

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)
)
CABLE PLASTICS RECLAIMING, INC.,) CASE NO. 05-30779 HCD
) CHAPTER 11
)
DEBTOR.)

Appearances:

Jeffery A. Johnson, Esq., attorney for debtor-in-possession, May Oberfell Lorber, 300 North Michigan, South Bend, Indiana 46601;

Thomas M. Walz, Esq., attorney for Citicorp Del Lease, Inc., Hahn, Walz & Knepp, 509 West Washington Avenue, South Bend, Indiana 46601;

Steven Hostetler, Esq., attorney for Paspek Leasing and Advanced Plastics Reclamation, Thorne Grodnik, LLP, P.O. Box 1210, Mishawaka, Indiana 46546-1210;

Rebecca Hoyt-Fischer, Esq., attorney for Horizon Bank, Laderer & Fischer, P.C., 112 West Jefferson Boulevard, Suite 310, South Bend, Indiana 46601;

Michelle Fisk, Esq., attorney for Northern Indiana Public Service Co., Schiff Hardin, LLP, 6600 Sears Tower, Chicago, Illinois 60606;

Matthew Hagenow, Esq., attorney for Daboyz LLC, and La Porte Property, Newby, Lewis, Kaminski & Jones, 916 Lincolnway, P.O. Box 1816, La Porte, Indiana 46352-1816;

Carl Greci, Esq., attorney for Randall Industries, 205 West Jefferson Boulevard, South Bend, Indiana 46601-1828; and

Alexander L. Edgar, Esq., Assistant United States Trustee, One Michiana Square, Fifth Floor, 100 East Wayne Street, South Bend, Indiana 46601.

MEMORANDUM OF DECISION

At South Bend, Indiana, on August 22, 2005.

Before the court is the “Motion Under 11 U.S.C. §§ 105 and 363 To Approve Sale of Debtor’s Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and To Set Hearing,” filed by the Debtor and Debtor-in-Possession Cable Plastics Reclaiming, Inc. (“CPRI” or “debtor”) on May 6, 2005. Objections to the Motion were filed by Citicorp Del Lease, Inc.; Daboyz, LLC; and La Porte Property. After an evidentiary trial

on the Motion was held on June 3, 2005, the court directed the parties to file simultaneous briefs and response briefs. The time for briefing having expired on June 23, 2005, the court took the matter under advisement.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(2)(A) and (N) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 7052. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

The debtor's business is a reclaiming operation that started in 2004 but ran out of capital. It filed bankruptcy on February 27, 2005. Soon thereafter, the debtor reached a proposed agreement with Advanced Plastics Reclaiming, LLC ("APR"), to sell a substantial portion of its assets to APR for the sum of \$2.2 million. In its Motion, the debtor sought authority to consummate the sale and assignment of the identified assets free and clear of all liens, encumbrances, claims, and interests. *See R.* 86 at 1. It argued that the proposed transaction was in the best interest of the debtor and its estate and that it was unlikely that the property would produce a greater yield in other circumstances. It also sought authority to include in the agreement a specified "breakup fee" if a subsequent successful bidder were to purchase the assets. The debtor disclosed in the Motion that the proposed purchaser, APR, is owned indirectly by Dr. Stephen Paspek, who is an insider of the debtor. Dr. Paspek owns approximately one-third of Broadview Group, LLC, which owns 40.87% of the common stock of CPRI, and he also owns 6.66% of the common stock and \$1.5 million of preferred stock of CPRI. *See id.* at 3. The proceeds

of the sale, if approved, will be paid to Horizon Bank, a secured creditor of the debtor having priority over the claims of all other secured creditors with regard to the subject assets. The debtor sought authority, under 11 U.S.C. § 363(f), to sell the assets at issue. *See id.* at 4.

Three objections to the debtor's motion were filed. The first was submitted by Citicorp Del Lease, Inc., a secured creditor with a properly perfected security interest in a Mitsubishi forks and side shifter. *See R. 96.* It was resolved by an agreement that was memorialized on the record in open court at the June 3, 2005, hearing, and Citicorp's objection was withdrawn. The other two objections were filed by unsecured creditors: La Porte Property, the debtor's landlord, and Daboyz, LLC ("Daboyz"), the landlord's next-door neighbor.

