S. HRG. 108–377

PADUCAH GASEOUS DIFFUSION PLANT

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON THE

PADUCAH GASEOUS DIFFUSION PLANT

DECEMBER 6, 2003

PADUCAH, KY

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PADUCAH GASEOUS DIFFUSION PLANT

SATURDAY, DECEMBER 6, 2003

U.S. SENATE,
SUBCOMMITTEE ON ENERGY,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Paducah, KY.

The subcommittee met, pursuant to notice, at 9 a.m., at Paducah Information Age Park, 2000 McCracken Boulevard, Paducah, Kentucky, Hon. Jim Bunning presiding.

OPENING STATEMENT OF HON. JIM BUNNING, U.S. SENATOR FROM KENTUCKY

Senator BUNNING. The committee will come to order. This is a field hearing of the Subcommittee on Energy dealing with the Paducah Gaseous Diffusion Plant and some of the problems in the cleanup. And we are also going to include a few remarks on the two programs for the employees and—present and past employees of the gaseous diffusion plant as far as death benefits and health care benefits. So that will be included at the end of this hearing.

Let me make some opening remarks, and then we will get to the first panel. Today's hearing focuses on the cleanup at the Department of Energy's Paducah plant and on the Department's role in the Energy Employee Occupational Illness Compensation Program. We need solutions to the issues, and we need them quickly.

At the Federal level, we can provide cleanup funding and work compensation. However, we need the help from the States to ensure a cooperative cleanup and an Illness Compensation Program.

I'd like to thank the witnesses—and there are many of them—for taking the time today to come to Paducah and testify on these extremely important matters.

We have been dealing with contamination at the Paducah plant for some time now. During the 106th Congress, I sat on the Energy Committee that brought to light the actual extent of the contamination at the Paducah plant. We discovered that workers at the plant were exposed to hazardous and radioactive materials.

Since the end of World War II, dedicated workers at the Department of Energy's sites across this county helped keep our Nation prepared to face threats from our adversaries by making our Nation's nuclear weapons stockpiles. Many of these workers, however, sacrificed their health and safety and were placed unknowingly in harm's way in their work to preserve our freedoms.

I am going to keep my remarks short today, because I am very anxious to hear from all of our witnesses. But there are a few facts from the GAO report that I think should be highlighted from the outset.

First, the GAO reports point out that the Department of Energy has spent close to a billion dollars on the Paducah cleanup program, and billions more will be required to be spent before final closure on the site. Further, about 10 billion gallons of underground water remain contaminated with hazardous and radioactive materials. Contaminated surface water pollutes creeks and ditches leaving the site, and chemicals seep into the Ohio River. About 160 storage areas contain hazardous materials, and low-level waste continues to be stored here.

I hope this hearing will help make sure that the cleanup of the site is complete in the most efficient and timely manner possible. The folks in Paducah have waited too long for the removal of the waste and need to be assured that squabbling between government agencies will not hold up closure on this contaminated area.

Second, subtitle D of the Energy Employees Occupational Illness Compensation Programs is in shambles. Congress created it in 2000 to compensate employees of DOE sites who developed illnesses during their employment. Over 2,500 former Paducah workers exposed to toxic substances are still waiting to have their cases examined to receive illness compensation.

The GAO reports that even if the Department of Energy eliminates its backlog of almost 20,000 claimants nationwide, the claimants then face problems with slow physician panels and eligibility under State workers' compensation laws. This does not even account for the 50 percent of claimants nationwide who will not have a willing payer even if they are found eligible for State workers' compensation.

The GAO estimates that almost 1,000 claimants at Paducah will not have a willing payer. This is wrong, and it needs to be fixed. I am skeptical that the DOE has the capability to administer this program because of its track record. I hope the witnesses today will help us examine and find the answers to this issue.

We have several panels of witnesses. The first panel, I'll introduce them right now. Ms. Robin Nazzaro, Director of Natural Resources and Environment with the General Accounting Office; Mr. Gerald Boyd, Manager of the Department of Energy's Oak Ridge Operations Office; Mr. William Murphie, Manager of the Department of Energy's Portsmouth/Paducah Project office will be answering questions, and now a Kentuckian in Lexington; Mr. Hank List of the Kentucky Natural Resources and Environmental Protection Cabinet; and Mr. Jon Johnston, Manager of the Environmental Protection Agency Region 4 Federal Facilities. And I'll introduce the second panel after that.

So Robin, if you are ready, you can start your testimony.

STATEMENT OF ROBIN NAZZARO, DIRECTOR OF NATURAL RESOURCES AND ENVIRONMENT, GENERAL ACCOUNTING OFFICE

Ms. NAZZARO. Thank you, Senator Bunning. I am pleased to be here today——

Senator BUNNING. Pull the mikes up to you so we can all hear. And here is the timer. We're going to time you. We're going to give you five minutes. We've got lots of people to talk to.

Ms. NAZZARO. I am pleased to be here today to discuss the Department of Energy's efforts to clean up contamination and waste at the Paducah uranium enrichment plant. As you know, the plant enriches uranium for use by commercial nuclear powerplants.

The DOE began a cleanup program at the site in 1988 after contaminated ground water was found in nearby residents' drinking water wells and contaminated surface water and soils were identified within and outside the site.

In August 1999, in response to allegations that past plant activities had endangered employees' health, DOE's Office of Oversight conducted an independent investigation that identified improper disposal of hazardous and radioactive materials on- and off-site and the release of contaminated water into streams and drainage ditches.

My statement today describes the preliminary results of our ongoing work on DOE's cleanup efforts at the Paducah plant. Specifically, my testimony will focus on how much DOE has spent on the cleanup program and for what purposes, and the estimated total future cost for the site; the status of DOE's efforts to clean up the contamination at the site and the challenges DOE faces, including completing the cleanup.

In summary, since 1988, DOE has spent over $800 million at the Paducah site. As shown on our chart here, DOE has spent about $375 million to pay for operation costs at the site. This includes construction, security, general maintenance and litigation costs. Almost $300 million was spent on actions to clean up contamination and remove waste. And about $150 million was spent for studies to assess the extent of the contamination and to determine what cleanup actions were necessary. These percentages are similar to those DOE's Office of Environmental Management have for all of its cleanup programs.

In January 2000, DOE estimated that the cleanup would be completed by 2010 and at a cost of $1.3 billion. However, DOE now estimates that completing the cleanup will take until at least 2019 and will cost almost $2 billion due to an expanded project scope and the millions of dollars for site operations for the nine additional years of cleanup. This estimate, however, does not include the cost of other DOE activities required to close the site.

