

GAO

Report to the Chairman, Subcommittee
on Oversight and Investigations,
Committee on Energy and Commerce,
House of Representatives

November 1994

MANAGING DOE

The Department of Energy Is Making Efforts to Control Litigation Costs





United States
General Accounting Office
Washington, D.C. 20548

**Resources, Community, and
Economic Development Division**

B-258656

November 22, 1994

The Honorable John D. Dingell
Chairman, Subcommittee on
Oversight and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

The Department of Energy (DOE) spends millions of dollars each year for legal expenses that its management and operating (M&O) contractors incur in defending themselves against class action lawsuits. This litigation arises from concerns that the operation of DOE's facilities for producing nuclear materials and weapons may have exposed workers and local populations to harmful radiation and chemicals. The cost of defending the contractors in such litigation is being borne by DOE, since its contracts require it to indemnify the contractors for most costs, including the costs of litigation, resulting from their operation of DOE's facilities. Concerned about whether DOE was adequately monitoring the litigation costs reimbursed to its contractors, you asked us to (1) determine how much DOE was spending for litigation to defend its contractors, (2) evaluate whether adequate controls are in place to ensure that all of these costs are appropriate, and (3) assess the efforts being made by DOE to improve its control of outside litigation costs.

Results in Brief

DOE has not maintained centralized data on the costs it reimburses contractors for outside litigation; however, available data indicate that the Department spent approximately \$40 million in fiscal year 1992 on costs associated with the legal defense of its past and present contractors. Most costs were for legal fees, travel and administrative expenses, and consultant fees incurred by outside law firms hired by the contractors. These costs, however, were not well controlled because DOE lacked effective criteria outlining what costs it would or would not reimburse. As a result, DOE was being billed at higher rates than other federal entities for professional legal fees, travel, word processing, document duplication, and other expenses and items associated with litigation. Furthermore, legal bills were being reimbursed with little or no departmental oversight because DOE had not established requirements and procedures for detailed review.

We raised these issues at a hearing before this Subcommittee¹ and pointed out that DOE was not doing enough to control costs. As a result, DOE has initiated actions to strengthen its controls over these costs. In particular, it issued specific cost guidelines and instituted procedures for periodically reporting all litigation costs. DOE is also establishing an audit function that will enable it to conduct a detailed review of the bills it receives for legal services. Finally, DOE is attempting to consolidate cases involving multiple contractors and law firms to improve case management and reduce costs. The Department estimates that these actions may save millions of dollars in legal costs.

Background

DOE's responsibility for contractors' litigation costs has its roots in the early nuclear programs. Since the inception of these programs in the 1940s, the federal government has relied on contractors to operate its nuclear facilities. However, because of the high risk associated with operating these facilities, the agencies responsible for managing nuclear activities—from the Atomic Energy Commission to DOE—included litigation and claims clauses in their management and operating contracts. These clauses provide that litigation expenses are allowable costs under the contracts. In addition, judgments against the contractors arising from their performance of the contracts are reimbursable by DOE.

Over the past several years, class action lawsuits have been filed against many past and present contractors responsible for operating DOE's facilities. In general, these suits contend that the operation of the facilities released radioactive or toxic emissions and caused personal injury, emotional distress, economic injury, and/or property damage. These suits have been filed against the current and former operators of certain DOE facilities throughout the country, such as the Fernald Plant in Fernald, Ohio; the Hanford Site near Richland, Washington; the Los Alamos National Laboratory in Los Alamos, New Mexico; the Rocky Flats Plant in Golden, Colorado; and various other facilities. (App. I lists ongoing class action suits against DOE contractors during fiscal years 1991-93.)

DOE has the option of undertaking the defense against such class action litigation on its own; however, it has generally opted to have the contractors defend the case in good faith. As standard practice, DOE has authorized contractors to proceed with their defense and has limited its own involvement to approving the hiring of outside counsel, reviewing

¹Managing DOE: Tighter Controls Needed Over the Department of Energy's Outside Litigation Costs (GAO/T-RCED-94-264, July 13, 1994).

billings, and agreeing upon any settlement amounts. The cognizant DOE field office is responsible for funding each contractor's litigation and overseeing the litigation effort.

Full Extent of Litigation Costs Is Not Known

DOE has not maintained complete information on the costs of litigation against present and former DOE contractors. According to officials from DOE's Office of General Counsel, costs for contractors' legal defense are budgeted and controlled by each responsible contractor and field office. These officials said that each DOE field office, through its Office of Chief Counsel, is responsible for managing the costs associated with its contractors' litigation. The officials added that DOE headquarters has not maintained overall cost data because it was not involved in the day-to-day management of these cases.

