

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

PROOF OF CLAIM



375965

Bar Date Ref #

In re.
Fleming Companies, Inc.

Case Number:
03-10945 (MFW)

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars

Name of Creditor and Address:
United States on behalf of U.S. Environmental Protection Agency
U S Department of Justice
P. O. Box 7611
Washington, DC 20044
ATTN. Kevin Lyskowski

Check box if you have never received any notices from the bankruptcy court in this case

Check box if this address differs from the address on the envelope sent to you by the court.

If you have already filed a proof of claim with the Bankruptcy Court or BMC you do not need to file again

Creditor Telephone Number (202) 514-5415

CREDITOR TAX ID #

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR.

Check here replaces or amends a previously filed claim dated _____

1 BASIS FOR CLAIM

- Goods sold
 - Personal injury/wrongful death
 - Retiree benefits as defined in 11 U.S.C. § 1114(a)
 - Services performed
 - Taxes
 - Wages salaries and compensation (Fill out below)
 - Money loaned
 - Other (describe briefly)
See attached
- Your social security number _____
Unpaid compensation for services performed from _____ to _____
(date) (date)

2. DATE DEBT WAS INCURRED

3 IF COURT JUDGMENT, DATE OBTAINED

4 TOTAL AMOUNT OF CLAIM AS OF PETITION DATE. \$ See attached \$ _____ \$ _____ \$ _____
(unsecured) (secured) (unsecured priority) (total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below
 Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges

5 SECURED CLAIM

Check this box if your claim is secured by collateral (including a right of setoff)
Brief description of collateral See attached
 Real Estate
 Motor Vehicle
 Other _____
Value of collateral \$ _____
Amount of arrearage and other charges at time case filed included in secured claim above if any \$ _____

6 UNSECURED PRIORITY CLAIM

Check this box if you have an unsecured priority claim
Specify the priority of the claim
 Wages salaries or commissions (up to \$4 650*) earned within 90 days before filing of the bankruptcy petition or cessation of the Debtor's business whichever is earlier - 11 U.S.C. § 507(a)(3)
 Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4)
 Up to \$2,100* of deposits toward purchase lease or rental of property or services for personal family or household use - 11 U.S.C. § 507(a)(6)
 Alimony maintenance or support owed to a spouse former spouse or child - 11 U.S.C. § 507(a)(7)
 Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8)
 Other - Specify applicable paragraph of 11 U.S.C. § 507(a) _____
* Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7 CREDITS The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim

8 SUPPORTING DOCUMENTS Attach copies of supporting documents, such as promissory notes purchase orders invoices itemized statements of running accounts contracts court judgments mortgages security agreements and evidence of perfection of lien DO NOT SEND ORIGINAL DOCUMENTS if the documents are not available explain If the documents are voluminous attach a summary

9. DATE-STAMPED COPY To receive an acknowledgment of your claim, please enclose a self-addressed stamped envelope and an additional copy of this proof of claim

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is received on or before 4 00 p m September 15 2003, Pacific Daylight Time

THIS SPACE FOR COURT USE ONLY

SEP 30 2003



Fleming Companies Claim



14443

BY MAIL TO
Bankruptcy Management Corporation
P O BOX 900
El Segundo CA 90245 0900

BY HAND OR OVERNIGHT DELIVERY TO
Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo CA 90245

DATE SIGNED
9/29/03

SIGN and print the name and title if any of the creditor or other person authorized to file this claim (attach a copy of a power of attorney if any)
Kevin Lyskowski
Trial Attorney, U.S. Department of Justice

Penalty for presenting fraudulent claim is a fine of up to \$500 000 or imprisonment for up to 5 years or both 18 U.S.C. §§ 152 AND 3571

See Other Side For Instructions

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re)	Chapter 11
FLEMING COMPANIES, INC)	Case No 03-10945 (MFW)
Debtor)	

**PROOF OF CLAIM OF THE UNITED STATES ON BEHALF OF
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

1 This Proof of Claim is filed by the Attorney General of the United States at the request of the United States Environmental Protection Agency (“EPA”) The Attorney General is authorized to make this Proof of Claim on behalf of the United States This Proof of Claim relates to the recovery of civil penalties for violations by Fleming Companies, Inc (hereinafter, the “Debtor”) of Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U S C § 9609, and Section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (“EPCRA”), 42 U S C § 11045 The violations relate to the Debtor’s facility located at 3501 Marshall Street, Minneapolis, Minnesota (hereinafter, the “facility”)

2 The basis for the Debtor’s liability is as follows

(a) On February 8, 2002, EPA filed an administrative complaint against the Debtor, *In re Fleming Companies, Inc* , Docket Nos EPCRA-05-2002-0010, CERCLA-05-2002-0002, MM-05-2002-0002 An Amended Complaint was filed on March 27, 2003

(b) The Amended Complaint contains four counts of violation, as follows

(i) Count 1 alleges that the Debtor failed to immediately notify the National Response Center of a release of a hazardous substance at its facility on August 15, 2000, in violation of Section 103(a) of CERCLA, 42 U S C § 9603(a),

(ii) Count 2 alleges that the Debtor failed to immediately notify the Minnesota State Emergency Response Commission (“SERC”) of the release identified in Count 1, in violation of Section 304(a) of EPCRA, 42 U S C § 11004(a),

(iii) Count 3 alleges that the Debtor failed to provide a written follow-up emergency notice to the Minnesota SERC as soon as practicable after the release occurred, in violation of Section 304(c) of EPCRA, 42 U S C § 11004(c), and

(iv) Count 4 alleges that the Debtor failed to submit to the Minnesota SERC and local fire department a completed Emergency and Hazardous Chemical Inventory Form for 2001 on or before March 1, 2002, in violation of Section 312(a) of EPCRA, 42 U S C § 11022(a)

(c) EPA sought a total civil penalty of \$95,909 for the alleged EPCRA violations and \$17,188 for the alleged CERCLA violations

(d) On March 27, 2003, the Debtor signed a Consent Agreement and Final Order that resolved the alleged EPCRA violations for \$76,500 and evidence and certification of continuing compliance, and resolved the alleged CERCLA violation for \$13,500. On April 4, 2003, EPA approved the Consent Agreement and on April 8, 2003, filed it with the EPA Regional Hearing Clerk

3 The United States asserts a claim against the Debtor for \$90,000, in accordance with the Consent Agreement and Final Order executed by EPA and the Debtor

4 No judgments have been rendered on this claim

5 No payments to the United States have been made by the Debtor regarding this claim

6 This claim reflects the known liability of the Debtor to the United States on behalf of EPA. The United States reserves the right to amend this claim to assert subsequently discovered liabilities

7 The United States has not perfected any security interest on its claim against the Debtor

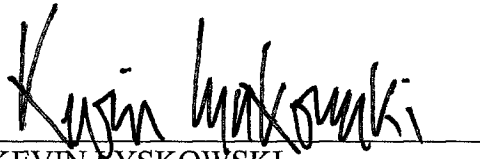
8 This Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the Debtor by this or any other federal agency

9 This proof of claim is filed as a general unsecured claim, except as to any rights of setoff, which secure EPA's claim

Respectfully submitted,



CATHERINE MCCABE
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice



KEVIN LYSKOWSKI
Trial Attorney
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