund environmental cleanups should *not* be doing so in bankruptcy courts.

Enforcement of state environmental laws, determination of liability, determination of PRPs, assessment of cleanup costs, and assessment of apportionment among all PRPs are highly technical tasks. They require the expertise of state EPAs. Bankruptcy courts should not decide environmental issues, over which they have no expertise.

PRPs who are sued under the circumstances set forth above would be well-advised to raise these arguments. A bankruptcy court is not the appropriate forum to enforce state environmental laws, and particularly, where it is not the state EPA seeking such enforcement.

Endnotes

1. 474 U.S. 494 (1986).
2. *Midlantic,* 474 U.S. at 507, n. 9, reads:
   > This exception to the abandonment power vested in the trustee . . . is a narrow one. It does not encompass a speculative or indeterminate future violation of such laws that may stem from abandonment. The abandonment power is not to be fettered by laws or regulations not reasonably calculated to protect the public health or safety from imminent and identifiable harm.
3. This motion would be filed under 28 U.S.C. §1334(c), Rule 12(b) of the Federal Rules of Civil Procedure, and Bankruptcy Rules 5011(b) and 7012(b).
4. 28 U.S.C. §§1334 and 157; 1 *Collier on Bankruptcy* ¶3.01, at 3-5 to 3-87 (15th ed. 1991); *In Re Wood,* 825 F.2d 90 (5th Cir. 1987).
5. *In re Marine Iron & Shipbuilding Co.,* 104 B.R. 976, 980 (D. Minn. 1989).
6. *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.,* 458 U.S. 50 (1982).
7. *In re Paso Del Norte Oil Co.,* 755 F.2d 421, 425 (5th Cir. 1985).
8. *In re Continental Airlines Co.,* 790 F.2d 35 (5th Cir. 1986), *affirming* 50 B.R. 342 (S.D. Tex. 1985) (labor laws); *In re Am. Solar King Co.,* 92 B.R. 207 (W.D. Tex. 1988) (securities laws).
9. *In re Envtl. Waste Control, Inc.,* 125 B.R. 546 (N.D. Ind. 1991) (withdrawal of reference in dispute by EPA and state EPA against debtor; court would not await settlement among PRPs; where hazardous wastes had contaminated ground water, court ordered debtor's remaining assets to be applied to remedial cleanup efforts); *U.S. v. ILCO, Inc.,* 48 B.R. 1016 (N.D. Ala. 1985) (withdrawal of reference in dispute by EPA and state EPA where consideration of the environmental laws was essential to the resolution).
10. *Marine Iron,* 104 B.R. 976; *In re Commercial Oil Serv., Inc.,* 88 B.R. 126 (N.D. Ohio 1987), *affirming* 58 B.R. 311 (Bankr. N.D. Ohio 1986).
11. *Accord In re Kish,* 41 B.R. 620, 626 (Bankr. E.D. Mich. 1984) (state court lawsuit for violation of state environmental laws not enjoined; "on the question of expertise, the state court must be given the nod when dealing with questions of the application of state environmental laws.").
12. 6A *Moore's Federal Practice* ¶57.11, 57-84 to 57-90 (2d ed. 1991).
13. 11 U.S.C. §502(e)(1)(B).
14. 862 F.2d 1500 (11th Cir. 1989).
15. *Charter,* 862 F.2d at 1504, opined:
    > The bankruptcy statute's prohibition on purely contingent claims such as those asserted here would seem to encourage, rather than discourage, the expeditious cleanup of hazardous waste disposal sites and the prompt liquidation of claims arising therefrom since those seeking contribution will have to incur the expenses associated with a cleanup, or pay pursuant to a judgment or negotiated settlement, prior to stating an allowable claim to a bankrupt's estate.
16. 126 B.R. 656 (D. Mass. 1991).
17. *See also In re Kent Holland Die Casting & Plating, Inc.,* 125 B.R. 493, 501 (Bankr. W.D. Mich. 1991) (lessor's claim under federal environmental laws for cleanup of hazardous substance on debtor lessee's leased premises was contingent and disallowed where suit by EPA and state EPA still was pend-

ing); *accord Midlantic*, 474 U.S. at 507, n.9 (the limitation upon abandonment "does not encompass a speculative or indeterminative future violation of such laws [state laws promoting public health or safety] that may stem from abandonment."); *In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988) (*Midlantic* restriction inapplicable where the hazards are speculative or await action by an administrative agency).

