



In the Matter of:

**Application of Section 1804 of the
Atomic Energy Act of 1954, as amended
by the Energy Policy Act of 1992, to
Decontamination and Decommissioning Work
Performed at the Department of Energy's
Y-12 National Security Complex, Oak Ridge, Tennessee**

ARB NO. 11-083

DATE: August 8, 2013

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For Petitioner, Building and Construction Trades Department, AFL-CIO:

Terry R. Yellig, Esq.; Esmeralda Aguilar, Esq.; Sherman, Dunn, Cohen, Leifer & Yellig, P.C., Washington, District of Columbia

For Respondent Administrator, Wage and Hour Division:

Dean A. Romhilt, Esq.; Jonathan T. Rees, Esq.; Jennifer S. Brand, Esq.; M. Patricia Smith, Esq.; U.S. Department of Labor, Washington, District of Columbia

For Interested Party, National Nuclear Security Administration of the United States Department of Energy:

Shelley P. Turner, Esq.; Terri L. Slack, Esq.; Lisa Daley Mangi, Esq.; U.S. Department of Energy, Washington, District of Columbia

For Interested Party, Metal Trades Department, AFL-CIO:

Robert Matisoff, Esq.; Keith R. Bolek, Esq.; O'Donoghue & O'Donoghue LLP, Washington, District of Columbia

Before: E. Cooper Brown, Deputy Chief Administrative Appeals Judge; Joanne Royce, Administrative Appeals Judge; and Luis A. Corchado, Administrative Appeals Judge

FINAL DECISION AND ORDER

On May 5, 2009, Building and Construction Trades Department, AFL-CIO (BCTD) asked the Department of Labor to find that, pursuant to “Employee Provisions” (Section 1804) of the Energy Policy Act 1992 (EPACT 92),¹ the Davis-Bacon Act (DBA)² applied to decontamination and decommissioning (D&D) projects at the Y-12 National Security Complex (Y-12) in Oak Ridge, Tennessee. The Wage and Hour Division’s Regional Director initially determined that the work projects at Y-12 were covered. Upon reconsideration by motion of the National Nuclear Security Administration (NNSA) of the U.S. Department of Energy (DOE), the Acting Administrator of the U.S. Department of Labor’s Wage and Hour Division (Administrator or WHD) determined that the DBA did not apply to wages for decommissioning and decontamination work at Y-12.

INTRODUCTION

BCTD’s appeal requires us to interpret the “Employee Provisions” (Section 1804) of the EPACT 92, solely a question of law.³ Specifically, the parties dispute whether the phrase “uranium enrichment facility of the Department” includes the Y-12 uranium enrichment facility. BCTD argues that the plain meaning of that phrase includes Y-12 and any contrary interpretation violates fundamental canons of statutory interpretation. In contrast, the Administrator and DOE point to legislative history and argue that “uranium enrichment facility” in Section 1804 is more limited and is synonymous with one kind of uranium enrichment facility: “gaseous diffusion enrichment facility.” In order of significance, we examine the text of Section 1804, the relevant text of EPACT 92, other provisions of the Atomic Energy Act of 1954 (AEA), and legislative history. We conclude that the phrase “uranium enrichment facility of the Department” is not synonymous with the narrower phrase “gaseous diffusion enrichment facility.” We find that the plain terms of Section 1804 require the payment of prevailing wages for any decontamination and decommissioning work performed at any DOE facility that engaged in “uranium enrichment.” The parties agree that Y-12 had engaged in “uranium enrichment.” Neither the Administrator nor DOE disagree with BCTD’s claim that the project work in this case involves decontamination and decommissioning. Therefore, as we more fully explain below, we find that Section 1804 applies to decontamination and decommissioning work performed at the Y-12 facility, and we reverse the Administrator’s finding.

¹ 42 U.S.C.A. § 2297g-3 (Thomson Reuters 2013).

² 40 U.S.C.A. § 3142, et seq. (Thomson Reuters 2013).