Nevertheless, DOE has collected some data indicating that it is incurring substantial costs for the services of outside law firms. In 1993, a subgroup of DOE's Contract Reform Team surveyed the Chief Counsels' offices to determine how much DOE was spending to reimburse its contractors for their legal expenses. According to the data the subgroup collected, DOE contractors paid over \$31 million to outside law firms in fiscal year 1992 and almost \$24 million during the first 8 months of fiscal year 1993. The subgroup attributed these large costs to "toxic tort" class action lawsuits filed against current and former contractors reporting to DOE's Albuquerque, Oak Ridge, and Richland operations offices.

The costs associated with these class action suits are large, in part, because several of the suits involve multiple contractors and law firms. Many lawyers work on each case, and the monthly costs can exceed \$500,000. The In Re: Hanford case, for example, has six former and present DOE contractors as codefendants, and 10 separate law firms are representing them. In just 1 month in 1992, DOE paid for the services of 62 outside attorneys, 25 of whom billed at least \$200 per hour, and 44 legal assistants working on the case. The cost of these services alone was over \$455,000. (See app. II for detailed information on the billings for this particular month.)

DOE has incurred additional costs for contractors' litigation that were not reflected in the data collected by DOE. The most significant of these are costs for establishing data bases. For each of the major class action lawsuits we examined—In Re: Hanford, Cook et al. v. Rockwell/Dow, In Re: Los Alamos, and Day v. NLO—the contractors and the outside legal

firms have established data bases of documents and other information. According to DOE officials in the field offices and representatives of the contractors, these data bases provide unique capabilities to identify and retrieve information needed for the contractors' legal defense.

The costs for these data bases increase DOE's total outside litigation costs substantially. Data obtained from the cognizant Chief Counsels' offices show that from fiscal year 1991 through fiscal year 1993, over \$25 million was spent for developing litigation data bases for these four cases. The data base for the Fernald litigation was the most costly—exceeding \$14 million—but the other data bases cost over \$2 million each. (App. III contains information on the costs of data bases.) When the fiscal year 1992 costs for data bases are added to the expenses paid to outside law firms during the same fiscal year, the total costs incurred by DOE for its contractors' legal defense during that fiscal year exceed \$40 million.

Other costs that should be considered as litigation-related costs include all funds associated with the activities of NLO, Inc., and the in-house legal costs at current M&O contractors. NLO—a former operator of the Fernald Plant—is currently in existence only to manage its legal defense under a postoperations contract.² From fiscal year 1991 through fiscal year 1993, NLO received \$15.7 million from DOE—\$8 million for costs incurred by outside law firms, an estimated \$2.5 million for developing the litigation data base, and much of the remaining \$5.2 million for activities directly supporting the litigation. For example, consultants hired by NLO over this period conducted various projects for the outside law firm, NLO staff assisted in activities related to the litigation, and the firm earned almost \$1 million in fees for managing the litigation.

Similarly, current M&O contractors incurred in-house costs to monitor and manage ongoing legal activities; however, the portion of these costs related to litigation against the contractors is not known. Contractor officials at Oak Ridge, Sandia, and Hanford all stated that they have lawyers on staff who manage outside litigation activities and in some cases participate in litigation activities. The in-house costs related to these activities, however, were not available. The officials said that data are not maintained on the costs related to the internal efforts associated with such litigation.

²This contract expired on Sept. 30, 1994.

DOE Lacked Effective Guidelines and Procedures for Controlling Litigation Costs

Legal fees represent the largest and most visible cost associated with DOE contractors' litigation expenses. These costs include the hourly rates charged by the outside attorneys and other expenses incurred by the law firms in defending the contractors. However, DOE exercised little control over these costs. Specifically, DOE did not establish any criteria or guidelines for allowable costs, and it did not develop procedures requiring detailed reviews of law firms' bills. As a result, DOE paid for legal expenses that would not be allowed under criteria established by certain other federal organizations.

DOE Did Not Establish Cost Guidelines

Cost guidelines are necessary for contractors and law firms to know what costs will or will not be reimbursed; however, DOE had not developed and implemented such cost criteria. Two federal corporations—the Federal Deposit Insurance Corporation (FDIC) and the Resolution Trust Corporation (RTC)—have developed cost guidelines for outside counsel. These corporations' guidelines clearly specify what costs will be allowable and at what rates. These guidelines appear to be consistent with an opinion issued in December 1993 by the American Bar Association. The association's opinion—although nonbinding—suggests that law firms can recoup only reasonable and actual costs for services.

Comparing DOE's reimbursements with the corporations' guidelines, we found that DOE had paid significantly more than these guidelines allow for professional fees, duplication and facsimile costs, travel costs, and office overhead expenses.

