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## **Court Rules Bankrupt Company Must Clean Up Groundwater Contamination in Albuquerque**

(Santa Fe, N.M.) Mark IV Industries, the former owner of a circuit board manufacturing facility in Albuquerque, remains obligated to complete the cleanup of contaminated groundwater at the company's former site according to a recent ruling by a federal bankruptcy court in New York.

"The court's ruling will hopefully help pave the way for a successful cleanup at the Albuquerque location," said New Mexico Environment Department Secretary Ron Curry. "This company must be held liable for pollution that is spreading to other parts of the aquifer."

The bankruptcy court ruled Mark IV's obligation to clean up the old Gulton Industries site in southeast Albuquerque remains, notwithstanding that Mark IV had filed a petition for protection under Chapter 11 (reorganization) of the Bankruptcy Code in April 2009. Mark IV filed the bankruptcy petition in New York, where it has its corporate headquarters. The bankruptcy court approved Mark IV's reorganization plan late last year, effectively discharging all monetary claims against the company.

Because the remediation has been suspended for nearly two years while the bankruptcy proceeding was pending, the department's Ground Water Quality Bureau has been concerned that the contamination will continue to spread. The plume has already migrated beyond the property boundary. A drinking water production well, Four Hills Well, is located within one mile of the site.

After Mark IV filed its bankruptcy petition, the department initiated an adversary proceeding in the bankruptcy court, seeking a declaratory ruling that the company was responsible for the clean up of contaminated groundwater at the Gulton Industries site. The department then filed a motion for summary judgment asking the court to rule in its favor on the legal issues. Mark IV also filed a motion for summary judgment, arguing that its cleanup obligations had been discharged. The court heard oral arguments in April of this year.

The court ruled on the motions in October, denying Mark IV's motion for summary judgment and granting the department's motion for summary judgment. In ruling that Mark IV's cleanup obligations are not dischargeable

in bankruptcy, the court found it significant that the department had elected to require Mark IV to conduct the cleanup under the State Water Quality Act, rather than merely seeking to recover cleanup costs. The department, in other words, was not seeking payment of a monetary debt, which would be dischargeable in bankruptcy. As a result of this ruling, Mark IV is obligated to complete the cleanup, notwithstanding the bankruptcy proceeding. Mark IV may appeal the ruling within 14 days after the court enters a final judgment.

Mark IV Industries is the former owner and operator of the Gulton Industries site in Albuquerque. Gulton Industries (the predecessor company to Mark IV) operated a circuit board manufacturing facility on the property from 1956 until 1970. The operation generated chlorinated solvents, which were discharged through a septic system and leach field, and surface impoundments.

Mark IV Industries sold the property to Chant Corp. in 1978.

Although it no longer owned the property, in 1995 Mark IV agreed to conduct the necessary site remediation. Mark IV removed the source areas and contaminated soil in 1995 under department oversight. Groundwater contamination above standards remains beneath the site, primarily trichloroethylene (TCE), dichloroethylene (DCE), and vinyl chloride. Mark IV had been injecting Hydrogen Releasing Compound® into groundwater through four injection wells to facilitate microbial degradation of the contamination. The remediation had been proceeding under the abatement regulations until Mark IV filed its bankruptcy petition. The last injection was in 2008.

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