³ We do not render any opinions on the funding sources (Section 1802) or payment requirements (Section 1803) of the Uranium Enrichment Fund but discuss them only to the extent necessary to interpret the Employee Provision (Section 1804).

BACKGROUND⁴

In 1992, Congress passed EPACT, substantially revising the Atomic Energy Act of 1954, as amended by Tit. XI, § 1101, Pub. L. No. 102-486, 106 Stat. 2766 (1992). Among the several chapters added to the AEA, EPACT added Chapter 28, “Uranium Enrichment Decontamination and Decommissioning Fund.” Section 1804 is one of five sections in Chapter 28 and provides as follows:

All laborers and mechanics employed by contractors or subcontractors in the performance of decontamination or decommissioning of *uranium enrichment facilities of the Department [of Energy]* shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality as determined by the Secretary of Labor in accordance with sections [of the DBA].

42 U.S.C.A. § 2297g-3 (emphasis added).

When EPACT was passed in 1992, Y-12 was indisputably one of two “former uranium enrichment facility[ies] of the Department.” Admin. Rec. Tab E at 3. The other “former uranium enrichment facility” in 1992 was the facility in Oak Ridge, Tennessee (Oak Ridge or K25). Y-12 and Oak Ridge, were built in the same year (1943). Y-12 performed uranium enrichment until 1946 using an electromagnetic isotope separation process (EMIS). Oak Ridge performed uranium enrichment through gaseous diffusion, the first DOE plant to use this process. Oak Ridge went into “stand-by mode” in 1985 and “cold shut down” in 1987. Both enriched uranium for military weapons, but Oak Ridge also enriched uranium for commercial purposes. Both facilities required D&D work.

In 1992, there were also two active uranium enrichment DOE facilities. Those were (1) the facility in Paducah, Kentucky (Paducah), and (2) the Portsmouth facility in Piketon, Ohio (Portsmouth).⁵ Paducah and Portsmouth were built in 1952 and 1955, respectively, and both operated as gaseous diffusion enrichment facilities. As of 1992, there were at least two other known methods of uranium enrichment: gas centrifuge and advanced vapor laser isotope separation (AVLIS). BCTD Pet. for Rev. at 3.

⁴ For the facts recited in the background section, we draw upon the facts that appear to be expressly or implicitly undisputed. See generally BCTD Pet. for Rev. at 15-16; Brief Submitted on Behalf of the National Nuclear Security Administration in Support of the Deputy Administrator’s Determination and in Opposition to the Petition for Review (DOE) at 2-5; BCTD Br. at 2.

⁵ EPACT Section 1403 as initially enacted expressly identified these two facilities as the facilities leased by the United States Enrichment Corporation. Pub. L. No. 102-486, § 1403, 106 Stat. 2776 (Oct. 24, 1992).

In 2009, DOE contracted out work at Y-12 to dispose of legacy materials, deactivate and demolish portions of a building, remove and dispose of radioactive scrap material, and perform other miscellaneous deactivation and demolition activities (Case Nos. 09-0017, 0018 and 0019). DOE's Oak Ridge Reservation Labor Standards Committee declined BCTD's request to pay DBA prevailing wages for the D&D work.

On May 5, 2009, BCTD asked the Administrator to investigate and reclassify the D&D work at Y-12 as DBA-covered per Section 1804. Tab B. DOE responded that Section 1804's "uranium enrichment facilities" should only apply to the D&D work at the gaseous diffusion facilities and not to the demolition work at the Y-12 facility. Tab C at n.17. After completing the investigation, in a February 2, 2010 initial ruling, WHD's Regional Director agreed with BCTD that Section 1804's DBA standards apply to all DOE uranium enrichment facilities. Tab D.