Professional Fees Were Not Discounted

The corporations require that discounts on fees for legal services be sought in all cases. Their guidelines direct law firms seeking to represent the corporations to offer a discount on their rates. A corporation official stated that FDIC receives at least a 5-percent discount. Most of the law firms representing FDIC discount their rates by 10 percent—some firms, by as much as 20 percent. DOE, however, did not require its contractors to seek discounts on professional fees from outside law firms. Consequently, few discounts were obtained. Only 2 of the 16 law firms' bills we examined contained any discounts.³

If DOE were to adopt this guideline, it could obtain substantial cost savings, as the following example shows. One law firm is representing DOE contractors in three separate class action suits. Over a 3-year period, the firm received \$8 million in professional fees for its work on these cases. If

³Both firms provided 10-percent discounts on their fees.

a 5-percent discount had been applied, DOE could have saved over \$400,000. At a 10-percent discount rate, the savings could have been over \$800,000. (See app. IV for further examples of the savings DOE could have obtained through discounts on fees.)

Duplication and Facsimile Rates Were High

Law firms charge for certain administrative tasks that they perform for their clients. One of these tasks is duplicating documents. The corporations' criteria state that charges for photocopying shall not exceed 8 cents per page. DOE was reimbursing its contractors at a much higher rate. The amounts charged for reproducing documents varied among the DOE contractors' law firms, ranging from 10 cents per page to 25 cents per page. Gibson, Dunn, and Crutcher charged almost \$170,000 for duplicating documents over a 3-year period. For 13 months, the firm charged 25 cents per page, and for 23 months, it lowered the rate to 20 cents per page. Had the firm been allowed to charge only 8 cents per page, the total cost reimbursed by DOE would have been \$58,750, a savings of nearly \$109,000. Limiting all firms to this rate would have saved almost \$425,000. (App. V contains further details on costs for duplicating.)

Another administrative task for which DOE was paying high rates is facsimile transmission. An FDIC official stated that this charge is to be billed at the actual cost—the cost of the telephone call. However, several firms representing DOE contractors charged as much as \$1.75 per page plus the cost of the long-distance call. For example, the law firm of Gibson, Dunn, and Crutcher was reimbursed by DOE for more than \$47,000 in telefax and telecopying charges—in addition to the related telephone charges—over a 3-year period.

Travel and Meal Costs Exceeded Federal Standards

Travel costs incurred by law firms representing DOE contractors exceeded guidelines set forth by RTC and FDIC. The corporations' criteria limit travel costs to coach airfare, moderate hotel prices, and federal per diem rates for meals. Travel costs reimbursed by DOE were significantly higher. For example, two firms—Hunton and Williams and Perkins Coie—billed first-class airfare for their senior partners. Additionally, attorneys often were reimbursed for the costs of high-priced hotel rooms. Lawyers from Kirkland and Ellis billed for hotel rooms in Washington, D.C., that cost from \$215 to as much as \$250 per night. In contrast, the government's lodging allowance for that city is \$113 per night.

Additionally, some firms billed for meals costing far more than federal per diem rates. In many cases, the meals cost almost \$100 per person. For example, the law firm of Perkins Coie

- billed for a four-person dinner in New York City costing \$95 per person (the federal per diem allowance in this city is \$38) and
- billed for a five-person dinner in Seattle costing \$90 per person (the federal per diem allowance in this city is \$34).

This firm also billed for meal expenses that consisted only of drinks—an expense that is not allowable under federal per diem regulations.

Furthermore, some of the meal expenses were incurred for attorneys and staff who were not on travel. One firm—Perkins Coie—billed over \$9,000 for expenses labeled as “conference meals” over a 3-year period. Review of the supporting documentation indicates that these expenses were for meals purchased while many of the staff in attendance were not on travel and/or for activities associated with “client development.” In another instance, Crowell and Moring billed not only for the meals of its local attorneys but for the meals of their spouses as well.⁴ According to a legal opinion from one DOE operations office, meal expenses for attorneys and staff who are not on travel are not reimbursable. Nevertheless, although such costs were not allowed by contractors within that particular region, they were allowed by other contractors and were reimbursed in full by DOE in other regions.

Overhead Expenses Were Billed as Additional Expenses

Other costs were incurred and charged to DOE that, under the two federal corporations’ guidelines, are considered to be law firm overhead that should be subsumed within the professional fees. These include costs for word processing services, overtime, utilities and supplies, and legal publications. In many instances, however, DOE allowed these charges.

Although these costs could conceivably, in some cases, be appropriately charged and reimbursed, we found many instances in which the charges were inappropriate. For example, Shea and Gardner billed for purchasing American Bar Association publications, such as a guide to taking depositions. Crowell and Moring marked up its telephone charges 25 percent above the actual cost and its computer research 50 percent above the actual cost.