Daboyz owns the parcel of real estate adjoining the property leased by the debtor. The Indiana Department of Environmental Management ("IDEM") sent Daboyz notice that its retaining pond was believed to contain certain contaminants, including hazardous levels of lead, which may have originated from the discharge of the debtor's manufacturing activities. Daboyz stated that IDEM has not determined the amounts of remediation, if any, required of Daboyz to eliminate any hazardous substances, but asked that any proposed sale of the debtor's assets include the setting aside of sufficient proceeds to satisfy any fines, penalties, or assessments that may result from penalties by IDEM. *See R. 111* at 2.

The last objection to the debtor's motion was filed by La Porte Property, the landlord of the debtor's leased premises. The parties had entered into a ten-year written lease on April 30, 2003. The equipment subject to the sale is located in those premises. The landlord stated that the lease had been rejected and that the execution of a new lease between the landlord and the proposed buyer, APR, was "improbable." *R. 112* at 1. The landlord objected that the proposed sale would benefit only a few secured creditors at the expense of the remaining creditors, secured and unsecured. However, if the sale was to be approved, the landlord asked that it be conditioned upon APR's immediate removal of the equipment from its current location. "La Porte Property should not be left to continue to bear the burden of protecting the Debtor's and/or APR's equipment without receiving any compensation therefor." *Id.* at 2.

Trial on the motion was held on June 3, 2005. Henry Boch, President of CPRI, described his cable plastics reclaiming business as a two-step process: the separation of wiring materials, containing polymers and metals, into their components (“the hydrogravity process”), and the recycling of those separated materials into pellets to be available to buyers (“the pelletizing process”). The secured creditors of his business are Horizon Bank, holding a \$2.2 million debt, and the Small Business Association, holding a \$1.3 million debt.

According to Mr. Boch, the debtor proposes to sell the assets in the hydrogravity line to APR, which is owned by Dr. Stephen Paspek, for \$2.2 million. Dr. Paspek is one of four inventors of the process, and its patent is pending. He owns a small part of the debtor personally and also is part owner of the Broadview Group, which is the largest shareholder of CPRI. Mr. Boch and his wife also own 23% of the shares of the debtor. If the sale is approved, Mr. Boch will become the president of APR. The witness testified that the hydrogravity line should be sold because it can stand on its own as a process separate from the pelletizing process. He further opined, based on his experience in the business, that the price offered is a fair one. He stated that there were no other prospective purchasers and that, if the sale is not approved, the hydrogravity line will be liquidated. He insisted that the sale is in the best interest of the estate, that there was no collusion in the process, and that the debtor will stay in business, on a smaller scale, with its pelletizing line.

Mr. Boch testified that IDEM visited the site in August 2004 and identified potential contamination in the runoff pond on the adjacent property. The issue, he explained, was the discharge of processed water. He said the company curtailed its operations on that date and spent time and money to meet the IDEM guidelines. Dr. Paspek developed a closed-loop system to address the problem. When IDEM later alleged that the debtor had an unlicensed wastewater system, CPRI disagreed. Mr. Boch testified that they had been told, in August 2004, not to release processed water, and they had complied. After several further visits, IDEM notified the company of its investigation and turned over its work to IDEM’s Office of Enforcement. Mr. Boch has not heard from the enforcement office. He pointed out that IDEM did not object to the sale and that the landlord did not raise an environmental objection to the sale.

On cross examination, Mr. Boch stated that IDEM continued testing the water by putting green dye in the water and in the storm drains, and it did not show up in the pond. The results were called inconclusive, he said. There were solid pieces in the pond, pieces of wire, but he did not know if they came from his facility. If there would be cleanup costs, he stated, there was no money from the sale for the cleanup. All the proceeds will go to the bank, the secured creditor. He noted again that IDEM has not objected to the sale and has not sent an enforcement assessment to CPRI.