On March 16, 2010, the DOE asked for reconsideration of WHD's February 2, 2010 opinion. Tab E. DOE argued that Section 1804's use of "uranium enrichment facilities" does not apply to all DOE uranium enrichment facilities but only to D&D work at its three gaseous diffusion uranium enrichment facilities and funded by a special D&D cost-sharing fund pursuant to Section 1801(a). Tab E. BCTD filed a response as did the Metal Trades Department, AFL-CIO. Tabs F, G. On June 28, 2011, the Administrator agreed with DOE and ruled that Section 1804 did not apply to the demolition work at the Y-12 facility. Tab H.

BCTD petitioned the Board to review the Administrator's final determination. The Administrator responded, asking us to affirm her decision. Similarly, as interested parties, the DOE and Metal Trades filed position statements with the ARB, also requesting that we affirm the Administrator.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor delegated to the ARB the authority to "act for the Secretary in review or on appeal of matters" under the DBA or laws "providing for prevailing wages determined by the Secretary of Labor in accordance with or pursuant to the Davis-Bacon Act."⁶ The Secretary's jurisdiction over the DBA and Section 1804 emanates directly from Congress. *See* 40 U.S.C.A. § 3142; 42 U.S.C.A. 2297g-3. In addition, the Secretary has the express authority to coordinate among the various executive departments the application and enforcement of DBA provisions. Reorganization Plan No. 14 of 1950, 5 U.S.C.A. App. (West 1996) (delegating to the Secretary of Labor responsibility for developing government-wide policies, interpretations, and procedures to implement the Davis-Bacon Act and the Related Acts). DBA proceedings before the ARB are appellate in nature, and the Board will not hear matters de novo except upon a showing of extraordinary circumstances. 29 C.F.R. § 7.1(e). This

⁶ Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378, § 5(a) (Nov. 16, 2012). This order also delegates to the Board the Secretary's authority under Reorganization Plan No. 14 of 1950, 5 U.S.C.A. App. (West 1996). *See also* 29 C.F.R. §§ 7.1, 7.9 (2013).

general prohibition against de novo review means that the Board generally will not conduct an evidentiary hearing, call witnesses, or make credibility determinations, but will rely on the record and arguments presented by the parties.⁷ We have previously stated that “in matters requiring the Administrator’s discretion, the Board generally defers to the Administrator.”⁸ However, the issue in this case involves a pure issue of law, interpreting whether Congress meant “gaseous diffusion enrichment facility” in using the term “uranium enrichment facility” in Section 1804. As an administrative appellate body standing in the shoes of the Secretary of Labor, we review de novo pure questions of law, a traditional role of an appellate body.⁹ Nevertheless, even in conducting a de novo review, we will consider whether the Administrator has advanced a reasonable interpretation that we can adopt. Ultimately, with or without deferring to the Administrator in this case, we must reject the Administrator’s decision because her reasons for finding no DBA coverage in this case contravene the plain language of Section 1804 and EPACT.

Before we turn to the text of Section 1804, we address the deference issue DOE raises. DOE argues that its interpretation of Section 1804 is entitled to deference as the agency entrusted with the administration of the Atomic Energy Act. It may be that DOE generally is entitled to deference under the AEA, but Section 1804 is an “employee provision” that Congress expressly entrusted to the Secretary of Labor. This is similar to many other instances where Congress adds an employee protection or whistleblower provision to the substantive statutes of other departments but empowers the Secretary of Labor to interpret the employee provision.¹⁰ Furthermore, for decades, the Secretary of Labor has been charged with coordinating the administration of the DBA as it is authorized to do under Reorganization Plan No. 14.¹¹ Consequently, we conclude that we owe no deference to the DOE in interpreting Section 1804, the Employee Provision.

⁷ See, e.g., *Framlau Corp. v. Dembling*, 360 F. Supp. 806, 813 (E.D. Pa. 1973).

⁸ *Road Sprinklers Fitters Local Union No. 669*, ARB No. 10-123, slip op. at 6 (ARB June 20, 2012) (citing *Titan IV Mobile Serv. Tower*, WAB No. 89-14, slip op. at 7 (Sec’y May 10, 1991)). We have also cited to *Udall v. Tallman*, 380 U.S. 1, 16-17 (1965), but reliance on *Udall* overstates the deference owed. In *Udall*, the Court spoke of the deference that Article III courts owed to Executive agencies when reviewing agency decisions, not a standard that governs a Department’s appellate administrative body reviewing the decisions of intra-Department agencies.

