



## Chapter 11

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### Reclamation Issues in Coal Bankruptcies

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**§ 11.01. Introduction.**

Coal bankruptcies raise a number of thorny issues at the intersection of environmental and bankruptcy law. Chief among them is whether and to what extent federal bankruptcy law affects the debtor's obligation to reclaim land — *i.e.*, the debtor's obligation to restore a surface mining site to its approximate original appearance, typically by restoring topsoil and planting appropriate ground cover after extracting the coal. In this chapter we address several issues relating to coal reclamation obligations in bankruptcy proceedings, issues that present an arguable conflict between the Bankruptcy Code's goal of providing debtors with a "fresh start" and environmental law's laudable purpose of protecting the environment.

Chapter 11 of the Bankruptcy Code provides a vehicle for reorganizing a financially troubled business. Although individuals as well as corporations can utilize Chapter 11, and although the Chapter 11 process can result in liquidation as well as reorganization, for present purposes we focus on the use of Chapter 11 to reorganize financially troubled businesses. We therefore ignore or gloss over many of the differences that may arise in other contexts. Likewise, as our aim is not to provide a detailed analysis or description of bankruptcy law, we touch only briefly on the relevant bankruptcy principles.

The Chapter 11 reorganization process serves the twin goals of granting the debtor a "fresh start" and providing a mechanism for orderly debt collection. The Bankruptcy Code achieves the first goal by providing the debtor with a "discharge" upon confirmation of a Chapter 11 plan, which operates as an injunction against post-confirmation action to collect on pre-confirmation debts. The Code achieves the second goal by collecting a bankruptcy estate, comprised essentially of all legal or equitable interests of the debtor in property as of the commencement of the case, and distributing that estate in an equitable fashion amongst creditors. In addition, once the debtor files a Chapter 11 petition, the Bankruptcy Code automatically "stays" any actions or proceedings against the debtor, thereby maintaining the status quo between the debtor and its creditors and facilitating the orderly resolution of the many competing claims to the debtor's assets.

Nothing in the Bankruptcy Code, however, gives the debtor *carte blanche* to conduct its operations in violation of applicable law. Indeed,

federal law specifically requires that the debtor's property be "manage[d] and operate[d] according to the requirements of the valid laws of the State in which such property is situated."<sup>1</sup> Likewise, the automatic stay does not apply to proceedings in which governmental entities seek to enforce their police and regulatory power.<sup>2</sup> For this reason, state or federal agencies may typically seek to enforce compliance with environmental laws notwithstanding the automatic stay.<sup>3</sup>

In many cases, there is little if any conflict between the Bankruptcy Code and environmental law. So, for example, a debtor mining company could not conduct mining operations during the bankruptcy case without complying with state law governing those operations. Nor would the automatic stay prevent the state from seeking to compel the debtor's compliance with state law. Somewhat more difficult issues arise, however, where the debtor has ceased some or all of its operations prior to filing its Chapter 11 petition. In this chapter, we address several such issues.

First, we address whether costs incurred to reclaim mining sites will be entitled to administrative priority. In addressing this question, we distinguish between three types of reclamation costs: (1) costs incurred pre-petition to reclaim land mined prior to the bankruptcy, (2) costs incurred post-petition to reclaim mines that have been operated during the bankruptcy, and (3) costs incurred post-petition to reclaim mines that ceased operating before the bankruptcy. This third category of costs, which we will call "deferred reclamation costs," is by far the most problematic, and the bulk of the first section of the chapter focuses on these deferred costs.

Second, we briefly address the priority status of reclamation bond premiums due during the bankruptcy under contracts entered prior to the bankruptcy filing.

And, third, we address whether the Bankruptcy Code allows a buyer to purchase previously-mined land from the bankruptcy estate without incurring reclamation obligations.

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<sup>1</sup> 28 U.S.C. § 959(b).

<sup>2</sup> See 11 U.S.C. § 364(b)(4).

<sup>3</sup> See, e.g., *Penn Terra Ltd. v. Dep't of Env'tl. Resources*, 733 F.2d 267 (3d Cir. 1984).