

POLICY ISSUE (Information)

January 30, 2015

SECY-15-0016

FOR: The Commissioners

FROM: Andrew P. Averbach /RA/
Solicitor

SUBJECT: ANNUAL REPORT ON COURT LITIGATION (CALENDAR YEAR 2014)

PURPOSE:

To inform the Commission of the status of litigation in the courts.

DISCUSSION:

Enclosed is a report updating court litigation since the last annual report dated January 31, 2014 (SECY-14-0013). It includes cases filed through the end of 2014 but reflects the status of NRC cases in court as of January 30, 2015.

During the reporting period (Calendar Year 2014), the Commission or NRC officials were sued six times in the courts of appeals.¹ During this same one-year period, seven cases were closed.² The number of new filings in 2014 is smaller than the number of new filings over most of the past decade, though consistent with the last few years. There were 3 new lawsuits (including cases filed in federal district court) in 2013, 5 in 2012, 11 in 2011, 9 in 2010, 8 in 2009, 13 in 2008, 11 in 2007, 8 in 2006, 11 in 2005, and 13 in 2004, for an average of 9.2 new lawsuits per year over the prior ten years.

**CONTACT: Andrew P. Averbach, OGC
(301) 415-1956**

¹ *Beyond Nuclear, Inc. v. NRC*, No. 14-1216 (D.C. Cir.); *Friends of the Earth v. NRC*, No. 14-1213 (D.C. Cir.); *Natural Resources Defense Council v. NRC*, No. 14-1213 (D.C. Cir.); *Natural Resources Defense Council v. NRC*, No. 14-1217 (D.C. Cir.); *New York v. NRC*, No. 14-1210 (D.C. Cir.); *Prairie Island Indian Community v. NRC*, No. 14-1212 (D.C. Cir.).

² *In re Aiken County*, No. 11-1271 (D.C. Cir.); *Natural Resources Defense Council v. NRC*, No. 13-1311 (D.C. Cir.); *Nye County v. NRC*, No. 12-1136 (D.C. Cir.); *Nye County v. NRC*, No. 13-1260 (D.C. Cir.); *Shieldalloy Metallurgical Corp. v. NRC*, No. 13-1259 (D.C. Cir.); *Tronox, Inc. and United States v. Kerr-McGee Corp*, Case No. 09-10156 (ALG)/Adv. Proceeding No. 09-1198 (ALG) (Bankr. S.D.N.Y.); *United States v. Science Applications International Corp.*, No. 04-cv-1543 (D.D.C.).

We continued to handle a steady stream of discovery demands in lawsuits brought by or against the United States or in which the United States and/or its agencies have been named as a third-party defendant. The descriptions of cases set forth in the enclosed report include the more significant cases of this type (though they are not included in the count of cases filed against the Commission). Much of this work involves responding to requests for documents related to the activities of the Atomic Energy Commission (AEC) and/or its licensees. This work also includes working with the Department of Justice to review pleadings and implementing litigation holds for materials that may be relevant to ongoing litigation.

During this reporting period we also handled nine so-called "Touhy" requests for NRC testimony, depositions, or other evidence for use in private litigation. See 10 C.F.R. § 9.200 *et seq.* Our largest discovery-related endeavor relates to Touhy requests issued by both sides in litigation between Georgia Power Co. and Westinghouse Electric Company Co. in the United States District Court for the Southern District of Georgia (No. 1:12-00167-JRH-JEG).

Enclosure:
Litigation Status Report

cc: SECY
ASLBP
CFO
OEDO
OGC
OCAA
OCA
OIG
OPA
REGIONS

LITIGATION STATUS REPORT

(As of Jan. 30, 2015)

ACTIVE CASES¹

ABB Inc. v. United States, No. 3:13-cv-01265-CSH (D. Conn.)