⁹ See, e.g., *N. Georgia Bldg. & Constr. Trades Council v. Goldschmidt*, 621 F.2d 697 (5th Cir. 1980) (appellate courts review statutory interpretations de novo); *Coca Cola Co. v. Atchison Topeka & Santa Fe Railway Co.*, 608 F.2d 213, 218 (5th Cir. 1979) (a traditional role of an appellate body is to review questions of law de novo).

¹⁰ For example, see employee provisions protecting whistleblowers within statutes governing rail transportation (49 U.S.C.A. § 20109) (FRSA), securities (18 U.S.C.A. § 1514A) (SOX), and nuclear activities (42 U.S.C.A. § 5851) (ERA).

¹¹ See, e.g., *Warren Oliver Co.*, WAB No. 84-008, slip op. at 9 (Sec’y Nov. 20, 1984) (the Secretary’s authority to enforce the Davis-Bacon and related acts under Reorganization Plan No. 14 of 1950 “has been reinforced by two opinions of the Attorney General of the United States.”).

DISCUSSION

1. Section 1804

As previously stated, Congress has delegated to the Secretary the task of interpreting, applying, and enforcing EPACT 92 Section 1804 (Employee Provisions). Stated simply, the parties dispute the meaning of the term “uranium enrichment facility” in Section 1804. If Y-12 is a “uranium enrichment facility” within the meaning of Section 1804, then the DBA covers D&D work at Y-12. Conversely, Section 1804 does not require DBA coverage of D&D work at Y-12 if it is not a “uranium enrichment facility.” The Administrator and NNSA argue that Congress intended the term to be synonymous with the narrower term “gaseous diffusion enrichment facility,” thereby excluding the Y-12 facility, an electromagnetic isotope diffusion facility. In contrast, BCTD argues that the term plainly includes any uranium enrichment facility, regardless of the uranium enrichment process used. We briefly summarize the basis for the parties’ differing interpretations.

2. The Administrator’s Final Determination

The Administrator issued a final determination on June 28, 2011, reversing WHD’s initial decision and finding that Section 1804’s DBA provision did not apply to the D&D work at the Y-12 facility. Tab H. Recognizing WHD’s initial decision as a “plausible” interpretation of Section 1804, the Administrator reversed the decision and cited several reasons. Tab H. at 2, 3. First, she notes that concern about low wages expressed in the initial decision no longer existed because allegedly the Service Contract Act protections would apply if the DBA did not.¹² Second, the Administrator agreed with DOE’s brief that the “better” and “more harmonious and internally consistent” approach is to understand the phrase “uranium enrichment facility” as synonymous with “gaseous diffusion enrichment facility” in Chapter 28. The reasons she stated are: (1) the provisions of Chapter 28 (42 U.S.C.A. §§ 2297g through 2297g-4) should be read as a whole because they were added together¹³ to the EPACT 92 and “share a common purpose;” (2) EPACT did not expressly define “uranium enrichment facility” or “gaseous diffusion enrichment facility” in Chapter 28; (3) DOE never paid for D&D work at Y-12 with funds from the UED&D Fund, which would result in a statutory violation if Y-12 was also considered a “uranium enrichment facility” that should have received some of the UED&D funding; (4) BCTD allegedly failed to point to legislative history supporting its argument that “uranium enrichment facility” was broader than “gaseous diffusion enrichment facility;” (5) legislative history allegedly showed that Congress used all three terms synonymously, but the Administrator

¹² *Id.* at 2. Because our decision rests on the statutory text of Section 1804 and EPACT, we see no reason to discuss the policy considerations behind Section 1804.