Additionally, according to the federal corporations’ guidelines, expenses for activities conducted by lawyers to develop subject matter expertise are not to be charged to the federal corporations. Instead, law firms must absorb the cost of developing an understanding of specialty issues. In

⁴A Crowell and Moring representative said that these meals were billed to the Hanford case in error. The error was discovered after our review of the firm’s travel records in April 1994. A credit of \$133.62 was applied to the firm’s May 26, 1994, billing to cover the cost of the meals.

contrast, some law firms—Shea and Gardner and Gibson, Dunn, and Crutcher—billed DOE contractors for staff to attend seminars on toxic/radiation litigation.

DOE Did Not Establish Requirements for Reviewing Billings

DOE did not have requirements mandating and facilitating detailed reviews by contractors and/or DOE of the bills submitted by law firms. As a result, the quality of the reviews varied greatly, and some reviews were inadequate. For example, one contractor—Westinghouse Hanford Company—performed an internal audit 2 years into the In Re: Hanford litigation and found that it did not have adequate reviews of the legal bills submitted to it. The audit also revealed that several costs that were not allowable under the company's own in-house criteria had been paid, such as first class airfares. In another instance, UNC, Inc.—a former contractor at Hanford—never examined detailed billings of its principal law firm and instead approved all of its bills on the basis of a monthly two-page billing summary. These summaries lacked detailed information on the activities that each lawyer had performed; in fact, they did not even specify the number of hours that lawyers had worked on the case.

DOE's review of bills was also inadequate. At only one DOE operations office—Oak Ridge—did Chief Counsel officials perform detailed reviews of legal costs before approving bills for payment. This office disallowed numerous costs—including costs for meals charged by lawyers who were not on travel and expenses for seminars—that were allowed by other operations offices. At Albuquerque, few detailed reviews of bills were performed, and when performed, such reviews took place after the bills had been paid. At Richland, bills were approved for payment by the Chief Counsel primarily on the basis of billing summaries, and any detailed reviews were conducted annually or semiannually. In our view, the summaries were not specific enough for a reviewer to determine what the costs were for and whether they were appropriate.

Additionally, DOE did not require the bills to be presented in a format that included enough detail to allow a reviewer to understand the basis for the charges. Consequently, even when detailed reviews were performed, many of the charges in the bills could not be adequately assessed. For example, some charges were listed simply for “research” or “reviewing documents,” while others were listed for meetings with specific individuals, but no mention was made of either the purpose of the meeting or the subject discussed. In other instances, activities were cumulated into a daily total

and briefly described; this information did not indicate how much time was spent on each activity and whether the time spent was appropriate.

Charges for activities performed by attorneys and their staffs might have been questioned if DOE had established adequate review procedures and sufficient criteria for reasonableness. For instance, several firms charged time for staff to prepare monthly bills, review and catalog newspaper articles, prepare security clearance forms, and rearrange or move file rooms. Additionally, General Electric hired a public relations firm to analyze trends in the case and passed these costs along to DOE for reimbursement. In our view, these activities were of such questionable benefit to DOE that a detailed review would have raised concerns about the appropriateness of DOE's paying for them.

DOE Recently Began to Control Litigation Costs

DOE has recognized that its controls over contractors' litigation costs are problematic and has taken some actions to improve them. In March 1994, DOE issued guidance on managing litigation, directing its field office Chief Counsels to ensure that the rates charged are reasonable. The guidance also requires that contractors develop for each case a formal understanding concerning, among other things, allowable expenses, billing procedures, and contractors' reviews of bills.

In testimony before this Subcommittee on July 13, 1994, we stated that although these actions represented a step in the right direction, they did not go far enough. The guidance still gave contractors considerable discretion in controlling costs. Given our experience with the way contractors had applied cost controls in the past, we were not convinced that this guidance would ensure that consistent and effective cost controls were developed and applied to all legal bills. Since the hearing, however, DOE's Office of General Counsel has begun to develop and adopt additional measures to address the problems identified.

On August 25, 1994, DOE issued an acquisition letter (No. 94-13) setting forth interim policies for contracting officers to consider in determining whether particular litigation costs are reasonable. The cost guidelines—which became effective for all ongoing class action suits on October 1, 1994—establish limits and terms for the costs that DOE will reimburse to contractors for outside litigation. For example, the guidelines specify that costs for duplication are not to exceed 10 cents per page; telephone charges, facsimile transmission costs, and computer-assisted research costs are not to exceed the actual costs; airfare is not to exceed

the coach fare; and other travel expenses should be moderate, consistent with the rates set forth in the Federal Travel Regulations. The guidelines also set forth DOE's policy for reimbursing attorneys' fees, profit and overhead, and overtime expenses, and they designate specific nonreimbursable costs.

