

No. 98-01

Date: February 23, 1998

Foreign Corrupt Practices Act Review
Opinion Procedure Release

The Department has reviewed the FCPA Opinion Request of a U.S.-based industrial and service company. The requestor has been held liable by an agency of the Government of Nigeria for the clean up of environmental contamination at a site formerly leased by a subsidiary of the requestor, and is aware the Nigerian authorities have levied a \$50,000 fine in connection with their claim of environmental damage. The requestor has sought to resolve its liability for the contaminated site by retaining a Nigerian contractor with experience in the removal of environmental contaminants. The contractor retained by the requestor was one recommended by officials of the Nigerian Federal Environmental Protection Agency.

When the requestor engaged the contractor to prepare a proposal for the removal of the contaminants from the site, its representatives were advised orally by a representative of the contractor that, in order to ensure Nigerian Government approvals of the clean-up, [1] the \$50,000 fine would have to be paid to the Nigerian Government through the contractor; and [2], that the balance of the contractor's proposed fee -- approximately \$170,000 -- for removal of the contaminants from the site included therein some \$30,000 in "community compensation and modalities for officials of the Nigerian FEPA and the Nigerian Ports Authority." Under these circumstances, the requestor has reasonably concluded that all or a portion of the "fine" and "modalities" will be paid, in fact, to Nigerian Government officials.

Based upon all the facts and circumstances disclosed to us by the requestor, the Department would -- if the requestor were to proceed with the requested payments to the contractor of the "fine" and the "modalities" -- commence an investigation to determine if a criminal prosecution would be merited. If the requestor were to pay the fine directly to an official account of the appropriate Nigerian Government agency, and the contractor were to reduce its fee by the amount it has included for "modalities", and arrangements were made for the contractor's fee to be paid to the Government of Nigeria for payment, in turn, to the contractor when the Nigerian Government is satisfied that the necessary environmental clean-up has been completed, the Department would reconsider its present intention to take an enforcement action with respect to the proposed transaction.

The FCPA Opinion Letter and this Release have no binding application to any party which did not join in the request, and can be relied upon by the requesting party only to the extent that the disclosure of facts and circumstances in the request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.