

# Akerman Practice Update

ENVIRONMENT AND NATURAL RESOURCES

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## Court Finds Environmental Claims Not Discharged by Chapter 11 Bankruptcy

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In *U.S. v. Apex Oil Company Inc.*, 579 F.3d 734 (7th Cir. 2009), the Seventh Circuit Court of Appeals ruled that Apex Oil Company, Inc. was required to undertake a costly court-ordered environmental cleanup pursuant to the Resource Conservation and Recovery Act (RCRA) at a site previously owned by a corporate predecessor that filed for Chapter 11 bankruptcy in 1986.

In *Apex*, the district court granted the Environmental Protection Agency (EPA) an injunction requiring Apex to clean up soil and groundwater impacts at a former oil refinery which may cost up to \$150 million. Apex appealed the district court's decision to the Seventh Circuit arguing that EPA's claim for an injunction had been discharged in Apex's 1986 bankruptcy case. The Seventh Circuit, in affirming the district court's grant of the injunction, ruled that the equitable remedy at issue did not constitute a dischargeable claim because RCRA does not provide for monetary relief in lieu of the court-ordered cleanup.

While the EPA's decision to seek an injunction pursuant to RCRA as opposed to other environmental laws, such as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or similar state environmental laws, may have impacted the result, the *Apex* decision highlights the conflicting goals of bankruptcy and environmental law, and the divergent court decisions currently shaping this technical area of law.

“Debtors, creditors, insurers, business owners, and insolvency practitioners should be cognizant of how environmental liability may impact a bankruptcy...”

Debtors, creditors, insurers, business owners, and insolvency practitioners should be cognizant of how environmental liability may impact a bankruptcy as the number of bankruptcies involving commercial and industrial properties increase. Such parties would benefit from the expertise of environmental counsel when assessing the risk associated with the potential environmental liability of such properties and negotiating remediation strategies and alternatives with the applicable regulatory agencies.

Robyn Neely is a Shareholder in the firm's Orlando office, representing multi-national corporations, developers, financial institutions, and various public and private sector clients on complex environmental transactions.

Jarrett Bingemann is a LEED® accredited lawyer in the firm's Orlando office, representing clients in a range of environmental and real estate matters.

Akerman is ranked among the top 100 law firms in the U.S. by *The National Law Journal NLJ 250* (2009) in number of lawyers and is the largest firm in Florida. With more than 500 lawyers and government affairs professionals, we serve clients from major business centers in Florida, New York, Washington, D.C., California, Virginia, Colorado, and Texas.

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