BANKRUPTCY REMEDIATION TRUSTS
A NEW PRP PARADIGM IN OUR POST-INDUSTRIAL SOCIETY

An Environmental Consultant's Perspective
Great Lakes Environmental Remediation and Redevelopment Conference
October 16, 2019
David Heidlauf, CPG 9365
BANKRUPTCY MILESTONES

Ramboll assists clients and stakeholders through the various pre-emergence bankruptcy milestones, into post-emergence management.

Chapter 11 filing ➔ Plan confirmation and emergence

01 Commercial debt restructuring
02 DIP financing
03 Valuation of claims
04 Claims resolution
05 Plan of reorganization
06 Post-emergence management

Due diligence
Environmental liability assessment
Due diligence
Liability valuation
GAAP compliance
Site evaluation
NRDA claims
Valuation of liabilities
Negotiation with DOJ
Estimation support
Financial alternatives
Trust fund development
Risk transfer
Disclosure statement and SEC compliance
Trust management
Site remediation
Site management

RAMBOLL EXPERIENCE
WHAT ARE BANKRUPTCY REMEDIATION TRUSTS?

- Entities established by the bankruptcy court to take title to environmentally impaired properties along with negotiated funding
- Functionally sever the contingent liabilities of the environmentally impaired properties with the parent bankrupt company
- Designed to provide a funding source to conduct response actions for its environmentally impaired properties (some funding is better than no funding)
HOW ARE BANKRUPTCY REMEDIATION TRUSTS MANAGED?

- Department of Justice is the governing authority responsible for the establishment and administration
- Managed by a court-appointed trust trustee
- Beneficiaries are the federal government (ie USEPA) and/or the respective states where the sites are located
- Each has a funded administrative account and a remediation account – typically each site has a separate remediation sub account allowance and budget
HOW ARE BANKRUPTCY REMEDIATION TRUSTS FUNDED?

- Bankrupt parent company estate
- Rights to insurance policies
- Company stock
- Rights to Rail crossing agreements (ie fiber optic)
- Judgements from lawsuits (ie fraudulent conveyance)
- Proceeds from the sale of remediated trust property
- Reimbursements from state-funded petroleum and ag chemical programs
The primary mission of Bankruptcy Remediation Trusts is to remediate and sell its properties, if possible. A secondary mission in some cases is to maintain control of the impacted property while fund lead remedial actions are being conducted.
OUR EXPERIENCE

01 We have served in the environmental consultant role on 8 LePetomane Family of Bankruptcy Remediation Trust Projects since 2002

02 These trusts have included 80+ sites in 9 EPA regions and 25 states

03 We have had individual site remediation budgets ranging from $80K to $1B+

04 Projects have entailed 2 CERCLA removal actions, 13 CERCLA NPL, 3 RCRA, 1 NRC, 2 NESHAP, 1 TSCA, 20 different State voluntary remediation programs, and 3 litigation cases

05 Sites have included waste processing, waste disposal, paper mill, paint manufacturing, pesticide manufacturing, mines, mills, smelters and rail siding industrial settings
LEPETOMANE FAMILY OF ENVIRONMENTAL BANKRUPTCY SITES
SELECT PROJECT EXPERIENCE
FOL ENVIRONMENTAL BANKRUPTCY TRUST     2002 – PRESENT

CHALLENGES
8 sites in 4 states in 3 EPA regions
Multiple mega NPL sites
Liabilities in the billions
Limited funding
Varied PRP status

WHAT WE DID
Lead environmental contractor
Support environmental contractor
Custodial contractor
Supported insurance policy cost recovery claims/litigation

EFFECT
Progressed CERLCA response actions at two mega NPL sites with failed remedies; successfully remediated mercury reprocessing and low level rad disposal sites; and two remediated properties sold
Hardeman County Landfill Site – Toone, TN  
2002 – Present