¹³ We note that Section 1804 was not part of the original language in the EPACT bill but was added by amendment through the legislative process. *See* § 1111 of the version reported in the House, H.R. 776 (containing draft language of the D&D fund, Chapter 27, without the DBA provision).

provided no specific examples;¹⁴ and (6) several mandatory reports prepared by DOE, the National Academy of Sciences (NAS), and the GAO demonstrate a “longstanding interpretation of sections 2297g through 2297g-4 to refer only to the three gaseous diffusion enrichment facilities and not to Y-12.” Tab H. at 3-5.

3. *BCTD’s Appeal*

Relying on the statutory text as well as legislative history, BCTD argues that the Administrator’s final decision failed to apply the plain meaning of the statute and follow well-settled canons of statutory construction. BCTD Br. at 5; BCTD Pet. for Rev. at 2, 7. BCTD argues that the Administrator should have looked to the ordinary meaning of the term “uranium enrichment” when Congress amended the AEA in 1992. BCTD Pet. for Rev. at 10. The fact that the term “gaseous facility” is used in Sections 1802 and 1803, but not Section 1804, allegedly triggers the presumption that Congress intended to include all uranium enrichment facilities in one instance and exclude some in other instances. BCTD Br. at 19. BCTD argues that Congress deliberately used the broader phrase “uranium enrichment facility” in Section 1804 and the more narrow term “gaseous diffusion” in other Sections of EPACT 92. BCTD explained that Congress had a special reason for limiting its cost-sharing to gaseous diffusion plants in the other sections of the D&D subchapter and that Section 1804 is a separate section and should be construed in its literal, plain meaning. BCTD Pet. for Rev. at 15. In its brief, BCTD argues that the legislative history shows that Congress understood “uranium enrichment” to refer to all methods of enrichment and cited to reports that included the Y-12 plant. BCTD Br. at 8. BCTD further argues that, contrary to the Administrator’s conclusion, the SCA would not apply to D&D work at Y-12 because DOL regulations do not apply SCA standards to work performed by employees of its management and operations contractors. BCTD Br. at 25-26. According to BCTD, the workers at Y-12 work for a management and operations contractor.¹⁵ BCTD argues that the Administrator was wrong to reverse the WHD’s initial determination based on the unverified claim of Metal Trades that they had completed work at Y-12 subject to the SCA labor standards. BCTD Br. at 27-28.

4. *DOE’s Arguments*

DOE agrees with the Administrator’s arguments and raises additional arguments. DOE labels the use of the phrase “uranium enrichment facility” in Section 1804 as an anomaly. DOE suggests that Congress intended for all of the D&D provisions of EPACT Chapter 28 to apply only to gaseous diffusion facilities. As we discuss later in our opinion, DOE supports this argument by using a fragment of Section 1802 in Chapter 28 to state that the purpose of the fund allegedly is to pay “for the decontamination and decommissioning of the Department’s gaseous diffusion enrichment facilities.” DOE Br. at 7, quoting Section 2297g-1(g). DOE argues that the two instances where Chapter 28 referred specifically to “gaseous diffusion enrichment facilities” supports the inference that all provisions of Chapter 28 related exclusively to gaseous diffusion uranium enrichment. Furthermore, because only gaseous diffusion enrichment facilities must

¹⁴ Admin. Br. at 14-15, 21.

¹⁵ See DOE’s statement to such an effect, Tab C, at 5.

pay a special assessment to replenish the D&D Fund each year, it makes sense to believe that Chapter 28 only dealt with gaseous diffusion enrichment facilities. Tab E at 4.

Turning to text outside of Chapter 28, DOE also argues that EPACT was passed in 1992 with a definition of “decontamination and decommissioning” that allegedly excluded Y-12, allegedly supporting its interpretation that “uranium enrichment facility” meant “gaseous diffusion enrichment facility.” Again, as we explain below, DOE relies erroneously on a fragment of an EPACT provision to support its argument.