Nathan J. Arnold, of Arnold Appraisal LLC and Arnold Equipment Company, is a licenced and certified equipment appraiser and a member of the Equipment Appraisers Association of North America and other groups. A graduate of Miami University, he took advanced courses on appraisals. After having appraised equipment for forty years, he testified that he is knowledgeable about the marketplace. He has specialized in chemical, plastic, and rubber processing equipment. He conducted an on-site inspection of the debtor's hydrogravity equipment on May 26, 2005, and prepared a report on May 31, 2005, with a forced liquidation value appraisal. *See* Purchaser's Ex. C. In his expert opinion, the value of the debtor's equipment was \$407,250. The cost of planning and holding an auction would be another \$50,000, and thus the net value after an auction would be about \$350,000. Mr. Arnold explained that economic conditions are down and that the current market for such equipment was "soft," not active and vibrant. He estimated that the debtor would need 45-60 days after the sale to remove the equipment. In addition, if an auction was conducted on the site, it would take 45-60 days to set up the equipment. Mr. Arnold was not cross-examined by any party.

The next witness was Dr. Stephen Paspek, President of Paspek Consulting. He received his Ph.D. in chemical engineering from the University of Notre Dame in 1979. He worked at Standard Oil for twenty-five years, as the manager of different divisions and as a licensed engineer. He has published many papers and holds thirty United States patents concerning reclaiming plastics and metal. He consults on process engineering and on designs of the process for converting raw material into a finished product. For example, he has consulted with companies that turn coal into a synthetic fuel.

Dr. Paspek testified that Henry Boch and his partner wanted to reclaim copper from scrap wire and cable that was going into landfills. Their first plans were not economically viable. However, they looked at alternative ways of achieving this goal, and Dr. Paspek developed the hydrogravity system to separate scrap wire into its individual parts. Through his unique process, he said, the company recovers a resource and gives it reusable value. He showed the court a jar filled with pellets of raw materials such as copper, nylon, polyethylene, and polyvinyl chloride. He explained that the original plan was to use the hydrogravity process to separate the elements and then to make the elements into pellets. However, the second process did not work well and was not marketable. Nevertheless, he and his company have developed another system, better than the pellets, for selling the separated elements.

Dr. Paspek testified that he spent more than 2 years and \$3 million of his own money in CPRI, to develop the hydrotechnology and equipment and to file for a patent on this unique process. He also spent \$400,000 of his money to develop the closed-loop system that captures and recycles the reprocessed fluids rather than discharging them. He has addressed the environmental issues, he testified; no discharge will be emitted, and no pollution will occur. If the sale is not approved, he said, the equipment will have to be sold piecemeal and the raw materials will go back into the landfills. No resource recovery is possible without this sale, he insisted.

Because the level of debt to equity was too high, Dr. Paspek stated, he and others established Advanced Plastics Reclaiming, an Ohio LLC, to purchase the hydrogravity assets. He thinks that forty jobs will be established in the new company. He entered into negotiations with the landlord about leasing the La Porte facility now housing CPRI, but he needed a smaller space. The landlord wanted to lease the facility to APR and expressed no concern about environmental contamination; however, he wanted almost \$1 million more than CPRI presently was paying for the larger space. The new company's other option was to relocate to three possible locations in Ohio. Dr. Paspek stated that Horizon Bank has agreed that the company can relocate the assets, but the location has not been determined yet. He stated that he will invest \$2 million in the new business, as start-up

capital, and will personally guarantee \$500,000 of the indebtedness. Horizon Bank has agreed to loan the new business \$2.2 million. He pointed out, again, that there were no other potential purchasers.

On cross-examination, Dr. Paspek testified that he was aware of the IDEM issues, although not in detail. He did not know where the property lines of the debtor's leased property were located, for example, and did not realize that the adjoining property was involved. He began the closed fluid system early in 2004 and put it into place around the end of 2004, but it was operational only for a few months before the company closed. The system saved salt and was good economically, he said.

Robert E. Holmes, a loan workout officer of Horizon Bank for thirty-six years, testified that lengthy, involved discussions led to the loan to CPRI. There is a balance of \$2.2 million, not including \$106,000 in accrued interest, attorney's fees and costs that are not covered in the sale. He explained that 3 other community-based banks in La Porte County have a 25% stake in the loans, and each one agreed to the loan. He stated that there were no other possible buyers and that the sale was in the best interest of the debtor and the banks.

The final witness was Thomas Fara, Operations Vice President of House of Fara, Inc., a hardwood trim manufacturer which leases the Daboyz real estate next to the debtor's leased building. He decided in August 2004 to purchase the building from Daboyz. Because the building had been vacant since 2001, he closed it, cleaned it, and had it inspected. After improving the building, he moved the manufacturing facility there; he will have 155 employees, eventually. Using an aerial photograph and site map, he pointed out the buildings and pond.