ABB and Combustion Engineering (CE) are wholly owned subsidiaries of ABB Holdings. CE owns a site at Windsor, Connecticut where it conducted contract work on naval reactors for the AEC from 1955 through 1961. CE later conducted licensed operations for commercial entities under both the AEC and the NRC at other areas on the site. The United States subsequently designated that portion of the Windsor location that had been used for Naval Reactor contract work for cleanup under the Formerly Utilized Sites Remedial Action Program (FUSRAP). However, the Corps of Engineers (which performs FUSRAP cleanup) indicated that it would take several years to complete this activity.

ABB and CE decommissioned the portion of the site used for NRC-licensed work and then asked the Corps of Engineers to allow it to decommission the FUSRAP portion under NRC auspices and to sue the government for contribution. The NRC and the Corps agreed to this proposal. ABB and CE have now completed that work and filed this lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), seeking contribution from the United States, which is represented by the Department of Justice. ABB and CE claim that the United States is liable in part because of the AEC ownership and control of the Naval Reactor contract process.

After conducting some discovery, the parties entered into mediation. With the Mediator's assistance, the parties negotiated an agreement. The Department of Justice then drafted a proposed Consent Decree, which was published in the Federal Register for comment. There were no comments on the Consent Decree and a motion to enter the consent decree is expected to be filed in early February.

CONTACT: Charles E. Mullins, OGC
301-415-1618

Brodsky v. NRC, No. 09-cv-10594 (S.D.N.Y.)

This lawsuit challenges fire-protection exemptions that NRC granted to Indian Point. The case was originally brought in the Court of Appeals for the Second Circuit, but that court found that it lacked jurisdiction. Petitioners (now plaintiffs) then re-filed their case in federal district court, which held that (1) plaintiffs were not entitled to an adjudicatory hearing on the exemptions at issue; and (2) the exemptions were reasonably rooted in sound record evidence. Plaintiffs appealed and, on January 7, 2013, the Court of Appeals for the Second Circuit issued a decision that upheld the district court's conclusion concerning the validity of the exemption. However, the court remanded the case back to the district court, with instruction that it remand the case back to the Commission, so that the Commission could either articulate why public

¹ For statistical purposes, we count as "active" any case pending before a court, or still subject to further judicial review, as of January 1, 2015. However, narratives accompanying each listed case include any post-January 1 developments.

participation was not required prior to the issuance of an environmental assessment and a finding of no significant environmental impact, or for other appropriate action. In response to the court's order, the Commission circulated a draft environmental assessment and finding of no significant impact related to the exemption. On August 27, 2013, the Commission published in the Federal Register a final EA and FONSI and issued its determination that the fire protection exemption should remain in place. On February 15, 2014, the plaintiffs filed a brief before the district court, challenging the NRC's actions on remand and, among other things, asserting that the EA supporting the exemption is invalid because it does not address the possible consequences of a terrorist attack. The NRC filed its responsive brief on April 11, 2014, and the agency is awaiting a decision.

CONTACT: Andrew P. Averbach, OGC
301-415-1956

Budzynski v. Burns, No. 12-cv-3174 (D. Md.)

Plaintiff, an NRC employee, claims that he was a victim of age discrimination when he was not selected for a position advertised in an NRC vacancy announcement. The NRC assisted the United States Attorney's office in filing two motions for summary judgment. The motions for summary judgment were denied and a trial date has been set for February 10 through 13, 2015, in the U.S. District Court for the District of Maryland.

CONTACT: Stephanie N. Liaw, OGC
301-415-2472

Commonwealth of Pennsylvania v. Lockheed Martin Corp., No. 09-cv-00821 (M.D. Pa.)

The Commonwealth has filed a CERCLA case against Lockheed Martin over the cleanup of the Quehanna site in central Pennsylvania. Lockheed Martin, in turn, has sued the United States for contribution, alleging that the waste left at the site was due to activities performed pursuant to government contracts, including contracts that involve the activities of the Atomic Energy Commission. The Department of Justice has filed a motion for summary judgment in the case, which was argued in late fall.

CONTACT: Charles E. Mullins, OGC
301-415-1618

El Paso Natural Gas Company, v. United States, No. 07-cv-905 (D.D.C.), *appeal pending*, Nos. 12-5156, 12-5157 (D.C. Cir.)