In addition to the cleanup, DOE has planned to build and operate a facility to convert the depleted uranium stored at the site to a more stable form. The DOE will also have to carry out final decontamination and decommissioning of the buildings, equipment and materials once the plant ceases operation, and DOE will have long-term environmental monitoring at the site. This could bring the total cost of closing the plant to over $13 billion through 2070.

Regarding the status of the contamination and cleanup, DOE has made some progress since 1988, but much of the work remains to be done. For example, to prevent contamination, DOE has removed over 4,500 tons of scrap metal, but over 50,000 tons remain. Similarly, although DOE has tested a new technology for removing the hazardous chemical TCE from the ground water with promising results, the test removed only about one percent of the estimated 180,000 gallons that have leaked into the ground. Further, this technology will not be fully implemented for over a year.

DOE also plans to conduct a number of studies to determine if other cleanup actions in addition to those already planned are necessary. DOE will test the ground water near several areas where waste is buried to determine if contamination is leaking and if so, what corrective actions will be needed.

DOE's key challenge in completing the cleanup of Paducah is achieving stakeholder agreement on the cleanup approach, including the scope and the time frames. For almost 2 years, from June 2001 to April 2003, DOE and its regulators—the U.S. Environmental Protection Agency and the Commonwealth of Kentucky—were unable to reach agreement on the cleanup scope and time frames, significantly delaying the cleanup process.

The DOE, EPA and Kentucky are currently negotiating approval of the 2004 cleanup plan; however, the success of this plan will depend on the parties' ability to reach agreement on the scope and time frames for individual projects as the cleanup moves forward. DOE's proposed plan is only the latest of several attempts to resolve the problems at the site since 1999.

Given the past difficulties in resolving disputes over scope and time frames, and the number of decisions that remain to be made, it is unclear whether DOE will be successful in accelerating this cleanup.

We will continue to assess DOE's progress and the challenges it faces in cleaning up the site, and we plan to issue our final report in April 2004. Thank you, Senator Bunning. This concludes my prepared statement.

Senator BUNNING. Thank you. Mr. Boyd.

STATEMENT OF GERALD BOYD, MANAGER, OAK RIDGE OPERATIONS OFFICE, DEPARTMENT OF ENERGY

Mr. BOYD. Thank you, Senator Bunning. On behalf of the Department of Energy, I am pleased to be with you and offer testimony on the environmental cleanup activities at the Paducah Gaseous Diffusion Plant. I am here representing Assistant Secretary for Environmental Management Jessie Roberson, who was unable to be with us this morning. Joining me today is Mr. William Murphie, who is the Manager of the Paducah/Portsmouth Project Office.

My office in Oak Ridge has Federal management responsibility for the Paducah site until the transition to the newly created Portsmouth/Paducah office is completed. Mr. Murphie, who reports to headquarters, leads the new office.

Senator, we wish to express our appreciation and acknowledge your efforts to get the Lexington office established. Although the physical office building has been delayed in its opening, things are

coming together in both the build-out of the facility and in the arrival of the new staff.

Let me state for the record that my office in Oak Ridge is fully supporting the ongoing transition of Paducah Federal management from Oak Ridge to the new Lexington office. We continue to work each day to make sure this transition is a smooth one.

In January, the Department plans to invite you to the anticipated formal ribbon cutting ceremony in Lexington to open the new office.

Senator, during my opening remarks, I would like to highlight some of the topics that have occurred over the past couple of years at the site. Although challenges do exist at Paducah, and I don't want to downplay those, we have some visible and significant progress in three areas. These areas include environmental cleanup, regulatory compliance and community involvement. Your support has been instrumental in achieving these accomplishments. Let me touch on each one of those briefly.

First, we have completed some very important and visible work in our cleanup activities. A large outside pile of crushed drums known as "Drum Mountain" was removed in the year 2000. Drum Mountain consisted of over 2,600 tons of rusting metal drums and was a source for both soil and surface water contamination at the site. Today, cleanup is complete, and the source of contamination is gone.

In addition, we initiated removal last year of the 44,000 tons of scrap metal at the site, largely consisting of piles of old gaseous diffusion plant equipment. We have removed over 6,000 tons already. The majority of this was accomplished in just the last few months following our agreement with the Commonwealth of Kentucky on the Letter of Intent.

We also have categorized the contents of more than half of the 800,000 cubic feet of material in the DOE Material Storage Areas. We are also aggressively disposing of this material.

We have made progress in controlling ground and surface water contamination. The site has two large off-site ground water plumes contaminated with trichloroethylene and technetium-99. Through the use of ground water treatment systems installed in the mid 1990's, we have successfully treated approximately 1.3 billion gallons of contaminated ground water.

Although, pump and treat is focused on plume containment, additional success has been made toward short-term removal. Field-testing of a new removal technology called six-phase heating has successfully removed more than 22,000 pounds of trichloroethylene near the maintenance facility considered to be the likely source of the original contamination.

This study is critical to our efforts to reach a decision on full-scale short-term removal as early as next year. We have also agreed with Commonwealth on a strategy for investigating the sources of the Southwest Plume, the other main plume of contaminated ground water at the site.

We recently resolved the technical issues regarding the cleanup of the North-South Diversion Ditch, a source of surface water contamination at the site. And we are actively excavating soil in this

area. In addition, we are disposing of our legacy low-level and mixed low-level waste at the approved off-site disposal facilities.

In coordination with the Commonwealth of Kentucky, we have an extensive environmental monitoring program to ensure the protection of the public and the environment. We routinely monitor over 150 ground water wells both on- and off-site. This data is collected for our annual site environmental report, which is placed in the Environmental Information Center. This center was relocated from Kevil to a more convenient location for the public in Paducah in 2001.

Overall, our environmental monitoring data shows a downward trend in contamination in the environment around the plant since 1996. In fact, the Agency for Toxic Substances and Disease Registry noted in their 2001 Public Health Assessment for the site that, "According to the information reviewed by ATDSR, under normal operating conditions, the Paducah Gaseous Diffusion Plant currently possesses no apparent public health hazard for the surrounding community from the exposure to ground water, surface water, soil and sediment, biota or air."

In addition, we continue to provide water to all residents above the contaminated plume as part of our water policy initiative to avoid any public consumption of contaminated ground water.

Next, we have made considerable progress in our efforts to resolve outstanding compliance issues at the site and towards a comprehensive regulatory agreement supporting overall site cleanup.