Additionally, officials from the Office of General Counsel have met with RTC and FDIC officials to gain insight from their experience in developing systems for auditing bills to determine the reasonableness of both the professional activity and the related expenses. A staff has been assembled in headquarters to develop requirements and procedures for reviewing bills and to conduct detailed review of bills. Chief Counsel staff in regional offices are also developing review procedures that will be coordinated with the headquarters requirements. DOE is still in the initial stages of developing an audit function but plans to have one in place by early 1995.

Furthermore, a cost-reporting system is being implemented that will provide monthly reports on all litigation. This reporting system will collect Department-wide cost data in a consistent format. According to DOE's General Counsel, this system will report all costs, including data base costs and contractors' in-house costs, within 10 days after the end of each month. DOE plans to compare the actual with the budgeted costs for each case to better ensure that the costs remain reasonable. This system is now operational, although Office of General Counsel officials acknowledge that the data are not yet complete.

Finally, DOE is consolidating its legal defense in various cases—a measure with the greatest cost-saving potential. The In Re: Hanford case, for example, has six codefendants—each represented by at least one law firm and some by as many as three firms. DOE acknowledges that duplication of effort is likely and, with it, unnecessary costs. To prevent further duplication, DOE informed the codefendants that beginning in fiscal year 1995, it would not reimburse any contractor for the services of any outside counsel other than the law firm selected to serve as lead counsel for the litigation.

At the time this report was being completed, a lead contractor had been designated and that contractor—with concurrence from DOE—had selected a lead counsel. DOE estimates that by consolidating, it will reduce its annual outside litigation expenses by nearly 60 percent, saving millions of dollars on this case alone. Office of General Counsel officials estimated that these efforts—establishing cost criteria, implementing an audit

function, and consolidating class action cases—would save DOE \$5 million to \$7 million annually.

Conclusions

During fiscal years 1991 through 1993, DOE incurred large litigation costs but, in many cases, did not have the internal controls needed to ensure that these costs were appropriate. At a recent hearing before this Subcommittee, we discussed these problems and, as a result, DOE began to improve its management of contractors' litigation costs. If DOE's recent efforts are fully implemented and successful, substantial cost savings could accrue to the government. Additionally, DOE should have cost controls and case management principles in place to ensure that any future lawsuits are handled efficiently.

DOE is to be commended for its quick and thorough response to the problems we identified. However, it remains to be seen whether or not these new procedures will be universally implemented within DOE's field offices and whether or not all contractors will accept and abide by these new procedures.

Agency Comments

We discussed the facts in this report with DOE officials, including the General Counsel and other officials from the Office of General Counsel. They agreed with the facts presented; however, they expressed concern that the tone of the report might lead readers to believe that DOE was not addressing the problems we had identified. They provided comments and information on the actions they are taking to reduce litigation costs and improve cost controls. We have incorporated these comments into the report where appropriate. As requested, we did not obtain written agency comments on a draft of this report.

We performed our work between November 1993 and August 1994 in accordance with generally accepted government auditing standards. Appendix VI contains details on the objectives, scope, and methodology of our review.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies of the report to the appropriate Senate and House committees; interested Members of

Congress; the Secretary of Energy; and other interested parties. We will make copies available to others on request.

Major contributors to this report are listed in appendix VII. If we can be of further assistance, please contact me at (202) 512-3841.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Victor S. Rezendes". The signature is fluid and cursive, with the first name "Victor" and last name "Rezendes" clearly distinguishable.

Victor S. Rezendes
Director, Energy and
Science Issues

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Abbreviations

ARCHO	Atlantic Richfield Hanford Corporation
DOE	Department of Energy
FDIC	Federal Deposit Insurance Corporation
M&O	management and operating
RTC	Resolution Trust Corporation

Ongoing Class Action Litigation Against DOE Contractors During Fiscal Years 1991-93

Case name	Facility	Contractor(s)
<u>In Re: Hanford Nuclear Reservation Litigation</u>	Hanford Site Hanford, WA	DuPont UNC, Inc. Atlantic Richfield Hanford Corporation (ARCHO) General Electric Rockwell International Westinghouse Hanford Company
<u>Cook et al. v. Rockwell</u>	Rocky Flats Plant Golden, CO	Rockwell International
<u>Cook et al. v. Dow</u>	Rocky Flats Plant Golden, CO	Dow Chemical
<u>In Re: Los Alamos Litigation^a</u>	Los Alamos National Laboratory Los Alamos, NM	University of California
<u>Stepp v. Monsanto Research Company</u>	Mound Plant Miamisburg, OH	Monsanto Research Company
<u>Day v. NLO^b</u>	Fernald Plant Fernald, OH	NLO, Inc.
<u>Boggs v. Goodyear Atomic Corporation</u>	Portsmouth Plant Portsmouth, OH	Goodyear Atomic Corporation Martin Marietta Energy Systems
<u>Eucler Marina and Campground, Inc., v. Union Carbide Corporation</u>	Oak Ridge National Laboratory Oak Ridge, TN	Union Carbide Corporation Martin Marietta Energy Systems

^aThis case was dismissed on Nov. 15, 1993.

