



# THE ADMINISTRATIVE WATCH

ADMINISTRATIVE WATCH ADDRESSES ENVIRONMENTAL, HEALTH & SAFETY ISSUES

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## **CHEMICAL COMPANY, IN-HOUSE LEGAL COUNSEL, AND EXECUTIVES INDICTED FOR ENDANGERING THE PUBLIC, FRAUD, AND OBSTRUCTION OF JUSTICE**

The United States Department of Justice (“DOJ”) announced on February 8, 2005 that a federal grand jury in the District of Montana indicted W.R. Grace (“Grace”), a chemical and mining company, along with Grace’s in-house legal counsel and several current and former executives, for “knowingly endangering residents of Libby, Montana, and concealing information about the health effects of its asbestos mining operations.” In commenting on the indictment, EPA’s acting Assistant Administrator for Enforcement and Compliance Assurance, Thomas Skinner, said “[t]his criminal indictment is intended to send a clear message: we will pursue corporations and senior managers who knowingly disregard environmental laws and jeopardize the health and welfare of the workers and the public.” The indictment heightens the scrutiny placed on individual decision making, accountability, and documentation associated with environmental issues. Obviously, it is premature to speculate on possible defenses, but the “reasonableness” of the decision making and the associated documentation will likely be key issues.

Grace conducted vermiculite mining operations in Libby, Montana between 1963 and 1990 as part of its construction products division. The company

mined the vermiculite for use in many common commercial products, including attic insulation, fireproofing materials, masonry fill, and as an additive to potting soils and fertilizers. Vermiculite contains natural concentrations of asbestos in the form of tremolite, which has known carcinogenic properties. According to the indictment, Grace’s in-house legal counsel and executives conspired to hide internal epidemiological, medical and toxicological studies regarding vermiculite’s toxicity, both in its mining activities and product development as far back as the 1970’s, in violation of the Toxic Substances Control Act.

The indictment further claims that some 1,200 employees and residents of Libby were sickened or killed by long-term, unregulated exposure to vermiculite dust from mining operations, resulting in an increase in the rate of lung cancer in the community. The U.S. Environmental Protection Agency (“EPA”), which is assisting in the DOJ prosecution, believes that some of the asbestos exposures resulted from the absence of corporate procedures requiring the decontamination of workers’ clothing before leaving the mine site, as well as the use of vermiculite as fill-material at construction projects in the Libby area.

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Following the mine's closure and eventual sale after 1990, the indictment alleges Grace illegally failed to disclose the nature and extent of contamination to prospective buyers, some of whom were interested in residential development. The government further alleges that Grace actively obstructed government clean-up efforts by withholding internal documentation regarding the scope of contamination resulting from nearly four decades of mining activity. As of 2001, EPA has reportedly incurred nearly \$55 million in cleanup costs at the Libby mine site.

If convicted, the defendants could receive up to fifteen years' imprisonment on each endangerment count and five years' imprisonment on each of the conspiracy and obstruction charges. Grace could be fined up to twice the economic gain associated with the misconduct, or about \$280 million.

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