Moving beyond the text of EPACT, DOE argues that the Y-12 plant had never been considered a “uranium enrichment facility” because it had never been in the uranium enrichment commercial enterprise of the 1960s and thereafter. Tab E at 3 (Mar. 16, 2010 request for reconsideration). According to the DOE, the enrichment process that took place at Y-12 was entirely different from the gaseous enrichment process – the latter produced a commercial byproduct that was sold to power utilities. Tab E at 5-6. Allegedly, it is the commercial enterprise that is connected with the D&D fund. Tab E at 3, 6. Moreover, DOE argues that that the GAO and NAS legislative reports that EPACT required evidence a common belief that EPACT focused on “gaseous diffusion enrichment facilities” because they discussed only the costs of cleanup for the gaseous plants without including Y-12. DOE Br. at 4-5. DOE notes that for twenty years other agencies have also interpreted Chapter 28 to apply to gaseous diffusion plants.¹⁶ Having summarized the parties’ arguments, we turn to the text in Section 1804 and EPACT.

5. Section 1804 Applies to All DOE Uranium Enrichment Facilities

Like the judicial courts, the ARB must enforce statutes consistent with congressional intent.¹⁷ To determine such intent, we adhere to well-settled principles of statutory interpretation. Statutory interpretation begins with the text of the statute itself.¹⁸ We must rely on the plain meaning of the words in that statute unless Congress specifies otherwise.¹⁹ If the language is unambiguous, our inquiry should end.²⁰ We must avoid rendering meaningless the

¹⁶ DOE Br. at 18. Under § 2297g-2(a), the National Academy of Science was required to provide recommendations to implement D&D work. According to the NAS report, it interpreted the fund as only applying to the three gaseous diffusion enrichment facilities. Admin Br. at 7; Tab K; Final Determination, Tab H at 4. The GAO Reports issued every three years similarly understood the D&D work as applying to the nation’s three gaseous diffusion enrichment facilities. Admin Br. at 8; Final Determination, Tab H at 5.

¹⁷ *Rosenberg v. XM Ventures*, 274 F.3d 137, 141 (3d Cir. 2001).

¹⁸ *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 739 (1989).

¹⁹ *Rosenberg*, 274 F.3d at 141.

²⁰ *Id.*

word choices Congress used.²¹ We must consider the statute as a whole and the historical context in which a particular provision was passed.²² Where Congressional intent is clear from the statutory text, there is no need to examine legislative history.²³ As we explain below, we find that Section 1804, EPACT Chapter 28, the Atomic Energy Act and legislative history compel us to find that: (1) the term “uranium enrichment facility of the DOE” is not synonymous with “gaseous diffusion enrichment facility”; and (2) Section 1804 plainly refers to any DOE facility that engaged in a method of “uranium enrichment” as EPACT defined that term.

As with any proper statutory analysis, we begin with the text of the specific statutory section in question, the Employee Provision at Section 1804. In this case, Section 1804 straightforwardly requires the payment of prevailing wages to all workers engaging in D&D work at DOE uranium enrichment facilities. Section 1804 did not define the term “uranium enrichment facility,” but EPACT defined “uranium enrichment” as “the separation of uranium of a given isotopic content into 2 components, 1 having a higher percentage of a fissile isotope and 1 having a lower percentage.” We find no suggestion in Section 1804 that “uranium enrichment facility” meant only “gaseous diffusion facilities.” We see Section 1804 as simply requiring the payment of prevailing wages for all workers engaged in decontamination and decommissioning work connected to uranium enrichment work performed at federal government facilities. No party disputes that at least some of the work required in the BCTD assignments involved D&D work. No party disputes that Y-12 was built as a DOE facility and had engaged in uranium enrichment. Consequently, standing alone, Section 1804 covers D&D work performed at the Y-12 facility. We find nothing in Section 1804 that justifies limiting DBA coverage to D&D workers at gaseous diffusion enrichment facilities and excluding coverage at other uranium enrichment facilities belonging to the federal government. However, the Administrator and DOE argue that we must ignore the plain words of Section 1804 to avoid inconsistency with the remainder of Chapter 28, which they argue applies only to gaseous diffusion enrichment facilities. We now examine EPACT Chapter 28.