^bThis case was settled on July 25, 1994.

Number of Staff Working on the In Re: HANFORD Case in February 1992

Contractor/Firm	Title	Rate per hour	Number of hours	Cost
ARCHO				
In-house	Attorney (2)	a	4.50	\$368.77
	Paralegal/ Litigation support (7 people)	a	383.75	\$7,352.46
Gibson, Dunn, and Crutcher	Partner	\$350	10.40	\$3,640.00
	Partner	\$335	24.50	\$8,207.50
	Partner	\$325	50.75	\$16,493.75
	Partner	\$280	54.75	\$15,330.00
	Associate	\$210	94.45	\$19,834.50
	Associate	\$210	0.75	\$157.50
	Associate	\$210	120.25	\$25,252.50
	Associate	\$210	13.75	\$2,887.50
	Associate	\$185	91.25	\$16,881.25
	Legal Assistant	\$95	1.00	\$95.00
	Legal Assistant	\$80	90.25	\$7,220.00
	Legal Assistant	\$75	47.25	\$3,543.75
	Legal Assistant	\$20	40.50	\$810.00
DuPont				
Kirkland and Ellis	Attorney	\$295	27.25	\$8,038.75
	Attorney	\$195	46.25	\$9,018.75
	Attorney	\$135	19.00	\$2,565.00
	Attorney	\$195	1.50	\$292.50
	Legal Assistant	\$40	16.75	\$670.00
	Legal Assistant	\$36	8.50	\$306.00
	Legal Assistant	\$70	36.50	\$2,555.00
	Legal Assistant	\$36	137.25	\$4,941.00
Williams, Kastner, Gibbs	Attorney	\$175	10.10	\$1,767.50
	Attorney	\$175	1.00	\$175.00
	Attorney	\$175	7.60	\$1,330.00

(continued)

Appendix II
Number of Staff Working on the In Re:
HANFORD Case in February 1992

Contractor/Firm	Title	Rate per hour	Number of hours	Cost
	Paralegal	\$65	7.60	\$494.00
General Electric				
Perkins Coie	Partner	\$220	45.00	\$9,900.00
	Partner	\$275	32.50	\$8,937.50
	Partner	\$220	11.80	\$2,596.00
	Partner	\$215	3.75	\$806.25
	Of Counsel	\$180	0.40	\$72.00
	Associate	\$142	41.50	\$5,893.00
	Associate	\$135	44.75	\$6,041.25
	Associate	\$120	1.50	\$180.00
	Associate	\$110	4.50	\$495.00
	Associate	\$110	126.20	\$13,882.00
	Associate	\$95	67.40	\$6,403.00
	Associate	\$95	2.50	\$237.50
	Legal Assistant	\$78	0.50	\$39.00
	Legal Assistant	\$80	3.90	\$312.00
	Legal Assistant	\$57	0.50	\$28.50
	Legal Assistant	\$62	85.50	\$5,301.00
	Legal Assistant	\$83	132.70	\$11,014.10
	Legal Clerk	\$39	48.50	\$1,891.50
	Contract Staff - Clerk(s)	\$22	801.60	\$17,635.20
	Contract Staff - D.E. Clerk	\$25	55.75	\$1,393.75
	Administrative Staff	\$75	0.25	\$18.75
	Administrative Staff	\$65	7.10	\$461.50
	Administrative Staff	\$25	54.50	\$1,362.50
Hunton and Williams	Partner	\$300	3.75	\$1,125.00
	Partner	\$210	0.50	\$105.00
	Counsel	\$300	3.25	\$975.00

(continued)