In April of this last year, the Department successfully resolved a dispute regarding the Site Management Plan that had been outstanding for almost 3 years. Working with environmental regulators within the Commonwealth of Kentucky and the U.S. Environmental Protection Agency, we have agreed to a set of enforceable milestones under the Federal Facility Agreement.

Perhaps more significantly, a Letter of Intent was signed with Kentucky in August, followed in October by an Agreed Order signed by DOE and Kentucky that resolved all outstanding environmental compliance issues pending against the Department. This agreement resolved many of the outstanding issues impacting progress at the site and establishes a foundation upon which we believe significant progress will be achieved.

In addition to establishing out-year enforceable milestones, it resulted in an accelerated cleanup schedule calling for the initial phrase of cleanup projects to be completed by the year 2019.

Finally, the third major area in which we have made good progress is establishing ways to ensure community involvement in the Department's activities. The Paducah Citizens Advisory Board and the Paducah Area Community Reuse Organization, or PACRO, are two organizations that we have worked carefully with over the last number of years.

Public and worker safety remains our first priority. We realize that significant work remains to be done and that this work requires the cooperation of regulators, the community and the Department. This is one of the reasons that we are pleased to have Agreed Orders in place with Kentucky allowing us to move forward and safely achieve tangible results over the next several years.

The citizens of the Commonwealth deserve no less than success at this site. The Department of Energy is committed to delivering it to them.

Thank you very much for the opportunity to testify. We will be glad to answer any questions.

[The prepared statement of Mr. Boyd follows:]

PREPARED STATEMENT OF GERALD BOYD, MANAGER, OAK RIDGE OPERATIONS OFFICE, DEPARTMENT OF ENERGY

Good morning, Senator Bunning. My name is Gerald Boyd and I serve as Manager of the Department's Oak Ridge Operations Office in Oak Ridge, Tennessee. On behalf of the Department of Energy, I am pleased to be with you, to offer testimony on environmental cleanup activities at the Paducah Gaseous Diffusion Plant. I am here representing Assistant Secretary for Environmental Management, Jessie Roberson, who was unable to be with us this morning. Joining me today is Mr. William Murphie, Manager of the Paducah/Portsmouth Project Office.

My office has federal management responsibility for the Paducah Site until the transition to the newly created Portsmouth-Paducah Office is completed. Mr. Murphie, who reports to Headquarters, leads the new office. Senator, we wish to express our appreciation and acknowledge your efforts to get the Lexington office established. Although the physical office building has been delayed in its opening, things are coming together in both the build-out of the facility in Lexington and in the arrival of new staff. Let me state for the record that my office is fully supporting the on-going transition of Paducah federal management from Oak Ridge to the new Lexington office. We continue to work each day to make sure this transition is a smooth one. In January, the Department plans to invite you to the anticipated formal ribbon cutting ceremony in Lexington to open the new office.

Senator, during my opening remarks, I would like to highlight some of the accomplishments that have occurred over the past couple of years at the site. Although challenges exist, and I don't want to downplay those, we have some visible and significant progress in three areas. These areas include environmental cleanup, regulatory compliance, and community involvement. Your support has been instrumental in achieving these accomplishments. Let me now touch on each of those areas.

First, we have completed some very important and visible work in our cleanup activities. A large outside pile of crushed drums known as "Drum Mountain" was removed in 2000. Drum Mountain consisted of over 2,600 tons of rusting metal drums and was a source for both soil and surface water contamination at the site. Today, cleanup is complete and the source of contamination is gone. In addition, we initiated removal last year of the 44,000 tons of scrap metal at the site, largely consisting of piles of old gaseous diffusion plant equipment. We have removed over 6,000 tons already. The majority of this was accomplished in just the last few months following our agreement with the Commonwealth of Kentucky on the Letter of Intent. We also have characterized the contents of more than half of the 800,000 cubic feet of material in the DOE Material Storage Areas. We are also aggressively disposing of this material.

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This study is critical to our efforts to reach a decision on full scale source term removal as early as next year. We have also agreed with the Commonwealth on a strategy for investigating the sources of the Southwest Plume, the other main plume of contaminated groundwater at the site. We recently resolved the technical issues regarding the cleanup of the North-South Diversion Ditch, a source of surface water contamination at the site, and we are actively excavating soil in this area. In addition, we are disposing of our legacy low-level and mixed low-level waste at approved off-site disposal facilities.

In coordination with the Commonwealth of Kentucky, we have an extensive environmental monitoring program to ensure the protection of the public and the environment. We routinely monitor over 150 groundwater wells both on and off site. This data is collected for our annual site environmental report, which is placed in

the Environmental Information Center. This center was relocated from Kevil to a more convenient location for the public in Paducah in 2001. The Agency for Toxic Substances and Disease Registry noted in their 2001 Public Health Assessment for the site that "According to the information reviewed by ATDSR, under normal operating conditions, the Paducah Gaseous Diffusion Plant currently possess no apparent public health hazard for the surrounding community from the exposure to groundwater, surface water, soil and sediment, biota, or air." In addition, we continue to provide water to all residences above the contaminated plume as part of our water policy initiative to avoid any public consumption of contaminated groundwater.

Next, we have made considerable progress in our efforts to resolve outstanding compliance issues at the site and towards a comprehensive regulatory agreement supporting overall site cleanup. In April of this last year, the Department successfully resolved a dispute regarding the Site Management Plan that had been outstanding for almost three years. Working with environmental regulators within the Commonwealth of Kentucky and at the U.S. Environmental Protection Agency, we have agreed to a set of enforceable milestones under the Federal Facility Agreement.

Perhaps more significantly, a Letter of Intent was signed with Kentucky in August, followed in October by an Agreed Order signed by DOE and Kentucky that resolved all outstanding environmental compliance issues pending against the Department. This agreement resolved many of the outstanding issues impacting progress at the site and establishes a foundation upon which we believe significant progress will be achieved. In addition to establishing out-year enforceable milestones, it resulted in an accelerated cleanup schedule calling for the initial phase of cleanup projects to be completed by 2019.

Under DOE's proposed cleanup strategy, a second phase of site cleanup is deferred to the comprehensive site-wide operable unit, which DOE has proposed to start after plant shutdown. We believe that additional acceleration is possible and we anticipate further discussion with the regulators and the community to further accelerate risk reduction.