Contrary to the Administrator’s and DOE’s contentions, we see no provision in Chapter 28 suggesting that Congress intended Section 1804’s “uranium enrichment facility” to be synonymous with “gaseous diffusion enrichment” facilities. To begin with, nowhere does Chapter 28 expressly state that the terms are synonymous. The terms are not used in the same sentence or section in any of the five sections. While using the term “gaseous diffusion” in some provisions of Chapter 28 and EPACT, Congress did not use that term in Section 1804 and we must presume that Congress did so deliberately. Congress used the phrase “gaseous diffusion”

²¹ *Id.*

²² *See Southern Ute Indian Tribe v. Amoco Prod. Co.*, 151 F.3d 1251, 1263 (10th Cir. 1998), *rev’d on other grounds sub nom. Amoco Prod. Co. v. Southern Ute Indian Tribe*, 526 U.S. 865 (1999).

²³ *See United States v. Rojas-Contreras*, 474 U.S. 231, 235 (1985).

only twice in Chapter 28. The first instance occurs in Section 2297g-1(g), which reads as follows:

(g) Treatment of assessment

Any special assessment levied under this section on domestic utilities for the decontamination and decommissioning of the Department's gaseous diffusion enrichment facilities shall be deemed a necessary and reasonable current cost of fuel and shall be fully recoverable in rates in all jurisdictions in the same manner as the utility's other fuel cost.

This focuses only on "special assessments" and plainly provides that "gaseous diffusion enrichment facilities" can recover this cost of "special assessments" through the rates they charge for fuel. It makes sense that this provision did not apply to non-operational facilities like Y-12, a facility that would not be selling uranium-enriched fuel, an undisputed fact. Contrary to DOE's argument, nowhere in Section 2297g-1(g) or Chapter 28 is there a provision stating that the purpose of the Fund is to pay for D&D work at "gaseous diffusion enrichment facilities." Chapter 28 contains only one statement identifying what costs the Fund will pay and it is a broad statement: the costs of *all* decontamination and decommissioning activities of the Department shall be paid from the Fund.

The second instance where Chapter 28 uses the term "gaseous diffusion" is found in Section 2297g-2(c). That section provides:

(c) Payment of remedial action costs

The annual cost of remedial action at the Department's gaseous diffusion facilities shall be paid from the Fund to the extent the amount available in the Fund is sufficient. To the extent the amount in the Fund is insufficient, the Department shall be responsible for the cost of remedial action. No provision of this division may be construed to relieve in any way the responsibility or liability of the Department for remedial action under applicable Federal and State laws and regulations.

Again, like Section 2297g-1(g), this section has a limited focus: remedial costs. Unlike D&D costs, remedial costs are costs that the Fund shall pay only if there are sufficient funds. In our view, the fact that Congress permitted gaseous diffusion enrichment facilities to recover remedial costs has no logical bearing on the scope of Section 1804. We believe that the Administrator and DOE overstate the inference that can be drawn from Sections 2297g-1(g) and 2297g-2(c) that were limited logically to operational uranium enrichment facilities.

Expanding the textual analysis to EPACT as a whole even further demonstrates Congress's deliberate and precise use of the various terms related to uranium enrichment. Most importantly, and arguably dispositive of this debate, is the fact that the definitions Congress

inserted in EPACT expressly reference “other techniques” of “uranium enrichment” including AVLIS. EPACT was passed with the following definitions:

- (1) The term ‘alternative technologies for uranium enrichment’ means technologies to enrich uranium by methods other than the gaseous diffusion process.
- (2) The term ‘AVLIS’ means atomic vapor laser isotope separation technology.^[24]

These definitions indisputably demonstrate that Congress knew that gaseous diffusion was not the only method of “uranium enrichment,” and consequently that it had to be careful in choosing the terminology in EPACT. In EPACT Section 1701 (§ 2297f), Congress expressly created a section in EPACT entitled “Gaseous diffusion facilities,” again demonstrating Congress’s keen awareness of the types of facilities that existed. In EPACT Sections 1602 and 1603, as reported in the House, Congress further demonstrated that it was fully aware of the need to be specific in discussing uranium enrichment facilities:

SEC. 1602. LICENSING OF AVLIS.