Appendix II
Number of Staff Working on the In Re:
HANFORD Case in February 1992

Contractor/Firm	Title	Rate per hour	Number of hours	Cost
Rockwell				
Shea and Gardner	Partner	\$285	0.25	\$71.25
	Partner	\$275	28.50	\$7,837.50
	Partner	\$235	5.25	\$1,233.75
	Partner	\$235	38.75	\$9,106.25
	Associate	\$155	53.25	\$8,253.75
	Associate	\$145	28.00	\$4,060.00
	Associate	\$145	37.25	\$5,401.25
	Associate	\$120	16.75	\$2,010.00
	Associate	\$120	108.25	\$12,990.00
	Paralegal	\$65	70.25	\$4,566.25
	Paralegal	\$65	70.00	\$4,550.00
	Paralegal	\$45	0.50	\$22.50
	Paralegal	\$45	0.25	\$11.25
	Paralegal	\$65	4.50	\$292.50
	Paralegal	\$65	7.75	\$503.75
Helsell, Fetterman, Martin, Todd, and Hokanson	Partner	\$215	44.90	\$9,653.50
	Partner	\$185	36.20	\$6,697.00
	Partner	\$175	51.00	\$8,925.00
	Associate	\$130	40.30	\$5,239.00
	Associate	\$115	60.20	\$6,923.00
	Associate	\$110	27.60	\$3,036.00
	Paralegal	\$75	44.20	\$3,315.00
	Paralegal	\$65	133.00	\$8,645.00
	Paralegal	\$65	121.40	\$7,891.00
	Document Clerk	\$30	85.00	\$2,550.00
	Document Clerk	\$25	22.90	\$572.50
UNC				
Crowell and Moring	Partner	\$335	6.50	\$2,177.50
	Partner	\$275	16.00	\$4,400.00
	Partner	\$210	81.75	\$17,167.50
	Associate	\$130	14.75	\$1,917.50
	Associate	\$115	33.75	\$3,881.25
	Paralegal	\$75	40.75	\$3,056.25
	Paralegal	\$70	0.50	\$35.00
(continued)				

Appendix II
Number of Staff Working on the In Re:
HANFORD Case in February 1992

Contractor/Firm	Title	Rate per hour	Number of hours	Cost
	Clerk	\$45	0.50	\$22.50
	Clerk	\$45	0.50	\$22.50
Stoel, Rives, Boley, Jones, and Grey	Partner Partner Clerk	^a	18.30	\$4,387.00
Westinghouse				
Davis, Wright, Tremaine	Partner	\$230	20.00	\$4,600.00
	Partner	\$190	72.60	\$13,794.00
	Partner	\$190	48.00	\$9,120.00
	Partner	\$190	0.10	\$19.00
	Associate	\$120	25.00	\$3,000.00
	Associate	\$110	8.40	\$924.00
	Associate	\$100	16.30	\$1,630.00
	Paralegal	\$60	60.60	\$3,636.00
				\$455,481.38

^aData not available.

Costs Incurred for Litigation Data Bases

Dollars in millions				
Site	Fiscal year			Total
	1991	1992	1993	
Fernald	\$3.9	\$5.4	\$4.8	\$14.1
Hanford	0.2	1.7	2.2	4.1
Los Alamos	•	1.2	1.6	2.8
Rocky Flats	1.7	1.2	1.3	4.2
Total	\$5.8	\$9.5	\$9.9	\$25.2

Savings DOE Could Have Achieved by Requiring Discounted Professional Fees

Fiscal year	Professional fees	Cost if discounted by 10 percent	Savings if discounted by 10 percent	Cost if discounted by 5 percent	Savings if discounted by 5 percent
Kirkland and Ellis ^a					
1991	\$3,689,741	\$3,320,767	\$368,974	\$3,505,254	\$184,487
1992	\$2,372,003	\$2,134,803	\$237,200	\$2,253,403	\$118,600
1993	\$1,991,554	\$1,792,399	\$199,155	\$1,891,976	\$99,578
Shea and Gardner ^b					
1991	\$2,055,920	\$1,850,328	\$205,592	\$1,953,124	\$102,796
1992	\$1,601,794	\$1,441,615	\$160,179	\$1,521,704	\$80,090
1993	\$1,799,710	\$1,619,739	\$179,971	\$1,709,725	\$89,985

^aKirkland and Ellis' professional fees were incurred for the Day v. NLO, Cook et al. v. Rockwell/Dow, and In Re: Hanford litigations.

^bShea and Gardner's professional fees were incurred for the Cook et al. v. Rockwell/Dow and In Re: Hanford litigations.

Savings DOE Could Have Achieved If Rate for Document Duplication Had Been Standardized

Case name and law firm	Rate per page	Total amount billed	Cost at \$0.08 per page	Savings
<u>In Re: Hanford</u>				
Gibson, Dunn, and Crutcher	0.20	\$ 63,608	\$ 25,443	\$ 38,165
	0.25	104,116	33,317	70,799
Kirkland and Ellis	0.20	29,444	11,778	17,666
	0.10	29,295	23,436	5,859
Perkins Coie	0.10	89,247	71,398	17,849
Shea and Gardner	0.15	86,203	45,975	40,228
Helsell, Fetterman, Martin, Todd, and Hokanson				
	0.20	52,088	20,835	31,253
Crowell and Moring	0.20	30,823	12,329	18,494
Davis, Wright, Tremaine	0.20	50,622	20,249	30,373
<u>Cook et al. v. Rockwell/Dow</u>				
Shea and Gardner	0.15	112,192	59,836	52,356
Kirkland and Ellis	0.20	38,144	15,258	22,886
	0.10	25,108	20,086	5,022
<u>Day v. NLO</u>				
Kirkland and Ellis	0.20	97,695	39,078	58,617
	0.10	75,829	60,663	15,166
Total		\$884,414	\$459,681	\$424,733

Objectives, Scope, and Methodology

On October 29, 1993, the Chairman of the Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, asked us to review the Department of Energy's (DOE) expenses for outside litigation. After discussions with the Chairman's office, we agreed to (1) determine how much DOE was spending for litigation to defend its contractors, (2) evaluate whether adequate controls are in place to ensure that all of these costs are appropriate, and (3) assess the efforts being made by DOE to improve its controls over these outside litigation costs.