Finally, the third major area in which we have made good progress is establishing ways to ensure community involvement in the Department's activities. We chartered the Paducah Citizens Advisory Board in 1996. This Board meets monthly and has citizen volunteers who advise DOE on our cleanup program. The Paducah Area Community Reuse Organization, or PACRO, was formed in August 1997 by regional community representatives in an effort to mitigate potential downsizing and restructuring of the Paducah Plant workforce. The Department has been supportive of PACRO as demonstrated by a $300,000 block grant provided in May 2003 to create jobs and expand economic opportunities.

We understand that some community members have been frustrated by the recent regulatory compliance discussions that resulted in the Site Management Plan dispute resolution and most recently, the Agreed Orders. However, we believe the process has been conducted in everyone's best interest and the result is a major breakthrough for this site and the community. More work is being accomplished now than has been ongoing for a long time, and we believe the continued demonstration of the cleanup actions will go a long way towards re-establishing the trust of the community.

Our record shows that we have made progress in cleaning up the environment at the Paducah Gaseous Diffusion Plant while concurrently working to involve the community in cleanup activities. Public and worker safety remains our first priority. We realize that significant work remains to be done and that this work requires the cooperation of the regulators, the community and the Department. This is one of the reasons we are pleased to have Agreed Orders in place with Kentucky allowing us to move forward and safely achieve tangible results over the next several years. The citizens of the Commonwealth deserve no less than success at this site. The Department of Energy is committed to delivering it to them.

Thank you very much for the opportunity to testify. We would be happy to answer any questions you may have.

Senator BUNNING. Mr. Murphie. Hank List.

STATEMENT OF HANK LIST, SECRETARY, KENTUCKY NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET

Mr. LIST. Thank you, Senator Bunning, and I also want to thank you for your involvement in this very important discussion and ef-

fort for cleanup of the Paducah Gaseous Diffusion Plant. I have prepared a report which I will somewhat refer to, but I am going to go somewhere that is very dangerous, and I will make a few comments——

Senator BUNNING. We'll submit your formal statement for the record, and you go right ahead.

[Interruption.]

Senator BUNNING. Does anybody else have a telephone? They can turn it off now.

Mr. LIST. I've been involved with this for a year and a half, so I don't have quite the history that the rest of the people on this panel have. And when I got involved with the process, one of the main problems that were present was there were so many channels of communication between the State of Kentucky and inside the Beltway, there was a huge amount of confusion that was in existence as to what was going on and what were the facts of the relationships involved with the EPA and the DOE and the State of Kentucky.

So one of the first efforts was to decrease the amount of people that were involved in talking to our delegation groups and try to get some grasp of who was in charge as far as the State of Kentucky was concerned.

Secretary Jim Vickford was very involved in trying to bring this about. At the same time, I followed up, and we did finally make a decision that the Cabinet of Natural Resources was to be in charge of this effort in working with the EPA and DOE and working towards resolving the impediments that were in place that were preventing significant cleanup at Paducah.

The delegation represents our best means of communication, because Kentucky is far removed from the Beltway, and we have to rely on someone to help us in the communications that are so necessary between all the parties present at this table. You have played that role, Senator McConnell has and Congressman Whitfield, all three have been involved in assisting us in our endeavor to communicate with Federal agencies and bring about an effective program.

I am not going to speak to the monies allocated and spent. We have very little control of that. We, obviously, influence that by our programmatic regulatory responsibilities and obviously, that does have some bearing on how monies are spent and how much, and that is a work in progress. And we feel like we are now moving towards a more effective use of these monies, and that the Congress has been really very generous in allocating to Paducah.

One of the things that used to be in existence that is not in place right now that must be put back into existence is what is called a Core Team that needs to work together. It is a collaborative effort between the EPA and DOE and the personnel on the ground representing my cabinet and the State of Kentucky.

This group, they were decision makers. They were there on-site. They were there to talk about the science of what we were dealing with, the physical characteristics that were involved in dealing with some of these issues. That Core Team ceased to function a while back, pretty much when this accelerated cleanup plan was

put on the table, and this new discussion of the scope of work started.

Senator, I would encourage you and all parties present here to make sure that we revisit the idea that a Core Team, a collaborative team, be recreated and that this group be empowered to make the site management plan and all the other things that have been achieved by Agreed Orders recently between the State of Kentucky and DOE, and this Core Team be given the ability to work effectively towards a meaningful action at Paducah. And that is what we're all here for. We're here for a meaningful action. Again, a meaningful action meaning characterization all the way to final disposition.

In my remarks, that is my number one request, Senator, of you as a leader on this issue, you and your expectations of the State of Kentucky and DOE and EPA in getting this accomplished. Let's get back to work. Let's put a group of people together back on-site at the plant and have them be empowered. The Lexington office is a tremendous start towards that effort. Let's continue that and just make this a more localized effort like it used to be and not so much a paperwork effort and a negotiation effort between Frankfort and Washington and all the other things that seem to have gotten in the way. We do have agreements in place now. There have been obstacles, and now it is time to get back to work, and I think we have the ability to get work done. Thank you, Senator.

[The prepared statement of Mr. List follows:]

PREPARED STATEMENT OF HANK LIST, SECRETARY, KENTUCKY NATURAL RESOURCES & ENVIRONMENTAL PROTECTION CABINET

Mr. Chairman and members of the committee my name is Henry C. List. I am Secretary of the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC). I am here to speak before the Subcommittee on Energy concerning the Paducah Gaseous Diffusion Plant (PGDP). The PGDP is a large and complicated cleanup project with a long history, and thus there is no end to the issues that could be discussed. However, Senator Bunning has asked me to address three primary issues regarding the PGDP that include 1) the cost of the cleanup, 2) the progress of the cleanup since the 2000 GAO report, and 3) challenges affecting the cleanup. With that request in mind I have prepared the following testimony accordingly.

COST OF THE CLEANUP

Let me start by stating that the Commonwealth of Kentucky (Kentucky) shares the concerns regarding the cost associated with this cleanup, the amounts expended to date and projected future cost. With regard to cost, I would like to briefly address both the cleanup costs that have been incurred to date and the future cleanup cost. Kentucky understands that characterization and investigation costs for a complex site like the PGDP are significant and are loaded upfront. However, the amount of cleanup that has been completed to date seems to be somewhat sparse given that $823 million dollars have been expended to date. Despite that, all stakeholders must work towards ensuring that future expenditures are used more efficiently to clean up the site. It is my hope that the Letter of Intent and recent Agreed Order will go a long way toward increasing the efficiency in the expenditure of cleanup dollars.