<table>
<thead>
<tr>
<th>CHALLENGES</th>
<th>WHAT WE DID</th>
<th>EFFECT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mega complex NPL site</td>
<td>Site conceptual model update</td>
<td>Successfully completed SVE pilot test remediation of a 1-acre buried drum landfill to help Region 4 win National Remedy Review Board buy-in of an SVE remedy for the main 23-acre buried drum landfills with 200,000 drums left in place</td>
</tr>
<tr>
<td>Failed remedies</td>
<td>Documented remedy failure</td>
<td></td>
</tr>
<tr>
<td>Dangerous chemicals: Hex – Level B</td>
<td>Conducted RI, FS, risk assessments and pilot studies to support new approach</td>
<td></td>
</tr>
<tr>
<td>Rural setting – Past residential harm</td>
<td>Serving as landfill cap and SVE Design Engineer of Record</td>
<td></td>
</tr>
<tr>
<td>Sole PRP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limited funding</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CHALLENGES</td>
<td>WHAT WE DID</td>
<td>EFFECT</td>
</tr>
<tr>
<td>------------</td>
<td>-------------</td>
<td>--------</td>
</tr>
<tr>
<td>Mega complex NPL site</td>
<td>Provided insurance policy cost recovery litigation support</td>
<td>Supported successful recovery of $50MM from an AIPG environmental cost cap policy; Trust retains property ownership during fund lead clean-up</td>
</tr>
<tr>
<td>Failed remedies</td>
<td>Represented the Trust at periodic community action group meetings</td>
<td></td>
</tr>
<tr>
<td>Dangerous chemicals: DDT – Level B</td>
<td>Provided site custodial support</td>
<td></td>
</tr>
<tr>
<td>Urban setting - Community distrust</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sole PRP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Limited funding</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Velsicol Chemical Corporation – St. Louis, MI 2002 – Present
Breckenridge Disposal Site – Breckenridge, MI 2002 – 2012

CHALLENGE
NRC and CERCLA removal site
Buried rad and chemical waste
More waste than anticipated
Fixed funding

WHAT WE DID
Developed RESRAD model remedial action objectives
Completed Phase I rad waste removal action
Supported Phase II rad and chemical waste removal action

EFFECT
Site successfully remediated via excavation and off-site disposal of both buried rad and chemical waste; NRC issued unrestricted use determination
PSC CyanoChem – Detroit, MI
2004 – 2009

CHALLENGE
One of two PSC sites
Closed RCRA TSD facility
Cyanide/metals contamination
Dangerous buildings and pits
Sole PRP
Limited funding

WHAT WE DID
Worked jointly with a MDEQ and their contractor to mitigate unacceptable acute site risks
Building demolition, contaminated groundwater removal and hot spot soil removal

EFFECT
Eliminated imminent risks to human health and the environment
Funds insufficient to address site’s longer term chronic risks
Property reverted back to the city
CMC HEARTLAND PARTNERS 2006 – 2019

CHALLENGE
56 sites in 7 states and 4 EPA regions
Multiple Trust beneficiaries
Rail siding parcels
Ag chemical and petroleum COCs
Encumbered property deed records

WHAT WE DID
Site investigations: 37 Phase I, 29 Phase II and 20 Phase III
Developed imminent and identifiable threat to public health and safety RAOs
Remediated 15 sites

EFFECT
Documented to the court’s satisfaction non ownership of some sites; no unacceptable risks at sites that were or were not remediated
## CMC Example Site – Fairmont, Minnesota
### 2006 – 2013

### CHALLENGE
- Arsenic impacts to shallow soil along rail siding and tracks
- Nitrate/TKN soil impacts at site of former warehouse
- Petroleum impacts to soil and groundwater from former ASTs

### WHAT WE DID
- Discover and delineate impacts to soil and groundwater
- Vapor intrusion and water supply well surveys to evaluate pathways
- Remediate soil impacts using MPCA petroleum remediation and MDA remediation programs

### EFFECT
- Received MPCA and MDA closure for the petroleum and Ag chemical evaluation and clean-up work
- Receive reimbursement of eligible costs from MN Petrofund and ACRRA programs
**C&A Mosaic Tile – Zanesville, OH**  
**2006 – 2019**