According to Mr. Fara, an anonymous tip he received in March 2005 led him to call a public official for information about the possible pollution by CPRI into the pond. He studied the IDEM report and inspected the pond area himself. He found bits of insulation, wire, and plastic – products that House of Fara does not use, he said. He asked the court not to approve the sale of the debtor's assets until the IDEM issues are resolved and cleanup liabilities are assessed. He claimed that he may have 150 employees who will be drinking lead-infested water if this pond is not cleaned up.

On cross-examination, Mr. Fara admitted that he has always provided bottled water to his employees and that they will not be drinking the water on the site. He also testified that he first tested the water in the fall of 2004, before buying the building, and that the test showed nothing remarkable in the water. “The water passed,” he stated. He later provided pop machines and water dispensers, but did not prohibit the employees from drinking the water. Although Mr. Fara denied that he was providing water before he got the anonymous tip in March 2005, he also testified that he had provided bottled water to his crew in October 2004, when they began cleaning the building that had been vacant since 2001, and continued to have it available.

Mr. Fara also testified that he does not care where the debtor’s assets are located or whether the sale goes on, but he wants the property next door to his business cleaned up. He believes that the debtor is trying to avoid liability for the pollution, he said. He admitted, however, that IDEM has not yet determined the amounts of remediation required, and he does not know if any remediation will be required. He was not aware that, at one time, there had been an underground storage tank holding fuel to fire the boilers and that the fuel might have contained lead. Although he relied on the site map drawn by Carlson Environmental, Inc., *see* Creditor’s Exhibit 4, Mr. Fara did not have the rest of the Carlson report and did not know (until later) that the tank had been removed. He stated that Carlson did not test the pond; he assumed that the lead was found in the pond because Cable Plastics was dumping it there before he bought the Daboyz property, he said.

After hearing the closing arguments of counsel, the court directed the parties to file simultaneous briefs and reply briefs. It then took the matter under advisement.

Discussion

The debtor asks for the authority to sell its assets pursuant to § 363(f). Section 363 of the Bankruptcy Code provides the statutory authorization to a trustee to use, sell, or lease property belonging to the bankruptcy estate. Subsection (b) provides that the “trustee, after notice and a hearing, may ... sell ..., other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1); *see Grochocinski v. Zeigler (In re*

Zeigler), 320 B.R. 362, 381 (Bankr. N.D. Ill. 2005) (describing procedure for obtaining approval to pursue sale of a debtor’s property). Under subsections (b) and (f), the sale may take place outside the normal course of business and “the property, under specified conditions, may be sold unencumbered of interests held by others.”¹ *Precision Industries, Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 544 (7th Cir. 2003). The powers and obligations given under § 363 to a trustee, with respect to a sale, “inure to the debtor-in-possession” in a chapter 11 case. *Id.* at 545 (citing 11 U.S.C. § 1107(a)). The trustee or debtor-in-possession has the burden of proving each of these statutory conditions. See *In re Zeigler*, 320 B.R. at 382 (citing cases). “Once the trustee [or debtor-in-possession] makes a prima facie case demonstrating that the estate would benefit from the sale of the property, however, the burden shifts to the party opposing the sale to show why the sale should not be approved.” *Id.*

Courts have discretion when deciding whether to approve a request for sale of the debtor’s assets. See *Wintz v. American Freightways, Inc. (In re Wintz Cos.)*, 219 F.3d 807, 812 (8th Cir. 2000) (stating that “bankruptcy courts have wide discretion in structuring sales of estate assets”); see also *Corporate Assets, Inc. v. Paloian*, 368 F.3d 761, 772 (7th Cir. 2004) (determining that bankruptcy court did not abuse its discretion in handling sale of debtor’s estate assets by auction). Various tests have been used in considering the propriety of a sale:

In determining whether to approve a proposed sale under § 363(b)(1), courts have applied a variety of standards, including a business judgment test, *In re Condere Corp.*, 228 B.R. 615, 630

¹ Subsection (f) of § 363 provides:

- (f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if –
- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
 - (2) such entity consents;
 - (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
 - (4) such interest is in bona fide dispute; or
 - (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

(Bankr. S.D. Miss. 1998); *WBQ P'ship v. Va. Dep't of Med. Assistance Servs. (In re WBQ P'ship)*, 189 B.R. 97, 102 (Bankr. E.D. Va.1995), a good faith test determining whether the sale is fair and equitable, *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987), and a test to assess whether the transaction is in the best interest of the estate, *In re Stein*, 281 B.R. 845, 852 (Bankr. S.D.N.Y. 2002). The Seventh Circuit Court of Appeals has stated that there must be an “articulated business justification” for the sale. *In re Schipper*, 933 F.2d 513, 515 (7th Cir.1991).