Also, I would like to address the issue raised by the GAO related to the costs associated with the disputes that have arisen between DOE, KY and EPA on this cleanup. Given the nature and complexity of the cleanup of this site, it is inevitable that some disagreement and disputes will occur. I do not think that the occurrence of disputes between the agencies is necessarily indicative of a poor relationship. That being said, I believe all the stakeholders should work together to keep disputes and resulting expenditures to a minimum. Now I would like to speak to the future costs of the cleanup. Since early 2002 Kentucky has not been afforded opportunities to be significantly involved in the scoping and budgeting process for the PGDP cleanup. Therefore, I cannot speak in any detail with regards to DOE's cost estimate of

2 billion dollars to implement the accelerated cleanup plan. Cost estimation for much of the work that is currently planned for the next four or five years (i.e., Scrap Metal project, North/South Diversion Ditch, DMSA's, waste characterization and disposition) is fairly straightforward. However, some future projects such as the Groundwater Operable Unit and the Burial Grounds Operable Unit have yet to be scoped and therefore it is difficult to estimate the costs of these future projects. I believe it is critical that Kentucky, EPA and DOE resume the collaborative process of scoping and budgeting these future projects.

PROGRESS OF THE CLEANUP SINCE THE 2000 GAO REPORT

The progress of the cleanup at the site since 2000 has been disappointing to Kentucky. I say this because the parties had gained some momentum that resulted from the October 1999 hearings before the Senate Appropriations Subcommittee on Energy and Water. During the course of those hearings, several areas at and around the PGDP were identified as being of a primary concern with regards to human health and the environment. It was determined by all parties that these areas should be addressed in as expeditious a manner as possible. Based on that directive, Kentucky, EPA and DOE developed and agreed upon a September 29, 2000 Federal Facility Agreement, Site Management Plan (SMP). The SMP was developed to address: Continuing off-site releases first (groundwater, surface water, and the NSDD), Site Cleanup by 2010; and Timely protection of public health and the environment.

The parties agreed to use a collaborative process to scope and budget the cleanup work envisioned by the September 2000 SMP. To that end, a Core Team consisting of Kentucky, EPA, DOE, and support agencies was founded. The Core Team evaluated and identified projects for early actions. The parties also identified remaining areas that required evaluation, but could be addressed over longer timeframes. In early 2002, DOE withdrew from participation in the Core Team process, and formulated an accelerated cleanup strategy without the participation of Kentucky and EPA. Kentucky had major problems with DOE's March 2002 accelerated cleanup proposal. Our view of the proposal was that acceleration was being achieved by means of reducing the scope of the cleanup. Also, too much of the cleanup was deferred until after shutdown of the Gaseous Diffusion Plant. Unfortunately, it took most of 2002 and 2003 to forge agreements. A Letter of Intent and two Agreed Orders, between Kentucky and DOE, were signed in the early fall of this year. Kentucky feels these agreements have resolved many of the issues that DOE had raised as impediments, such as waste disposition issues, that have slowed progress in the field in recent years and is hopeful that fieldwork such as the removal of scrap metal, remediation of the North-South Diversion Ditch, and the characterization and disposition of legacy wastes will proceed without further dispute or delay. These projects represent a large portion of the fieldwork at Paducah for the next three years.

CHALLENGES AFFECTING THE CLEANUP

As I alluded to earlier, Kentucky recognizes the track record with the number of disputes that have occurred between the parties. I want to reiterate that the project disputes that occurred during the 2000-2001 timeframe were not necessarily indicative of a poor relationship. The process of scoping the cleanup for a site like the PGDP was a monumental and complex task. To assume that multiple parties with different roles could scope such a cleanup without any dispute is not realistic. So I believe the Core Team process should not be characterized as having been an effort characterized only as bad or poor relationships. In fact, the projects that will be conducted over the next 3 years at the site are a product of that collaborative process. I believe the relationship between Kentucky, DOE and EPA suffered when DOE withdrew from the Core Team process and unilaterally changed the approach to the cleanup at the PGDP. The relationship between the parties of the FFA can be greatly improved with the restoration of a year-round collaborative process for scoping future projects and the PGDP cleanup budget. The resolution the parties of the FFA reached on April 14, 2003 formed a good basis for agreement on projects and commitments for the next three years. The real scope of future projects such as the Groundwater, Surface Water and Burial Grounds Operable Units is largely undefined. Kentucky remains cautious with regard to DOE's outyear commitments and is concerned that DOE intends to defer much of the cleanup after the shutdown of the Gaseous Diffusion Plant. The parties need to begin working together now to scope these projects and to prepare for actions in 2007, 2008 and beyond to follow the completion of scrap removal, the North-South Ditch removal, legacy waste characterization and disposition. Restoring a true collaborative process between DOE,

EPA and KY, is the best plan to minimize both the number of future disputes and the time required to resolve them.

Senator BUNNING. Thank you, Mr. List.

Jon Johnston.

STATEMENT OF JON JOHNSTON, ENVIRONMENTAL PROTECTION AGENCY, REGION 4, FEDERAL FACILITIES MANAGER

Mr. JOHNSTON. Good morning, Senator Bunning. Thank you for the opportunity to represent the Environmental Protection Agency in this hearing this morning. I'm Jon Johnston. I serve as the Federal Facilities Branch Chief in our Region 4 office in Atlanta, Georgia.

My branch is responsible for the oversight of Federal agency hazardous substance cleanups, primarily at those sites on the National Priorities List pursuant to the Super Fund statute to work with primarily military installations and the three Department of Energy facilities in this region that are currently on the National Priorities List; that being the Savannah River Site in South Carolina, the Oak Ridge Reservation in Tennessee and, of course, the subject of today's discussion, the Paducah Gaseous Diffusion Plant here in Kentucky.

I point out that all three of the DOE facilities, as well as most of your military facilities where we oversee cleanup, have ongoing industrial operations, and we mold our cleanup work around those operations. In general, while allowing for site specific conditions, EPA works at DOE sites establishing cleanup schedules and milestones that meet the CERCLA requirement, the Super Fund requirement, for expeditious completion of all necessary remedial action. My testimony is available in its entirety. I am just going to summarize this.

Senator BUNNING. We'll put it all in the record.

Mr. JOHNSTON. Thank you, sir. I was in attendance at your previous hearings. I can say without a doubt that our senior managers met subsequently, representing EPA, the Commonwealth and DOE, and agreed to fundamentally change our approach to cleaning up this facility. Primarily with the Core Teams that Secretary List just mentioned, but also to shift resources and attention toward early cleanup actions in lieu of completing characterization studies that were then underway in 1999 and prior to that time.

