

CLIENT ALERT

A Sewer By Any Other Name Would Smell As Foul

March 24, 2005

Southwest Marine, Inc. (Feb. 23, 2005), concerned costs incurred by a contractor in defending a private action brought under the Clean Water Act in which the government did not intervene and in which a federal court found that the contractor had violated the act, imposed a penalty for that violation, and then remitted the penalty entirely in recognition of costs incurred by the contractor to correct the violation. The ASBCA acknowledged that there was no FAR provision that expressly made the costs of a private action unallowable, but noted that FAR 31.205-47 would make such costs unallowable if the action had been brought by the government and concluded that the costs incurred in this private action were sufficiently similar to costs incurred in an action brought by the government to make the costs of the private action unallowable as well.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.