

THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
W.R. GRACE & CO., <u>et al.</u> ,)	Case No. 01-01139 (JKF)
)	(Jointly Administered)
Debtors.)	

**NOTICE OF UNITED STATES' INTEREST
IN FRAUDULENT CONVEYANCE PROCEEDINGS**

The United States of America, for and on behalf of the U.S. Environmental Protection Agency, submits this Notice of Interest in Fraudulent Conveyance Proceedings.

1. On March 12, 2002, the Court entered an Order authorizing the Asbestos Property Damage Claimants and the Asbestos Personal Injury Claimants ("Plaintiffs") to prosecute certain fraudulent conveyance claims, and a case management schedule. The case management order directed that Plaintiffs are to file their complaints by March 18, 2002 and that answers and counter- or cross-claims are due by April 1, 2002. No date was set for interested parties to intervene.

2. The United States is an interested party for purposes of the fraudulent conveyance proceedings. The Debtor's Statement of Financial Affairs ("SOFA") lists sites where the Debtor is or may be liable under environmental law. One of the sites listed on the 17-page SOFA 17(A) is the Grace Vermiculite Expansion Plant in Libby, Montana. The costs of responding to the release of hazardous substances and public health risks associated with the Libby site alone could exceed \$100 million. The Debtor lists other vermiculite expansion plants, similar to the Libby plant, on SOFA 17(A). The Debtor also lists numerous other CERCLA Sites and other facilities known to be in actual or potential violation of the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and other federal environmental statutes.

3. Pursuant to 28 U.S.C. § 3304(b)(1), a transfer is fraudulent as to a debt to the United States which arises before or after the transfer if the transfer is made with actual intent to hinder, delay, or defraud the United States. A transfer is fraudulent as to a debt to the United States which arises before the transfer if the debtor is insolvent or rendered insolvent by the transfer, and the transfer is made without an exchange of reasonably equivalent value. 28 U.S.C. § 3304(a). The United States understands from the case management conference held on February 20, 2002 that only the “constructive fraud” claims, i.e., those which the United States may have an interest in pursuant to 28 U.S.C. § 3304(a) are subject to the Court’s March 12, 2002 Order. The Court has not decided when intentional fraud claims may be heard.

4. The United States will make a decision whether to move to intervene in the adversary “constructive fraud” proceedings as soon as feasible, and will endeavor to file an appropriate motion by April 15, 2002 should the government desire to intervene in this matter. In its moving papers, if any, the United States will specify the specific issues it would like to participate in, and the role the United States would like to have in litigating those issues. See In re Marin Motor Oil, Inc., 689 F.2d 445, 454-55 (3d Cir. 1982), cert. denied sub nom., Michaels v. Official Unsecured Creditor’s Committee, 459 U.S. 1206 (1983), and cert. denied sub nom., Marin Oil, Inc. v. Official Unsecured Creditor’s Committee, 459 U.S. 1207 (1983); Phar-Mor, Inc. v. Coopers & Lybrand, 22 F.3d 1228, 1240-41 (3d Cir. 1994). The United States will also make

disclosures pursuant to Fed. R. Civ. P. 26(a)(1)(A) so as to get on track with the Court's case management schedule.

FOR THE UNITED STATES

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