In re Zeigler, 320 B.R. at 381.

The debtor in this case contends in its Motion that the sale of the property is in the best interest of the debtor and its estate because the sale would result in the full payment to Horizon Bank, the secured creditor having priority over the claims of all other secured creditors with regard to the assets which are the subject of the proposed sale agreement. La Porte Property, the landlord, objects to the sale, now that its negotiations for a lease with APR have proven unsuccessful, on the ground that only the secured creditor Horizon Bank would benefit from the sale. The landlord’s central request, however, is that the debtor or APR immediately remove the assets from its building. The court notes that APR has agreed to the removal of the assets within 60 days of the actual sale, and finds that the fulfillment of that request was delayed by the landlord’s filing of an objection to the sale. The court also notes that La Porte Property did not file a brief after the court hearing.

The objection of Daboyz is based upon its IDEM notice “that a retaining pond located on the Daboyz parcel of real estate is believed to contain certain contaminants, including hazardous levels of lead, which have been deemed by IDEM to have originated from the manufacturing activities of the Debtor.” R. 111 at 1. IDEM’s testing in August 2004 discovered a high concentration of lead in CPRI’s test wastewater sample. It found that the results exceeded the hazardous waste regulatory level and declared its disposal of wastewater by discharge to be unlawful. *See* Cr. Ex. 1, “Complaint Investigation Report,” at 5. Daboyz is aware of the contingent nature of its claim: “IDEM has yet to determine the amounts of remediation, if any, required of Daboyz.” R. 111 at 1. In its brief, it noted that it may, in the future, be a potentially responsible party in the remediation and may then have a cause of action against CPRI under environmental laws.² *See* R. 126 at 3. Relying on *In re Environmental*

² The parties did not raise a challenge to Daboyz’s standing in this litigation, and the court therefore has (continued...)

Waste Control, Inc., 125 B.R. 546 (N.D. Ind. 1991) (“*In re EWC*”), Daboyz argues that the debtor is required to comply with environmental laws and to proceed with environmental cleanup as a matter of law. Daboyz asks that sufficient proceeds from the sale of the assets be set aside to satisfy any remediation costs which may be assessed by IDEM or the EPA. At trial, Mr. Fara (the purchaser of the Daboyz property) testified that he did not care if the sale proceeded. His concern was that the debtor clean up the polluted pond on his property. The court finds that Daboyz does not object to the actual sale of the assets; rather, it asks that restrictions be placed on the use of the sale proceeds.

Daboyz focuses on IDEM’s investigation into environmental law violations by CPRI. It relies on *In re EWC* to support its argument that CPRI’s assets should be preserved to pay for the cleanup work and remediation required as a result of CPRI’s illegal disposal of hazardous wastes onto Daboyz’s property. *See R.* 126 at 5. In *EWC*, the environmental claims against the debtor’s estate arose from an earlier judgment entered against the debtor. The government was seeking enforcement of that judgment in the bankruptcy court, and the “dwindling assets that would be used to pay for these obligations are subject to the secured claims of creditor Resources Unlimited, Inc.” *EWC*, 125 B.R. at 547. In *EWC*, the hazardous wastes had contaminated the groundwater beneath the landfill and were spreading; the EPA and IDEM had disclosed an imminent environmental danger; an EPA work plan had been established; and the court had mandated its implementation. *EWC* asked the district court to determine “that the environmental authorities ha[d] no immediate right to the funds in the debtor’s estate.” 125 B.R. at 549. The court denied that relief. It held that “applicable legal authority suggests that *EWC* must comply with environmental law and pursue a cleanup and corrective action at the landfill, regardless of its financial insolvency.” *Id.* at 552. In a later decision in that case, the district court made clear that, in determining the priorities among claimants, “under 11 U.S.C. § 363(c), the debtor could expend funds otherwise available to a creditor with priority, as long as there was compliance with 11 U.S.C. § 363(e),