El Paso Natural Gas filed this lawsuit to compel the United States to clean up two sites associated with the Tuba City Mill: the Tuba City Dump, and the Highway 160 site. NRC is a named defendant in the lawsuit, along with other federal agencies and the United States. All defendants are represented by the Department of Justice.

The suit asserts a number of theories of liability including the APA, CERCLA, the Resource Conservation Recovery Act (RCRA), and the Uranium Mill Tailings Radiation Control Act (UMTRCA). The Navajo Nation has intervened as a plaintiff. The district court dismissed the APA and UMTRCA claims against the Department of Energy and issued a partial judgment

allowing El Paso to appeal on those issues to the D.C. Circuit. That court affirmed the district court's dismissal order. *El Paso Natural Gas Co. v. United States*, 632 F.3d 12721 (D.C. Cir. 2011). The United States then moved for dismissal of the remaining claims and the district court granted that motion as well.

Both plaintiffs appealed and the D.C. Circuit affirmed the dismissal of most of the claims with two exceptions. *El Paso Natural Gas Co. v. United States*, 750 F.3d 863 (D.C. Cir. 2014). First, the Court of Appeals agreed that one of the plaintiffs' claims should have been dismissed "without prejudice" instead of "with prejudice." Second, the Court re-instated the plaintiffs' RCRA claims relating to groundwater contamination at the Highway 160 site and remanded them to the District Court for further proceedings.

The District Court has held the case in abeyance at the parties' request. The Department of Justice and the Department of Energy, the primary agency defendant in the case, have held meetings with the Plaintiffs to discuss future proceedings and have conducted initial settlement discussions.

CONTACT: Charles E. Mullins, OGC
301-415-1618

El Paso Natural Gas Co. v. United States, No. 3:14-cv-08165-DGC (D. Az.)

This is the second lawsuit by the El Paso Natural Gas Co. against the United States. This CERCLA lawsuit seeks the cleanup of waste resulting from mining at 19 mines in New Mexico and Arizona between the late 1940's and the 1960s. The Department of Justice has filed an answer to the initial Complaint and has requested NRC's assistance locating potentially relevant documents concerning the mines. Discovery has not yet begun.

CONTACT: Charles E. Mullins, OGC
301-415-1618

EPEC Polymers, Inc. v. NL Industries, Inc., No. 3:12-cv-03842 (D.N.J.)

The United States is defending against a third-party complaint alleging that the Army Corps of Engineers is responsible for environmental response costs under CERCLA because it dredged thorium-containing materials from the Raritan River in New Jersey and disposed of them on a site now owned by the plaintiff. The plaintiff alleges that the thorium was discharged from a facility owned defendant NL Industries, Inc., in Sayreville, New Jersey. NL in turn alleges that the thorium is traceable to the activities of Tenneco Chemicals, Inc., the holder an AEC license, and that the NRC performed a field team investigation and approved the decommissioning of plaintiff's site in the late 1990s or early 2000s. OGC attorneys have coordinated with the Department of Justice in obtaining documents related to the AEC license and the field team investigation. The parties are conducting discovery and have recently opened discussions about entering into mediation.

CONTACT: Charles E. Mullins, OGC
301-415-1618

Jeremy M. Suttenger, OGC
301-415-2842

Friends of the Earth v. NRC, No. 14-1213 (D.C. Cir.)

On October 28, 2014, Friends of the Earth filed a petition for review of the Commission's approval of an update to the FSAR for Diablo Canyon, asserting that this update should not have taken place without interested parties being afforded the opportunity for a hearing. On December 10, 2014, the NRC and the United States moved to dismiss the petition, asserting that (1) because of the pendency of the same issue in an adjudication before the Commission (in which Friends of the Earth makes the same argument, relying on the same FSAR update that it identifies in the Court of Appeals), no final order issue has been issued that is reviewable under the Hobbs Act; and (2) Friends of the Earth has not exhausted its administrative remedies. PG&E, which has intervened in the case, has supported the motion; Friends of the Earth has opposed it; and NRC filed a reply on January 8, 2015. The agency awaits a ruling on the motion from the court.

CONTACT: Charles E. Mullins, OGC
301-415-1618

Kandel v. United States, No. 06-cv-872 (Fed. Cl.)

This is a class-action suit brought against the United States by federal retirees seeking additional retirement benefits on account of alleged mishandling of annual leave at the time of retirement. The complaint, originally captioned *Solow v. United States*, but now renamed, includes the NRC and other federal agencies, all of whom are represented by the Department of Justice. The court denied the government's motion to dismiss on statute of limitations grounds, and the parties currently have cross-motions for partial summary judgment on the merits of the case pending before the court. Because the plaintiffs have raised issues regarding the former employees of the Panama Canal Commission and beneficiaries of deceased employees, the names and addresses of putative plaintiffs (or their survivors) have not yet been delivered to the class administrator for mailing of notices. A joint status report was filed on January 27, 2015, to address these issues and to establish deadlines for next steps.

CONTACT: Mark J. Maxin, OGC
301-415-1554

Natural Resources Defense Council v. NRC, No. 14-1225 (D.C. Cir.)

On June 22, 2011, Exelon, the owner and operator of the Limerick Generating Station, applied for renewal of its operating licenses for an additional 20 years. On November 22, 2011, NRDC petitioned to intervene in the license renewal proceeding, proposing four contentions relating to NRC's compliance with the National Environmental Policy Act (NEPA), one of which (relating to severe accident mitigation alternatives) was admitted in part by the Atomic Safety and Licensing Board. The Commission ultimately determined that denial of NRDC's NEPA contention was warranted (on the ground that the contention was covered by existing regulations and NRDC's waiver petition did not satisfy the applicable waiver criteria). On November 4, 2014, following the Commission's issuance of a renewed operating license for Limerick, NRDC petitioned for review of the Commission's decisions relating to severe accident mitigation alternatives, asserting that (notwithstanding the Commission's regulations providing otherwise) a second mitigation alternatives analysis should have been performed prior to license renewal. The court has not yet set a briefing schedule.

CONTACT: James E. Adler, OGC
301-415-1656

Nevada v. NRC, No. 09-1133 (D.C. Cir.)

This petition for review challenges NRC's "Yucca Mountain Rule," 10 C.F.R. Part 63, which implements an EPA rule establishing standards for reviewing the Yucca Mountain high level waste application. Given the suspension of adjudicatory proceedings before the Commission related to Yucca Mountain and the uncertainty surrounding the Yucca Mountain project (including the lack of new appropriations from Congress from the Nuclear Waste Fund), the case has been held in abeyance, subject to periodic status reports. In these reports, the parties have advised the court of the resumption of the licensing process following the issuance of a writ of mandamus in *In re Aiken County* (discussed below).

CONTACT: Jeremy M. Suttenger, OGC
301-415-2842

New Jersey v. NRC, No. 11-3228 (3rd Cir.)

In this lawsuit, New Jersey challenges NRC's Decommissioning Planning Rule insofar as that rule assumes a 1% real rate of return on decommissioning funds. At New Jersey's request, the case has been held in abeyance pending the outcome of the *Shieldalloy* litigation (discussed below), which concerns the validity of the NRC's transfer of authority to New Jersey as an Agreement State. Once the *Shieldalloy* decision becomes final and is no longer subject to further appellate review, New Jersey has represented that it will seek to withdraw its petition for review as moot.

CONTACT: James E. Adler, OGC
301-415-1656

New York v. NRC, No. 14-1210 (D.C. Cir.); ***Prairie Island Indian Community v. NRC***, No. 14-1212 (D.C. Cir.); ***Beyond Nuclear, Inc. v. NRC***, No. 14-1216 (D.C. Cir.); ***Natural Resources Defense Council v. NRC***, No. 14-1217 (D.C. Cir.)

These four consolidated petitions for review challenge the agency's Continued Storage Rule and associated Generic Environmental Impact Statement. The Petitioners assert violations of the AEA, NEPA, the AEA, and the federal government's Indian trust responsibility. The agency has moved to defer briefing on the petitions for review pending the Commission's decision on a petition to suspend reactor licensing brought by *Beyond Nuclear* and its co-petitioners, which raises the same issue as has been raised before the court – whether, under the Atomic Energy Act, the Commission must make a finding concerning the feasibility of a repository (which Petitioners characterize as a "Waste Confidence safety finding") before issuing licenses for reactors to operate.

CONTACT: Andrew P. Averbach, OGC
301-415-1956

Pueblo of Laguna v. United States, No. 02-24 (Fed. Cl.); ***Jicarilla Apache Nation v. United States***, No. 02-25 (Fed. Cl.)

In these cases the plaintiffs (two separate Indian tribes) seek an accounting of the federal government's alleged mismanagement of the tribe's trust funds and other properties. Plaintiffs also seek recovery for monetary loss and damages. The court issued discovery and document preservation orders in both cases and the NRC provided documents to DOJ.

The *Laguna* case has settled and the case was dismissed on December 9, 2013. The *Jicarilla* case was tried on the Tribe's investment claims for the 1972 to 1992 time period in the spring of 2012 and the court issued a decision in favor of the Tribe earlier this year. The parties are now litigating the Tribe's investment claims from 1993 to the present.

CONTACT: Charles E. Mullins, OGC
301-415-1618

Ohngo Gaudadeh Devia v. NRC, Nos. 05-1419, 05-1420, 06-1087 (D.C. Cir.)

This is the caption for three consolidated lawsuits filed by dissident Goshutes and the State of Utah challenging a series of Commission adjudicatory decisions authorizing issuance of a license for the proposed Private Fuel Storage spent fuel storage facility. The case is fully briefed, but the court of appeals decided to hold the case in abeyance, as not currently "ripe," because PFS had failed to obtain necessary approvals from Department of the Interior (DOI) sub-agencies. PFS went to federal district court to challenge the other agencies' decisions. PFS prevailed in 2010, obtaining a remand to DOI. Ever since, the parties have filed a series of joint status reports in the D.C. Circuit agreeing that the case should remain in abeyance pending further developments. Although PFS previously moved to terminate its NRC license, it has withdrawn its termination request, and the parties have advised the court that PFS is still awaiting official action on the approvals.

CONTACT: Grace H. Kim, OGC
301-415-1607

Shieldalloy Metallurgical Corp. v. NRC, No. 13-1259 (D.C. Cir.)

In response to the D.C. Circuit's decision in *Shieldalloy Metallurgical Corp. v. United States*, 707 F.3d 371 (D.C. Cir. 2013), the Commission issued a memorandum and order, CLI-13-06, reinstating New Jersey's authority to regulate Shieldalloy's Newfield, New Jersey, site, and further explaining why New Jersey's standards governing license termination were consistent with the Commission's. Shieldalloy filed a petition for review of the Commission's order, asserting that CLI-13-06 rested upon an inaccurate interpretation of the Commission's regulations and that the Commission's as-low-as-reasonably-achievable (ALARA) principle compelled the use of the decommissioning alternative that yielded the lowest achievable dose of radioactivity. On October 14, 2014, the Court of Appeals denied the petition for review, ruling that the applicable regulation, 10 C.F.R. § 20.1403(a), uses the ALARA principle as an eligibility test that permits licensees to use restricted release decommissioning methods only where it can show that it is not cost-effective to employ unrestricted release. Shieldalloy petitioned for panel rehearing, and the court denied the petition on December 10, 2014. Shieldalloy has until March 10, 2015, to file a petition for a writ of certiorari.

CONTACT: Andrew P. Averbach, OGC
301-415-1956

Grace H. Kim, OGC
301-415-3605

CLOSED CASES

In re Aiken County, No. 11-1271 (D.C. Cir.)

Aiken County (South Carolina), together with the states of South Carolina and Washington and a number of other parties, filed this lawsuit in the fall of 2011 seeking mandamus relief against NRC for allegedly unlawful inaction and delay in the Yucca Mountain licensing proceeding. NRC's brief argued that Congress's cut-off of appropriated funds for the Yucca proceeding justified the agency holding the licensing proceeding in abeyance. Subsequent to oral argument, the Department of Justice (at the court's direction) filed an amicus brief on behalf of the United States, and NRC and petitioners filed supplemental briefs responding to the brief of the United States. The court then entered an order holding the case in abeyance pending potential Congressional direction concerning the disposition of funds previously appropriated from the Nuclear Waste Fund for Yucca Mountain-related activities. The parties filed subsequent status reports responding to various Congressional actions.

On August 13, 2013 the court issued an order granting the writ of mandamus and directing NRC to continue the licensing process, *In re Aiken County*, 725 F.3d 255 (D.C. Cir. 2013), and the Commission has implemented this direction. The State of Nevada sought rehearing of the decision, but its petition was denied on October 28, 2013. Certain petitioners subsequently moved to recover their attorneys' fees pursuant to the Equal Access to Justice Act. The claim of one petitioner was settled and the court issued an order denying the remaining petitioners' claims on October 23, 2014.

CONTACTS: Andrew P. Averbach, OGC
301-415-1956

Charles E. Mullins, OGC
301-415-1618

Navajo Nation v. United States, No. 06-cv-945 (Fed. Cl.)

The Navajo Nation alleged that the United States has mishandled the royalties from the exploitation of oil, gas, coal, uranium, and other natural resources that accrue to the benefit of the Nation and its members. The case was filed in 2006 and the Department of Justice, representing the Government, requested NRC to assist in discovery. The case was subsequently referred to alternative dispute resolution and discovery was stayed. The case was removed from mediation in 2012 and discovery re-initiated. But in 2014 the Department of Justice and the Navajo Nation negotiated a settlement, and the case has now been dismissed.

CONTACTS: Charles E. Mullins, OGC
301-415-1618

Michelle Albert, OGC
301-415-5431

Natural Resources Defense Council v. NRC, No. 13-1311 (D.C. Cir.)

On June 22, 2011, Exelon, the owner and operator of the Limerick Generating Station, applied for renewal of its operating licenses for an additional 20 years. On November 22, 2011, NRDC petitioned to intervene in the license renewal proceeding, proposing four contentions relating to NRC's compliance with NEPA, one of which (relating to severe accident mitigation alternatives) was admitted in part by the Atomic Safety and Licensing Board. The Commission ultimately determined that denial of NRDC's NEPA contention was warranted (on the ground that the contention was covered by existing regulations and NRDC's waiver petition did not satisfy the applicable waiver criteria), and NRDC petitioned for review of that decision. The NRC moved to dismiss the petition on the ground that another contention – pertaining to the agency's failure to comply with NEPA in promulgating its Waste Confidence Decision and Rule – was still pending. The court of appeals instructed the parties to address this issue in their briefs and, on November 13, 2014, (by which time the Waste Confidence contention had been dismissed, the license renewal had been issued, and NRDC had filed another petition for review, see No. 14-1225 above), the court dismissed the case as moot.

CONTACT: James E. Adler, OGC
301-415-1656

Nye County v. NRC, No. 12-1136 (D.C. Cir.)

This was a companion case to *In re Aiken County*, No. 11-1271 (D.C. Cir.), the mandamus case. In this case, the same parties who filed the mandamus case challenged the Commission's decision in CLI-11-07 (Sept. 9, 2011) directing the Atomic Safety and Licensing Board to close down the licensing board proceeding reviewing the application to construct the Yucca Mountain geologic repository. Petitioners stated that they filed the case for "protective" purposes in case they did not prevail in *Aiken County*.

Petitioners filed an unopposed motion to hold the case in abeyance pending resolution of the mandamus case. Following the decision in *Aiken County*, the court, at the parties' request, agreed to hold the case in abeyance pending expiration of the time for further review of the *Aiken County* decision. On February 5, 2014, the court granted Petitioners' motion to dismiss the case voluntarily.

CONTACT: Charles E. Mullins
301-415-1618

Nye County v. NRC, No. 13-1260 (D.C. Cir.)

Shortly after the D.C. Circuit's decision in *In re Aiken County*, the petitioners in this case filed a motion in the Yucca Mountain adjudicatory proceeding seeking the disqualification of then-Chairman Macfarlane on the ground that she had previously expressed opinions on matters at issue as part of the Commission's consideration of the Yucca Mountain license application. The Chairman denied the motion, pledging that she could and would remain objective in considering the license application. The petitioners then filed an emergency petition in the D.C. Circuit seeking a writ of mandamus, a preliminary injunction, and review on the merits of the Chairman's decision. The court denied the petition for a writ of mandamus and the motion for a preliminary injunction and instructed the parties to proceed with the case as a petition for review. The NRC then filed a motion to dismiss the petition, asserting that the court, having denied the petition for a writ of mandamus, lacked jurisdiction to review the Chairman's decision, which was not a final order under the Nuclear Waste Policy Act. The court granted the motion and dismissed the petition for review on February 21, 2014.

CONTACT: Andrew P. Averbach, OGC
301-415-1956

Charles E. Mullins, OGC
301-415-1618

Tronox, Inc. and United States v. Kerr-McGee Corporation, No. 09-10156 (ALG)/Adv. Proceeding No. 09-1198 (ALG) (Bankr. S.D.N.Y.)

This fraudulent conveyance lawsuit was litigated as part of a bankruptcy case involving Tronox. Tronox, and Kerr-McGee before it, were liable for clean-up costs at numerous sites, including for decommissioning the facility of an NRC licensee, Cimarron. As a result of an earlier settlement agreement during a Tronox bankruptcy proceeding, a portion of proceeds from this litigation (if any) would go towards cleanup of the Cimarron site. Tronox and the United States, which is represented by the Department of Justice, claimed that Kerr-McGee had transferred its most valuable assets in order to shelter it from environmental liabilities, resulting in Tronox and its affiliates being unable to manage their liabilities and having to file for bankruptcy. Ultimately, the parties settled the case, with the defendant agreeing to pay \$5.15 billion into a litigation trust to fund the cleanup of the sites in question. The agreement was approved by the bankruptcy court on November 12, 2014, and the agreement became effective on January 21, 2015, with trust disbursements to begin immediately.

CONTACT: Bradley W. Jones, OGC
301-415-1644

United States v. Science Applications International Corp., No. 04-cv-1543 (D.D.C.)

The government sued SAIC under the False Claims Act for damages and other relief arising out of SAIC's contract to provide unbiased advice to the NRC. The NRC had hired SAIC to support the agency's rulemaking effort to develop standards applicable to the release of radioactive materials into the environment. SAIC at the same time was a hired consultant for entities with an interest in the outcome of the NRC rulemaking. After a jury trial in which the United States was represented by Department of Justice and NRC lawyers, the government won a \$6.5 million verdict and judgment. The district court rejected SAIC's motion to set aside the verdict.

The court of appeals reversed the district court judgment because of defects in the jury instructions on calculating damages and on when corporate employees' "collective knowledge" could be imputed to the corporation. The court did, however, reject SAIC's position that only express contract conditions are actionable under the False Claims Act, and it upheld the government's position that implied conditions (here, providing unbiased advice) are actionable as well.

On remand, SAIC moved to reopen discovery on damages. The District Court granted SAIC's motion in part, permitting limited discovery on damages until April 18, 2014. On April 24, 2014, the district court recommended that the parties discuss settlement. Mediation was held on September 9, 2014, and the matter was settled on October 16, 2014, with SAIC agreeing to pay \$1.5 million to the government.

CONTACT: Robin A. Baum, OGC
301-415-2202