Highlights for 2026 Edition

The revisions for this 2026 edition of **Environmental Obligations in Bankruptcy** reflect the authors' annual review of developments, including caselaw at the intersection of environmental and bankruptcy law. These developments are analyzed in the text, along with improvement of existing material. For example:

In **Chapter 3, "The Environmental Claim and When It Arose,"** the authors consider the decision in *Tronox Inc. v. Anadarko Petroleum Corporation*, in which the District Court for the Southern District of New York addresses the "prepetition relationship" test, based on the settlement of an environmental tort case.

Similarly, in **Chapter 8, "Treatment and Discharge of Environmental Obligations,"** the authors note that an important issue in analyzing plans of reorganization in CERCLA cases is the time when a CERCLA claim arose and thus whether it has been discharged, which in turn varies by the circuits' various approaches the discharge question. These approaches vary depending on the courts' interpretations of the intended accrual of the word "claim" under the Bankruptcy Code. In *City of Hammond, Indiana v. ASARCO Master, Inc.*, the plaintiff cities' CERCLA claims were discharged in the ASARCO bankruptcy. The District Court for the Northern District of Indiana (in a decision from which an appeal has been filed with the Seventh Circuit) said the plaintiffs had sufficient notice of the bankruptcy and they "could have raised an environmental claim prior to ASARCO's bankruptcy bar date but they didn't. Plaintiff's CERCLA claim should therefore be considered discharged by the court order confirming the bankruptcy."

On the other hand, in *In re Texaco, Inc.*, the successors to a reorganized Chapter 11 debtor-oil company moved to reopen its 37-year-old bankruptcy case and to enforce the discharge injunction, seeking to bar claimants from pursuing lawsuits against the debtor or its affiliates for alleged environmental injury and land loss stemming from debtor's activities in coastal areas. The Bankruptcy Court for the Southern District of New York allowed reopening of the Chapter 11 case but found that the claimants' lawsuits against debtor fell within the unambiguous meaning of the plan's definition of unimpaired class of claims, and therefore were not barred by discharge injunction.

Likewise, in a Third Circuit case, *In re Congoleum Corporation*, a former corporate sibling of the Chapter 11 debtor, a manufacturer of flooring and other products that contained

asbestos, brought a motion to reopen the debtor's bankruptcy case, which had been closed for more than a decade, and for a declaration that, under the order confirming the debtor's reorganization plan, it was not liable for certain environmental claims of debtor's creditor stemming from the operation of the debtor's manufacturing facility. The authors analyze the decision of the Court of Appeals, after an *en banc* hearing, which reviewed complex facts to rule that the former corporate sibling was not liable for those claims. The creditor's due process rights were more than satisfied and the confirmation order's finding that the former corporate sibling had no responsibility for the debtor's environmental liabilities was not a third-party release that violated the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

Another third-party liability case was presented by the Bankruptcy Appellate Panel for the Ninth Circuit in *In re Ben Nye Co., Inc.*, and analyzed by the authors. It illustrates the limitations of 11 U.S.C.A. § 524(g) (statutory authority for channeling injunctions in asbestos cases). The debtor Ben Nye Co. did not attempt to use subsection 524(g) because it "lacked the insurance or assets necessary to utilize that statute."

These and other cases are presented in this 2026 edition in a variety of contexts.

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