

NRC@WORK Home

Public Site

Search Intranet: Everything

NRC Yellow Announcement



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

Announcement No. 061

Date: June 9, 2009

To: All NRC Employees

SUBJECT: LITIGATION HOLD FOR MATERIALS RELATED TO TRONOX, INC.

The United States filed a Complaint in Intervention against Tronox, Inc. and Anadarko Petroleum in Tronox's bankruptcy in the Southern District of New York, alleging that Tronox's former parent, Kerr-McGee Corporation, purposely undervalued Tronox's environmental liabilities.

The NRC is implementing a litigation hold for all materials that may be relevant to the suit because Kerr-McGee and its current parent, Anadark Petroleum, will likely seek discovery for all sites where the United States may allege that Tronox or Kerr-McGee, or their predecessors are potentially responsible parties.

This implementation of a Litigation Hold for the Tronox, Inc. requires all NRC employees to:

1. Immediately suspend the routine destruction of documents to ensure the preservation of potentially relevant materials; and
2. To email the name and contact information of any staff member likely to have discoverable information to Susan Chidake. OGC.

Relevant Materials:

Generally, relevant materials are those relating to the recovery by Tronox, Inc. and its predecessors (including Kerr-McGee Corp.) pursuant to Section 107(a) of CERCLA regarding unreimbursed costs that have been or will be incurred by the United States in response to the release and/or threatened release of hazardous substances at and from various sites. This includes materials regarding any site in which Tronox and its predecessors may be potentially responsible parties. This includes materials relating to the Cimarron site and to thorium sites in Chicago, including the West Chicago site, and to uranium mill and mining sites where decommissioning is or has been performed under an NRC license. These sites include a site in Cushing, Oklahoma, where radiological cleanup was conducted under an NRC license which was terminated upon completion of cleanup in 2006; a nuclear site at Ambrosia Lake, New Mexico, which is being remediated under an NRC license in the current site owner's name (Rio Algom); and a site in the Church Rock, New Mexico area, that is currently owned by United Nuclear Corporation and at which on-site soil and subsurface remediation and site closure were carried out under the auspices of an NRC Uranium Mill Tailings Radiation Control Act (UMTRCA) license with United Nuclear Corporation in accordance with an 1988 Memorandum of Understanding between NRC and the Environmental Protection Agency. Materials to be preserved include, but are not limited to, those materials that:

1. Tend to show that any party owned or operated the Site, or arranged for transportation or disposal of hazardous

B/3

substances at the Site;

2. Concern facility operations, such as types of historical disposal or production of materials and waste streams;
3. Concern any investigation and response action reports regarding the Site;
4. Include any correspondence regarding the Site;
5. Concern environmental response costs, both past and estimated future costs, including, but not limited to, contracts, deliverables, invoices, vouchers and statements of work;
6. Show deliberations leading to remedy selection decisions for all operable units;
7. Relate to settlement negotiations regarding recovery of response costs incurred at the Site;
8. Contain communications with contractors or Federal or state agencies regarding the Site; and

The preserved materials should also include any other materials related to a Tronox Site, including concerning any other potentially responsible parties.

Preservation Duties:

NRC employees may not delete, destroy, overwrite or throw away potential evidence related to the subject matters identified, including any relevant information in personal files, home computers or personal e-mail accounts.

NRC has an obligation to take measures to preserve any materials relating to the subject matter of the litigation. This obligation includes preserving "electronically stored information" or "ESI." NRC employees must preserve any electronically stored or written material, whether final or in draft form, such as memoranda, e-mails, photographs, maps, diagrams, handwritten notes, databases, letters, presentation materials, recordings, microfilm, scanned photographs or documents.

Note well: The materials to be preserved are not limited to federal records or official agency records, but include personal files, notebooks, calendars or day planners. Even privileged materials must be preserved because the court may need to review documents to evaluate claims of privilege.

Staff Likely to Have Materials:

OGC is requesting also, that the name and contact information of any staff member likely to have discoverable information relevant to disputed facts be emailed to Susan Chidakel, OGC. For now, no one need produce documents, but everyone must preserve them. Thank you.

/RA/

John F. Cordes
Solicitor

NRC Yellow Announcements Index