<table>
<thead>
<tr>
<th>CHALLENGE</th>
<th>WHAT WE DID</th>
<th>EFFECT</th>
</tr>
</thead>
</table>
| CERCLA non-time critical RA  
Partially completed capping remedy  
Sole PRP  
Limited funding | Provided technical oversight of the Engineer of Record for completion of the site's cap  
Conducted 8-year of post remedy landfill maintenance and monitoring | Successfully completed landfill capping remedial action and 8 years of post-closure landfill maintenance and monitoring  
Property sale pending |
CHALLENGE
17 sites, 11 states, 5 USEPA regions: 5 NPL, 2 RCRA, 2 NESHAP, 1 TSCA
Remote abandoned mine sites
Encumbered property deed records
Varied PRP status
Limited funding

WHAT WE DID
Lead environmental contractor
Support environmental contractor
Custodial contractor

EFFECT
Provided custodial services at 5 sites; progressed CERLCA, RCRA and state response actions at 7 sites; successfully remediated/sold 2 cement asbestos manufacturing, 2 smelter and 1 mill sites
**Former CAPCO Facility – Ragland, AL**  
**2009 – 2014**

<table>
<thead>
<tr>
<th>CHALLENGE</th>
<th>WHAT WE DID</th>
<th>EFFECT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama voluntary clean-up program</td>
<td>Conducted site investigation</td>
<td>Successfully remediated the site’s asbestos and PCP impacts</td>
</tr>
<tr>
<td>Asbestos- and PCB-impacted soils</td>
<td>Demolished site buildings</td>
<td>Alabama (ADEM) issued a no further action letter</td>
</tr>
<tr>
<td>Limited funding</td>
<td>Removed PCB-impacted soils</td>
<td>Sold the remediated property to an adjacent landowner for industrial reuse</td>
</tr>
<tr>
<td>In-place closure of asbestos-impacted soils</td>
<td>Established institutional controls</td>
<td></td>
</tr>
</tbody>
</table>

---

**WHAT WE DID**

- Conducted site investigation
- Demolished site buildings
- Removed PCB-impacted soils
- In-place closure of asbestos-impacted soils
- Established institutional controls

**EFFECT**

- Successfully remediated the site’s asbestos and PCP impacts
- Alabama (ADEM) issued a no further action letter
- Sold the remediated property to an adjacent landowner for industrial reuse
**Former Federated Metals Smelter Site – Alton, IL 2009 – 2015**

<table>
<thead>
<tr>
<th><strong>CHALLENGE</strong></th>
<th><strong>WHAT WE DID</strong></th>
<th><strong>EFFECT</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Illinois voluntary remediation site</td>
<td>Conducted RI, FS, RD and RA</td>
<td>Successfully remediated site, employing green remediation means: onsite borrow source, reuse of dredged spoils for cap top soil, wood chip roads and tree root ball habitat restoration</td>
</tr>
<tr>
<td>Multi-regulatory agencies</td>
<td>Constructed a passive <em>in-situ</em> groundwater treatment remedy</td>
<td></td>
</tr>
<tr>
<td>Difficult site conditions: wetlands, overhead power, nesting bald eagles, flooding, endangered Mississippi river dike</td>
<td>Excavated lead impacted soils, consolidated soils on 14-acre slag pile and capped slag pile</td>
<td></td>
</tr>
<tr>
<td>Limited funding</td>
<td>Established institutional controls</td>
<td></td>
</tr>
</tbody>
</table>

Sold remediated site to a brownfields developer
Former ASARCO Mill Site – Deming, NM
2009 – 2014

**CHALLENGE**
New Mexico voluntary remediation program
Abandoned mill site

**WHAT WE DID**
Conducted a site investigation
Excavation of metals-impacted soils, consolidation under an existing spoils landfill and placement of surface barrier
Established institutional controls

**EFFECT**
Successfully remediated site
New Mexico issued a no further action letter
The Trust sold the site to an adjacent landowner
Silverton Site – Silverton, CO
2009 – Present

CHALLENGE
81 mining claims; only one has environmental issues
That claim is part of the Bonita Peaks NPL site
Public resistance against disturbance of historic mine features