To respond to this request, we met with staff in DOE's Office of General Counsel in Washington, D.C., to obtain an overall perspective on the litigation activities of the Department's various contractors, the underlying issues associated with such litigation, and the rationale for DOE's paying the costs of the contractors' litigation. Additionally, we selected and visited three of DOE's operations offices—Albuquerque, Oak Ridge, and Richland—and examined records of the litigation activities and costs incurred in each office. We selected these offices because DOE data indicated that these offices had incurred about 75 percent of the Department's expenses for contractors' litigation.

To address the first objective, we discussed litigation costs with DOE headquarters and operations office officials. We discussed the types of costs associated with the litigation and the records maintained on these costs. We also obtained and reviewed data covering the period from October 1991 through May 1993 compiled by an internal DOE litigation management task force assessing the costs of litigation. To verify the data on costs for outside legal firms' services developed by the task force and to attempt to obtain complete cost data for fiscal year 1993, we examined available records at the three operations offices, including the data that were submitted to the task force, supporting documentation, and various other records detailing expenditures for outside legal firms' services. However, we were not able to obtain sufficient data on costs to ensure that the amounts provided to the task force were accurate or to calculate the total costs for fiscal year 1993. In addition, we discussed other costs of litigation with these DOE officials and obtained data from them detailing the costs of developing litigation data bases. We also contacted contractors and law firms responsible for developing and managing the data bases and obtained data on the costs incurred. Furthermore, we discussed in-house costs with contractor officials at all three operations offices.

To address the second objective, we (1) evaluated the charges and expenses of the outside law firms engaged by the contractors and (2) assessed the process used by the contractors and DOE to review these costs. We obtained and reviewed the billings of outside law firms involved in four major class action suits: In Re: Hanford, Cook et al. v. Rockwell/Dow, In Re: Los Alamos, and Day v. NLO. We examined the supporting documentation for the various charges, and when the available data were insufficient, we contacted the contractors and/or law firms to obtain information on the rates and charges for activities, or in some cases, we visited the law firms to review documentation supporting the charges. We did not, however, obtain and examine law firms' internal documents supporting the hourly charges of individual lawyers or legal assistants.

To evaluate the reasonableness of the law firms' charges and expenses, we compared these costs to the guidelines developed and used by the Federal Deposit Insurance Corporation and the Resolution Trust Corporation. These federal corporations use outside law firms to conduct much of their legal work and have had cost guidelines in place for several years to ensure that the expenses they incur for litigation are reasonable. We judged the corporations' guidelines to be an appropriate benchmark for evaluating the costs incurred by DOE. Additionally, we used the American Bar Association's Formal Ethics Opinion 93-379 as another guide for judging the reasonableness of the law firms' charges. Finally, we met with a litigation management consultant to obtain further guidance on reasonable and prudent costs to be paid for legal services.

To assess the adequacy of the review of the law firms' billings, we discussed review procedures with each DOE operations office we visited and obtained available documentation that showed evidence of review and comment on the law firms' charges. In addition, we met with representatives of the contractors—DuPont, Martin Marietta Energy Systems, NLO, UNC, the University of California, and Westinghouse Hanford Company. We discussed review procedures by telephone with Atlantic Richfield Hanford Corporation, Dow Chemical Company, General Electric, and Rockwell International.

To keep apprised of DOE's efforts to develop and implement cost controls over litigation costs, we discussed actions proposed by the agency with officials from the Office of General Counsel at DOE headquarters and the Office of Chief Counsel at the Albuquerque, Oak Ridge, and Richland operations offices. We obtained documents detailing the actions DOE

intends to take to better control litigation costs and ensure more effective litigation management. Furthermore, we discussed planned procedures for auditing law firms' bills with the official responsible for this activity in DOE's Office of Inspector General.

Major Contributors to This Report

Resources, Community, and Economic Development Division, Washington, D.C.	William F. Fenzel John R. Schulze Tracy Kelly Solheim
Office of General Counsel	Martin J. Fitzgerald Susan W. Irwin
Denver Regional Office	Peter Fernandez Ernie V. Limon, Jr.
Seattle Regional Office	John E. Cass

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