The Core Team reviewed the true life cycle base line, what will it take to get a complete cleanup done here at the Paducah facility. We reached an agreement in 2000 on a site management plan, set those milestones out. I would point out that they included many of the projects now identified for acceleration.

That 2000 site management plan was not fully implemented. And that did lead to formal dispute under the terms of the Federal Facilities Agreement, which governs the cleanup for this facility. All of the parties wanted work to continue during this period, and that has been summarized adequately in the GAO report.

I would point out, for example, that the parties during the 2001 to 2003 period of dispute managed to improve the scrap metal removal project in 2001, the North-South Diversion Ditch remedial action in 2002. It isn't what we had hoped to complete, and it is

certainly not enough to say that we are done with this cleanup, but we have had some progress during that period of time.

Recently, November 14 of this year, DOE submitted its most recently revised site management plan for the facility. The agency has that under review, so I cannot report to you our official response, but I want to provide some preliminary reactions.

Let's emphasize the positive aspect that the proposal contains the projects that EPA and the Commonwealth and DOE believe need to be accelerated. And it does appear that we could agree with the proposed milestone commitments for the next few fiscal years, and we continue to advocate, as we have for these projects for the last several years, that we jointly move on to implementation.

We do have some preliminary concerns with that draft site management plan. The proposal would make implementation of the accelerated projects contingent on an indefinite suspension in the completion of cleanup work until after the Paducah facility is closed. That is a unique proposal in our experience, and certainly we will need a better understanding of the DOE's rationale before we can reach an approval of that.

In the meantime, we continue to want to accelerate cleanup and get these projects built. As Secretary Vickford said at one time, "We need to see diesel smoke and dirt moving." That is what we want to aim for.

To that end, the EPA this week submitted to DOE a Letter of Intent specifying projects for acceleration, indicating our complete agreement that they need to be built now without further delay so that we can move on. The issue of any phasing of cleanup or agreement to suspend cleanup for some period of time until plant closure continues to be negotiated. It is going to take a lot of discussion as to whether or not it is approved. But these projects, as far as the EPA is concerned, are good to go.

Thank you for the opportunity to testify today, and I'll be happy to respond to questions.

[The prepared statement of Mr. Johnston follows:]

PREPARED STATEMENT OF JON JOHNSTON, ENVIRONMENT PROTECTION AGENCY, REGION 4, FEDERAL FACILITIES MANAGER

Good morning, Senator Bunning. On behalf of the Environmental Protection Agency, I am pleased to be with you to offer testimony about the environmental cleanup activities at the Paducah Gaseous Diffusion Plant. My name is Jon Johnston and I serve as the Federal Facilities Branch Chief, representing the Agency's Region 4 office in Atlanta, Georgia. Joining me today is Winston Smith, Director of our Waste Management Division. My Branch is responsible for oversight of Federal agency hazardous substance cleanups, primarily at facilities on the National Priorities List established under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as Superfund The Department of Energy (DOE) has three facilities in this Region currently on the Superfund National Priorities List: the Savannah River Site in South Carolina, the Oak Ridge Reservation in Tennessee, and the Paducah Gaseous Diffusion Plant here in Kentucky. All three facilities have ongoing operations, as do many of the military NPL facilities conducting cleanup in the southeast. Our approach to oversight activities is the same for all three DOE facilities, and we have signed letters of intent, accelerated enforceable agreements, and comprehensive cleanup schedules already in implementation at both the South Carolina and Tennessee DOE sites. Agreements reached for ORR and SRS establish comprehensive cleanup strategies, including definitive dates for completion coordinated with ongoing DOE missions, without interruption. Comprehensive cleanup of these large DOE sites are planned for completion in 2016 at ORR and 2025 at SRS. At Paducah, we have made a start on a good acceleration plan. We have DOE's three-year commitment in place for Paducah cov-

ering the accelerated projects specified in the letter of intent between DOE and the Commonwealth.

While our focus for this testimony is the Paducah facility, EPA must be consistent here with its oversight of cleanups at the other DOE sites, in Region 4 and Nationally. Establishing milestones and schedules for completion of cleanup allows the agencies to coordinate and maintain an effective, continuous, and comprehensive cleanup program that is transparent to all stakeholders. Nationally, while allowing for site-specific conditions, EPA works to have cleanup schedules and milestones that are fair and equitable, supported by the state and the public and that meet the CERCLA § 120(e)(3) requirement for "expeditious completion" of "all necessary remedial action" at Federal facilities on the National Priorities List. To that end, I believe that we are on the verge of agreement for the Paducah facility that will put cleanup here on the same accelerated pace as the other facilities.

As a result of your 1999 hearings about Paducah, senior managers from EPA, the Commonwealth, and DOE agreed to fundamentally change our approach to cleaning up this facility. We reached agreement to shift resources towards early cleanup actions in lieu of completing characterization studies then underway, and to use existing data and our professional judgment to select appropriate cleanup actions. That agreement was embodied in the enforceable milestones approved in the 2000 site management plan. Those milestones included the projects you now find identified for acceleration in DOE's recently submitted draft site management plan for fiscal years 2004-06.

The 2000 SMP, signed by all three parties, was not fully implemented. This led to formal dispute under the terms of the Federal Facilities Agreement, which governs the cleanup activities for the facility. During this period of dispute (2000-2003) at Paducah, EPA participated in the implementation of DOE's 2001 "Top-to-Bottom Review" of its environmental programs, signed Letters of Intent (LOI) with DOE and negotiated accelerated cleanup agreements with the Tennessee and South Carolina facilities as requested by DOE. DOE has indicated prior to today that the parties could not come to agreement on an LOI for the Paducah facility based on a fundamental disagreement on the scope of work for the out-years.

Wanting work to continue during this period, the parties approved the Scrap Metal removal project in October 2001 and the North-South Diversion Ditch remedial action in August 2002.

As required by the FFA, when the parties could not agree on a cleanup plan, EPA and the Commonwealth published a site management plan in September 2002, containing the projects for acceleration.

Thereafter, in April 2003, senior executives of all three parties issued a site management plan for fiscal years 2003-05 and reached a general agreement to continue negotiations to set out-year milestones leading to completion of cleanup. The settlement also specified start dates for investigations in order to set major projects on a path to remedy selection and construction.