WHAT WE DID
Mine safety closure coordination
Site investigation of the Army Tunnel and Aspen Mine tailing piles on the San Juan claim
In-situ tailings pile stabilization pilot test

EFFECT
Trust unable to initiate any response actions until environmental issues identified at the San Juan claim
Response measures limited by community tourism-driven aversion to disturbance of historic mining features
LYONDELL TRUST  2010 – PRESENT

CHALLENGE
7 sites in 7 states and 5 EPA regions
2 NPL, 1 RCRA and 4 state sites

WHAT WE DID
Served as lead environmental contractor
Served as support environmental contractor
Served as custodial contractor

EFFECT
Progressed CERLCA, RCRA and state response actions at 6 sites
Sold one material storage site
Turtle Bayou – Turtle Bayou, TX  
2010 – Present

<table>
<thead>
<tr>
<th>CHALLENGE</th>
<th>WHAT WE DID</th>
<th>EFFECT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waste chemical disposal NPL site</td>
<td>Optimization of long-term groundwater monitoring program</td>
<td>Optimized long-term groundwater monitoring program to reduce the annual groundwater monitoring costs and thereby increase the life of the Trust</td>
</tr>
<tr>
<td>Long remediation history with multiple technologies</td>
<td>Conducted additional plume delineation studies</td>
<td></td>
</tr>
<tr>
<td>Recalcitrant contamination issues</td>
<td>Facilitated technical impracticability waiver</td>
<td></td>
</tr>
<tr>
<td>Limited funding</td>
<td>Proposed institutional controls</td>
<td></td>
</tr>
</tbody>
</table>

Optimized long-term groundwater monitoring program to reduce the annual groundwater monitoring costs and thereby increase the life of the Trust.
St. Helena – Baltimore, MD
2010 – Present

**CHALLENGE**
- Former pigment manufacturing facility
- Abuts Baltimore harbor
- Land and sediment impacts
- Interested perspective purchaser

**WHAT WE DID**
- Conducted a multi-year RCRA facility inspection
- Geochemical modeling demonstrated no detrimental impacts from groundwater discharge to harbor
- Conducted land-focused corrective measures study

**EFFECT**
- Capping based remedy with no active groundwater treatment requirements
- Property sales contract pending
<table>
<thead>
<tr>
<th>CHALLENGE</th>
<th>WHAT WE DID</th>
<th>EFFECT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Former magnesium product and rocket fuel manufacturing site with a perchlorate groundwater plume that covers 5,000 acres and historically impacted Lake Mead</td>
<td>Managed completion of a $100MM interim soil removal</td>
<td>Working toward cost-effectively addressing onsite and offsite impacts consistent with remedial action objectives while addressing Bankruptcy Trust, regulatory agency, stakeholder and community concerns</td>
</tr>
<tr>
<td>Multiple coalescing plumes, multiple PRPs and multiple consultants</td>
<td>Groundwater remedial performance monitoring</td>
<td></td>
</tr>
<tr>
<td>$1B in Trust funding</td>
<td>Multi-year remedial investigation and feasibility study</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Innovative treatability studies</td>
<td></td>
</tr>
</tbody>
</table>
The Bankruptcy Remediation Trust paradigm works well when the trustee, environmental consultant, and the federal and/or state remedial project manager(s) collaborate together toward pragmatic solutions to a site’s environmental challenges with the resources available in the trust.

The Bankruptcy Remediation Trust paradigm works poorly when federal and/or state stakeholders treat the trustee and the environmental consultant as an adverse party.
ACKNOWLEDGEMENTS

Special thanks to our LePetomane Bankruptcy Remediation Trust client

Thanks to the many EPA, NRC and state regulatory partners

Thanks to Ramboll project managers Stan Popelar, Steve McGinnis, David Heinze, Angela DeDolph, Bruce Kennington and John Pekala

Special thanks to Mark Travers my friend, mentor, and former boss who hired me to begin work on his just landed first FOL Bankruptcy Remediation Trust Project