²(...continued)
proceeded to the merits of its objections to the sale of the debtor’s assets.

which allows conditioning of the use of the collateral upon the provision of adequate protection of the secured creditor's interest." *Resources Unlimited, Inc. v. EWC*, 158 B.R. 998, 999 (N.D. Ind. 1993). Having considered the ruling in *In re EWC*, and its decisions on prioritizing claims in those circumstances, the court finds that *In re EWC* is of no benefit to the objectors of the § 363 sale in this case.

It is well established that "[b]ankruptcy does not insulate a debtor from environmental regulatory statutes." *United States v. Hansen*, 262 F.3d 1217, 1238 (11th Cir. 2001), *cert. denied*, 535 U.S. 1111 (2002) (citing *Ohio v. Kovacs*, 469 U.S. 274, 284-85, 105 S. Ct. 705, 710-11, 83 L.Ed.2d 649 (1985), and *Midlantic Nat'l Bank v. New Jersey Dept. of Env'tl. Prot.*, 474 U.S. 494, 507, 106 S. Ct. 755, 762 (1986)). *In re EWC* follows that long-held maxim by requiring the chapter 11 debtor, a landfill operator, to comply with the environmental laws and to carry out the cleanup and corrective actions ordered by the state and federal environmental agencies, despite its insolvency. In this case, however, no state or federal agency has entered an appearance, filed a claim, or brought a charge against the debtor based upon findings that the debtor has violated an environmental statute. IDEM compiled a Complaint Investigation Report against CPRI, the La Porte County Highway Department, and potentially others, based upon an anonymous complaint made in July 2004 that the Highway Department was spraying liquid that may have come from CPRI onto the dirt roads in La Porte County. IDEM's investigation led to its request that CPRI "cease all discharges of industrial wastewater and industrially contaminated storm water to the pond and/or to the on-site septic system," Creditor's Ex. 1 at 9, and Mr. Boch testified that CPRI complied with that request. In addition, Dr. Paspek developed a closed-loop system that captures and recycles the reprocessed fluids without releasing a discharge. Now CPRI proposes to sell its assets, remove its equipment, and move from that location, thereby terminating all possibility of further contamination. IDEM has neither objected to the proposed sale nor taken any enforcement action against the debtor. Under these circumstances, the court declines to stop the sale of the debtor's assets based upon the speculation of Mr. Fara and Daboyz, a potential creditor which may, in the future, be a financially responsible party or which may, in the future, seek financial contribution from the debtor.

Daboyz has asked the court to balance the Bankruptcy Code’s goal of facilitating the reorganization of a debtor company with the goal of environmental laws to protect the public safety. Courts have balanced those competing federal policy interests in cases concerning a trustee’s right to abandon contaminated property, and this court found the analysis in such decisions helpful. In general, “courts have concluded that a trustee may not abandon property which includes hazardous wastes that the debtor had been ordered to treat prior to the bankruptcy filing.” *In re Pilz Compact Disc, Inc.*, 229 B.R. 630, 641 (Bankr. E.D. Pa. 1999) (discussing *Midlantic* and cases construing it). However, property may be abandoned if there is no serious health risk or evidence of danger of immediate harm or “where the hazards [to public health or safety] are speculative or may await appropriate action by an environmental agency.” *Borden, Inc. v. Wells-Fargo Bus. Credit (In re Smith-Douglass, Inc.)*, 856 F.2d 12, 16 (4th Cir. 1988) (citing cases).³ When a state environmental agency does not take any enforcement action, such inactivity indicates a lack of threat to public health or safety. *See id.* (citing *In re Purco, Inc.*, 76 B.R. 523, 533 (Bankr. W.D. Pa. 1987)). This court, following the policy established by the Supreme Court in *Midlantic*, 474 U.S. at 507 n.9, 106 S. Ct. at 762 n.9, and by the Fourth Circuit in *In re Smith-Douglass, Inc.*, 856 F.2d at 16, finds that, in this case, any danger of immediate harm to the public health or safety by the debtor’s conduct is speculative. Daboyz’ objection to the sale, therefore, based upon such speculation, cannot stand to block the proposed sale of the debtor’s assets.