Until August 2003, all three parties were negotiating toward a comprehensive cleanup plan per the April agreement. In August 2003, when the Commonwealth took the initiative to resolve the compliance action it had brought against DOE, DOE included its site cleanup strategy in negotiations with the Commonwealth. These negotiations were the result of a State enforcement action and did not involve EPA. EPA wrote to the Commonwealth and to DOE (during their negotiations) that settlement of the compliance actions was necessary and appropriate, but agreement about a cleanup program should occur under the terms of the FFA. The Commonwealth and DOE signed a letter of intent and an agreed order on consent this summer. The settlement of enforcement actions and DOE's return to compliance have EPA's full support.

DOE submitted its draft fiscal years 2004-2006 SMP to EPA and the Commonwealth on November 14, 2003. Because the draft DOE Site Management Plan (SMP) is still under Agency review I cannot report to you our official response, but I can provide some preliminary reactions. I want to first emphasize the positive aspect that DOE's proposal contains the projects that EPA believes need to be accelerated. Furthermore, it appears that we could agree with the DOE's proposed milestone commitments for fiscal years 2004-2006. EPA continues to advocate that DOE, EPA and the Commonwealth move on to implementation.

We have identified some preliminary concerns with the draft SMP. DOE's proposal makes implementation of accelerated projects contingent on an indefinite suspension in the completion of cleanup work until the Paducah facility is closed. EPA needs a better understanding of DOE's rationale for this approach. In the meantime, in order to accelerate cleanup, on Wednesday of this week EPA submitted a letter of intent to DOE calling for the three parties to immediately implement the projects proposed as milestones by DOE in the draft 2003 site management plan. Although

EPA does not agree that such an LOI is needed for DOE to implement these projects, we are willing to sign an LOI because DOE has stated that one is needed. The parties can subsequently work toward agreement on out-year milestones.

In conclusion, we are in agreement with DOE and the Commonwealth on the most immediate actions to be taken through fiscal years 2005 and 2006, and are working together to develop out-year plans for cleanup that recognize the need to characterize and remediate the site in as expeditious a manner as practicable.

Thank you for the opportunity to testify. We would be happy to respond to questions.

Senator BUNNING. Thank you very much. I am going to ask some general questions and then a few specifics. The Department of Energy has changed its completion date and cost estimations for the cleanup at the Paducah site several times, several times since I have been in the Senate. In 2000, the Department estimated that it would cost $1.3 billion to cleanup the site with a completion date of 2010. The Department now estimates that the cleanup of the majority of the waste will cost an additional $2 billion, with an estimated completion date of 2019. This figure does not include the additional 13 billion GAO estimates it will cost to cleanup the remainder of the site by 2070.

Here is the question. Why has the cost of the cleanup increased so significantly since 2000? Anybody from the DOE or EPA or anybody that would like to try to answer that. Mr. Murphie, would you like to try to answer that?

Mr. MURPHIE. Thank you, Senator. The cost of the cleanup has, in fact, changed as well as the date for completion as you pointed to in this GAO report, in their report on multiple occasions. Essentially, we have a compounding effect of two things; one being the increase in scope and the assumptions from one year to the other, and then the complications of dealing with the funding assumptions. The primary increase from the 1.3, 2010 date to the two billion, 2019 date is effectively the compound of the significant increase in scope between the two baselines that were developed back in the year 2000 versus the current baseline.

As the GAO points out on their chart up on the wall there, there is a certain carrying cost or certain cost for the site independent of the cleanup. And every year that it takes longer, it is a cost that is incurred by the Department. And therefore, some of the increase is directly due to the schedule extension itself.

Senator BUNNING. Isn't it not true, though, that the Congress of the United States has increased significantly, specifically to Paducah, monies in addition to what was requested by the administration, and you have gotten additional money? What has happened to that money?

Mr. MURPHIE. Well, we thank you very much for the additional funds, particularly in 2003 and the anticipated funds that we will be getting in 2004. The ability for us to make significant progress is very much a result of that additional funding. As I just alluded to, the base program is money that we have to spend regardless. So any additional funds which you and Congress are able to provide to us does allow us to allocate it directly to the acceleration of real work. We would hope that you'll have a chance to get out there at some point in the new term.

But I think in the last few months, you will see, and we can show, that there is real work going on at the site. This is largely

a result of the fact that we have reached a deal with Kentucky on the Agreed Order. We have made significant progress with EPA on the resolution of the site management plan. And real work is being done at the site. Those funds that you now make available to us go directly to real work and the acceleration of real work.

[The following was received for the record:]

BREAKDOWN OF COSTS ASSOCIATED WITH OPERATION COSTS

January 9, 2004

Item description	*Cost to date as reported to GAO (dollars in thousands)
Surveillance and maintenance	$88,899
Management and legacy waste	72,951
Program management (FY 92-98)	50,662
Uranium program activities	35,173
Construction of remediation facilities to support cleanup activities	26,117
Litigation expenses/support/records search (includes D&D fund and UP funds)	39,430
Post retirement medical and life/old worker compensation	12,744
Security	11,575
Authorization basis document revision	4,171
Severance (USEC employees)	3,000
Agreement in principle/FFA grants*	2,247
Investigative trenching (DOJ directive)	1,463
Misc activities	1,457
Total	$349,889

The cost to date reported in the GAO report was $373M. The cost to date reported here is the actual cost incurred from 1988-2003. GAO adjusted the actual cost to date to fiscal year 2002 dollars, which increased the overall Operational Cost by $23 million.

*Does not include costs prior to FY2002 provided by ORO funding.

Senator BUNNING. This is one of—the GAO estimated that 45 percent or $373 million of the $823 million already spent on cleanup has gone to operational costs. How much has the Department had to spend on litigation cost? How do these costs effect the funding available for actual cleanup activities? How much has been spent on paying regulatory violations that the State has issued? How much has that delayed the cleanup?

Mr. BOYD. Senator Bunning, on the litigation issue, we note that in the last number of years we have spent over $8 million on litigation, and there is not at this point any way to tell exactly what that may turn out to be in the long run.

On these other issues, I think we would have to try to get you accurate numbers as to what our expenditures have been, related to regulatory interface, working with stakeholders and those kinds of things. We could get you the numbers related to that. The $8 million in litigation in the last number of years, I know is an accurate number, but the others we would probably have to provide later. Bill, do you have any of those with you?

Senator BUNNING. But that doesn't even come close to the $373 million that GAO has estimated that goes to operational cost. Where did the rest of the money go?

Mr. MURPHIE. Actually, the litigation cost is not just $8 million. The $8 million is per year. That is per year.