18. *Warth v. Seldin*, 422 U.S. 490, 499 (1975); *Hill v. Houston*, 789 F.2d 1103.
19. *Weinberger v. Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 654 (1973); *Far East. Conference v. U.S.*, 342 U.S. 570, 574-75 (1952):

    Threshold questions within the peculiar expertise of an administrative agency are appropriately routed to the agency, while the court stays its hand. . . . In cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over. This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined. Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure.
20. *Weinberger, id.* (FDA); *Far East, id.* (Federal Maritime Board); *Wagner & Brown v. ANR Pipeline Co.*, 837 F.2d 199 (5th Cir. 1988) (FERC).
21. *INF, Ltd. v. Spectro Alloys Co.*, 651 F.Supp. 1405 (D. Minn. 1987) (ICC); *In re Saint Mary Hosp.*, 125 B.R. 422 (Bankr. E.D. Pa. 1991) (state welfare department).
22. *Smith-Douglass*, 856 F.2d 12; *In re Ferrante & Sons, Inc.*, 119 B.R. 45 (D. N.J. 1990); *In re Better-Brite Plating, Inc.*, 105 B.R. 912, 917 (Bankr. E.D. Wis. 1989); *In re FCX, Inc.*, 96 B.R. 49 (Bankr. E.D. N.C. 1989); *In re Franklin Signal Co.*, 65 B.R. 268 (Bankr. D. Minn. 1986).
23. S. REP. NO. 95-989, 95th Cong., 2d Sess. 52 (1978), *reprinted in* 1978 U.S. Code Cong. & Ad. News 5787, 5838; H.R. REP. NO. 95-595, 95th Cong, 2nd Sess. 343 (1978), *reprinted in* 1978 U.S. Code Cong. & Ad. News 5963, 6299.
24. *U.S. v. Nicolet, Inc.*, 857 F.2d 202 (3rd Cir. 1988); *In re Commonwealth Oil Refining Co.*, 805 F.2d 1175 (5th Cir. 1986), *cert. denied* 483 U.S. 1005 (1987); *Cournoyer v. Lincoln*, 790 F.2d 971 (1st Cir. 1986).
25. *Midlantic*, 474 U.S. at 508; *Robinson v. Michigan Consol. Gas Co.*, 918 F.2d 579 (6th Cir. 1990); *Saravia v. 1736 18th St., N.W., Ltd.*, 844 F.2d 823 (D.C. Cir. 1988); *In re Stevens*, 68 B.R. 774 (D. Maine 1987); *In re Charles George Land Reclamation Trust*, 30 B.R. 918 (Bankr. D. Mass. 1983).
26. *Commercial*, 88 B.R. 126; *In re Mattiace Indus., Inc.*, 76 B.R. 44 (Bankr. E.D. N.Y. 1987); *Charles George*, 30 B.R. 918.
27. According to *Commercial*, 88 B.R. at 317, the trustee "will be liable for failing to clean up the site as well as for any injuries resulting from such failure. . . . [T]he trustee who is unfamiliar with hazardous waste disposal should [not] bear such an onerous burden."
28. According to *Mattiace*, 76 B.R. at 47, "Congress' intent was not to permit the operation of a business for profit that constitutes a threat to the health and welfare of the public, nor that the bankruptcy court serve as a refuge for . . . polluters."
29. According to *Charles George*, 30 B.R. 918, "[t]his Court had neither the resources, the expertise or, for that matter, the suitably qualified trustee with experience in hazardous waste management, to do other than to allow the resolution of this matter by the continuing efforts of the appropriate state court."
30. Even if PRPs are not involved, this article should alert the reader to the many issues involved when environmental issues arise in bankruptcy cases.

G.L. Hamberg practices bankruptcy, commercial litigation, and regulatory law with the Milling law firm. Previously, he was a rates attorney with the Pennsylvania Public Utility Commission and a law clerk student intern in the U.S. Bankruptcy Court (E.D. Pa.). His mailing address is Milling, Benson, Woodward, Hillyar, Pierson & Miller, Suite 2300, 909 Poydras Street, New Orleans, LA 70112-1017.