After reviewing the record in this case, the written and oral arguments of the parties, the testimony and evidence presented at the hearing, and the varied interests of all those involved, the court determines that sound business justifications for the sale of the debtor’s estate assets have been articulated. The following evidence was presented at trial without contradiction. Mr. Boch and Dr. Paspek testified that, when CPRI filed

³ It is noteworthy to acknowledge, as well, that the cleanup costs for environmental violations are generally treated as administrative expenses under 11 U.S.C. § 507(a)(1) and are subordinate to secured claims, although they may have priority status over unsecured claims. *See In re Smith-Douglass, Inc.*, 856 F.2d at 16; *see also* 6A Norton Bankr. L. & Prac. 2d § 149.19 (William L. Norton, Jr., ed.-in-chief, 2005). Judge Norton, in his highly regarded bankruptcy treatise, cited *In re EWC* and commented that “[a] few cases have hinted that environmental claims may even take priority over secured claims,” but that such priority “may be granted only to the extent necessary to cure an immediate threat.” 6A Norton Bankr. L. & Prac. 2d § 149.20.

bankruptcy on February 27, 2005, it planned to reorganize the entire business by developing both its hydrogravity process (which reclaims usable materials from recycled wiring that would otherwise go into landfills) and its pelletizing process (which turns the reclaimed materials into pellets). However, its operating capital was insufficient and its indebtedness was too great for the reorganization to succeed. After negotiating in good faith and without collusion with APR, CPRI agreed (pending approval of the court) to sell the assets related to the hydrogravity process to APR for \$2.2 million. The certified equipment appraiser, Nathan Arnold, testified that the liquidation value of the assets was approximately \$407,250. The court finds, therefore, that the purchase price is approximately five times the liquidation value of the assets. The price will cover the debtor's obligation to Horizon Bank, which holds a first priority security interest in the assets in the amount of \$2.2 million (plus interest and costs, which will not be repaid). It is true that the price will not cover the debtor's obligation to the Small Business Administration, which holds a second priority security interest, or to the unsecured creditors. However, neither the SBA nor the creditors' committee has objected to the sale. In fact, the court finds, those parties will not be paid even if the proposed sale is not approved and the assets instead are liquidated, since the liquidation value is estimated to be only \$407,250, and whatever proceeds accrue will go first to the first priority secured creditor Horizon Bank.

The court also finds that the sale reflects a good business judgment. The assets are being sold to the company whose president invented the hydrogravity process and which best can utilize the technology that will aid society and the environment. In addition, CPRI will continue to operate as a much smaller but reorganized business that operates the pelletizing line. It was noteworthy that neither of the objecting parties – the landlord (an unsecured creditor) and the adjoining landholder (a potential unsecured creditor) – presented evidence that the actual sale of the assets was not justified. *See In re Brethren Care of South Bend, Inc.*, 98 B.R. 927, 933 (Bankr. N.D. Ind. 1989) (listing factors to consider when determining whether there was a good business reason to grant the application to sell). There was testimony that no other offers were made. The court finds, without evidence to the contrary, that the proposed sale is fair and equitable and in the best interest of the debtor's estate.

The court further determines that the debtor demonstrated successfully that the estate would benefit from the sale of the property and, when the burden of proof shifted to the parties opposing the sale, that the objectors failed to show why the proposed sale should not be approved. Accordingly, the court authorizes and approves the proposed sale of the debtor's assets as they are described in the Agreement between CPRI and APR, *see* R. 86, Ex. A.

Conclusion

Based upon the findings of fact and conclusions of law in this Memorandum of Decision, the court grants the "Motion Under 11 U.S.C. §§ 105 and 363 To Approve Sale of Debtor's Assets Free and Clear of Liens, Claims, Interests, and Encumbrances," filed by the debtor Cable Plastics Reclaiming, Inc. It authorizes and approves the sale of the debtor's assets, identified in the Agreement between CPRI and Advanced Plastics Reclaiming, LLC, for the sum of \$2,200,000, free and clear of all liens, encumbrances, claims, and interests. The Objections to the debtor's Motion, filed by La Porte Property and Daboyz, LLC, are overruled.

SO ORDERED.

/s/ Harry C. Dees, Jr.
HARRY C. DEES, JR., CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT