

Recovering Environmental Cleanup Costs from the Federal Government For Wartime Activities

Corporate owners and operators of contaminated properties often face enormous cleanup costs that will last for many years. Managing the financial and legal aspects of these liabilities can be a significant part of the chief financial officer's and the general counsel's duties. Many times the operations history of these sites extends back far enough to include periods where the United States actually owned part of the site or controlled production as part of our national defense programs. In these situations, the company has potential cost recovery claims against the federal government that can significantly reduce its out-of-pocket cleanup expenses. The key is knowing how and when to find and unlock these recovery opportunities.

Recoveries in these cases can be significant, especially if claims are well developed before they are presented to the U.S. For example, the Project Navigator team worked on the Tex Tin Superfund case (Region 6) involving a government-owned tin smelter where the U.S. paid for 2/3 of the projected \$30 Million cleanup cost. An aerospace contractor recovered \$140 million of the remediation costs for its stealth aircraft plant. Liability percentages for the government have been as high as 100%, but other cases, based on weak or poorly developed facts, have resulted in no federal liability. Like all other aspects of financial management, there is no substitute for thorough research and objective assessment of risk.

Researching these claims can be expensive. Uncovering the historical facts can be a time-consuming detective process. Project Navigator partners with an experienced team of lawyers, paralegals and archival history research experts with a proven track record of success in these cases. We strive to achieve a 10:1 or better ratio of amount recovered to expense incurred. We recommend a three-phase approach to provide results, review and control during each phase of a project:

- Phase 1 - Evaluate elements of potential claim including federal ownership/control, estimated cleanup costs, and ranges of potential recovery from the United States;
- Phase 2 – Research and prepare full claim including detailed historical fact documentation and analysis and legal foundation for claims;
- Phase 3 – Present and negotiate claims with federal government, including tolling agreement if appropriate, development and presentation of demand amount, and negotiation of settlement or evaluation of litigation options and risks if required.

This is not something to consider for every site. For sites with \$1 Million or more of potential cleanup cost, it is definitely worth considering. For older sites with less expensive cleanup projections, it still may be worth a quick review to see if there is obvious federal liability that can be easily pursued.