Notwithstanding the amendments made by section 5 of the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Public Law 101-575; 104 Stat. 2835), Corporation facilities for the enrichment of uranium using AVLIS shall be subject to licensing in the same manner as production and utilization facilities under section 103 and 104 b. of title I.

SEC. 1603. LICENSING OF OTHER TECHNOLOGIES.

(a) Corporation facilities using alternative technologies for uranium enrichment, other than AVLIS, shall be licensed under sections 53 and 63 of title I.

(b) The Corporation shall provide for the costs of decontamination and decommissioning of any Corporation facilities described in subsection (a) in accordance with the requirements of the amendments made by section 5 of the Solar, Wind, Waste, and Geothermal Power Production Act of 1990.^[25]

We also note that interpreting “uranium enrichment facility” as “gaseous diffusion enrichment facility” will cause a ripple effect in other sections and improperly alter EPACT provisions. For example, in EPACT, Congress added the phrase “or any uranium enrichment facility” to the end of 42 U.S.C.A. § 2021(c)(1). That section currently reads as follows:

²⁴ Section 901, Pub. L. No. 102-486.

²⁵ See Sections 1703, 1703, Pub. L. No. 102-486, for final language.

No agreement entered into pursuant to subsection (b) of this section shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of--

(1) the construction and operation of any production or utilization facility or any uranium enrichment facility; . . .

If we altered “uranium enrichment facility” in Section 1804, then it must necessarily change in Section 2021(c)(1) and limit that section where Congress may not have intended such a limit. In sum, the deliberateness of Congress’s use of “gaseous diffusion enrichment” and “uranium enrichment” in general is evident throughout the text of EPACT.

Because the text of Section 1804, Chapter 28, EPACT demonstrates that Congress used the term “uranium enrichment facility” as plainly as it appears, we find that it would be inappropriate for us to apply that term any other way. We conclude that only clear legislative history to the contrary could justify narrowing the plain meaning of “uranium enrichment facility” to “gaseous diffusion facility.”

The legislative history of Section 1804 and EPACT does not dissuade us from the plain meaning of the terms “uranium enrichment facility.” The most significant reason is that no party has cited to legislative history expressly showing that Congress meant “gaseous diffusion enrichment facility” in Section 1804. No party has presented legislative history expressly indicating that all of Chapter 28 dealt *exclusively* with gaseous diffusion facilities. It is clear that Section 1804 was added as an amendment to the bill that introduced EPACT. We see nothing problematic with deeming this as an independent employee protection section. We appreciate that the DOE believes that our interpretation might conflict with the funding provisions in Chapter 28, but that issue is not ours to settle. More importantly, we are not convinced that the general employee protection in Section 1804 necessarily changes the funding provisions of Chapter 28.

CONCLUSION

We find that the employee protections in Section 1804 of the Energy Policy Act of 1992 apply to D&D work at all DOE uranium enrichment facilities and, therefore, the D&D work at Y-12 is covered by the DBA. Consequently, we **GRANT** BCTD's petition for review and **REVERSE** the Administrator's final determination.²⁶

SO ORDERED.

LUIS A. CORCHADO
Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

²⁶ Metal Trades argues that the three work projects at Y-12 are complete or nearly complete and any remedy ordered by the DOL would not affect the wages at the Y-12 facility. Therefore, Metal Trades argues, the issue is moot. Metal Trades Br. at 9-10, *citing Dep't of the Navy*, ARB No. 96-185 (ARB May 15, 1997); *Naval Supply Sys. Command*, WAB No. 78-24 (Sec'y Apr. 6, 1979). We find that Metal Trades has no standing to argue the mootness of a payment dispute involving other parties and, therefore, we will not address that issue.