Senator BUNNING. Okay. We'll give you $24 million then since 2000.

Mr. MURPHIE. In addition, we have all the other activities we talked about, the regulatory costs. We can break those down for you.

[The information follows:]

*REGULATORY COSTS
[Dollars in thousands]

Agreement in principle/FFA grants**	$2,247

*Included in the operational costs provided in response to item from page 28, line 4.
**Does not include costs prior to FY2002 provided by ORO funding.

Senator BUNNING. How much have you been paying in fines to the Commonwealth?

Mr. MURPHIE. The fine would be the Agreed Order that we just settled, and we agreed to pay a million dollars to the Commonwealth of Kentucky and a $200,000 supplemental program. Beyond that, I don't believe we have had in any prior year fines that we paid to the Commonwealth. I could stand to be corrected.

Senator BUNNING. Would you please furnish that for the committee? If you don't have it today, I would like for you to furnish it to the committee in writing.

Mr. MURPHIE. Yes, sir.

[The information follows:]

* AMOUNT OF PENALTIES
[Dollars in thousands]

Agreed Order penalty**	$1,000
Agreed Order environmental project	$200

*No additional penalties or fines have been paid to the Commonwealth other than the ones mentioned above that were part of the settlement reached in the Agreed Order (October 3, 2003).
**The Agreed Order allows penalty to be paid to the Comonwealth in installments.

Senator BUNNING. How much has been spent on paying regulatory violations? How much has it delayed the cleanup? In other words, the direct money that we send and make a line item for in the budget that says it is for the cleanup of the mess that is here. Now, it doesn't say it is to pay fines. It doesn't say it is to do this or do that. It is for cleanup. How much money are we getting into the cleanup on a yearly basis in Paducah?

Mr. MURPHIE. I would refer to the GAO's accurate depiction over there. I think, as you can tell, probably about a third of the money actually goes to the real cleanup. The rest of the money does go to either the infrastructure, the overhead, the DOE direct cost, the litigation and all the other things that are basically accurately identified on that chart.

Senator BUNNING. In other words, if we allocate $118 million, one-third of that is actually getting into cleanup?

Mr. MURPHIE. In terms of physical work, probably a third. We have a lot of assessments, a lot of studies. As Gerald mentioned, we have all the monitoring programs and paperwork. As Hank mentioned earlier, we have a lot of investigations that are ongoing. There is a lot of paperwork. We are still in a lot of the decision making processes for some of these very large decisions to be made.

And the investigation, mediation feasibility studies are fairly extensive right now. The physical work is a much smaller fraction than we would like to see.

Senator BUNNING. I don't want to be contentious with you, but this plant has been here 50-plus years or very close, and we have known about these problems here for a long time. And it wasn't until much more recently that we started to allocate what we thought was going to be enough dollars due to the initial 2000 plan.

In other words, we were going to do a $1.3 billion, and it was going to be cleaned up by 2010. Now, you keep moving the goal post down. And the cost by moving the goal post is an additional $2 billion and another 9 years. We'd like some finality. We would like to know what the finality is going to eventually look like.

You can't keep coming to the Congress of the United States and saying, "Oh, by the way, we weren't right last year. This year we think it is going to cost an additional $500 million." I want to know what the accelerated plan that you and the DOE and the EPA and the Commonwealth have come to a collusion on and why it took so long for EPA to sign off on it. What is in that that we should know about?

Mr. MURPHIE. We actually don't have an agreement on the full accelerated cleanup plan at this point, Senator.

Senator BUNNING. I thought it was signed.

Mr. MURPHIE. We have an agreement with the Commonwealth of Kentucky, the Agreed Order and a Letter of Intent, and we are working with EPA on getting the final——

Senator BUNNING. EPA did not sign off yet?

Mr. JOHNSTON. The Letter of Intent that was signed didn't involved EPA. The Department and the Commonwealth were negotiating an Agreed Order, and they do that separately because it is a State environmental action—enforcement action.

Senator BUNNING. In other words, you have not signed off on it.

Mr. JOHNSTON. No. It was just presented to us on November 14.

Senator BUNNING. Maybe the two people, one from the Commonwealth and one from the Department, can give me some kind of very strong estimate of what we are looking at, because I am going to have to fund it.

Mr. MURPHIE. If you would like us to lay out the——

Senator BUNNING. At least the preliminary of what you have agreed on.

Mr. MURPHIE. We could submit for the record the site management plan, which has been provided to EPA and the Commonwealth of Kentucky for review. And this is what Jon was just referring to that is under review. It does lay out very explicitly the strategic approach and the cost that ties to the 2019 schedule and the $2 billion.

Senator BUNNING. In other words, GAO's estimate is in that report?

Mr. MURPHIE. Yes, sir.

Senator BUNNING. I would like to have that submitted for the record, so we could include that also.

Mr. MURPHIE. We will.*

Senator BUNNING. Ms. Nazzaro, the GAO 2000 report identified uncertainties about funding as a challenge that could affect the Paducah cleanup but did not mention funding as an additional challenge today. Is funding no longer a challenge?

Ms. NAZZARO. Correct, in that we did identify three uncertainties in the 2000 plan, the technical, the funding and the regulatory. At this point in time, we feel that the funding issue has been addressed thanks to the increased appropriations. In fact, DOE has experienced 40 million in carry-over funds in the last couple of years, so they are not even spending all of the money that has been appropriated to them.

Senator BUNNING. They are not spending it on the cleanup that is——

Ms. NAZZARO. They are not spending it at all. It is carry-over funds that are carried over from one fiscal year to the next.

Senator BUNNING. They couldn't——

Ms. NAZZARO. They didn't spend everything that was appropriated to them, yes.

Senator BUNNING. That is very rare, by the way. In the testimony, the GAO stated that much of the cleanup remains to be done. Why has the Department of Energy made so little progress in cleaning up contamination and waste since 1988?

Mr. BOYD. Senator, there is no question that Ms. Nazzaro's comments about the complexity in dealing with this has been a problem for the Department. Reaching agreement in what the cleanup standards are, getting acceptance by the regulators, acceptance by the community, the stakeholders has been a very difficult problem.

I think also there has been difficulty in dealing with the problems here at Paducah partly because there had not been any site appropriated budgets until the year 2000. That is when Congress started appropriating funds by site to assure that the funds that were necessary for the individual site cleanup was made available. So in the year 2000, that was done.

I believe another issue has been that there had been lack of focus on having the adequate management attention to the Paducah site, as well as the Portsmouth site. One of the things that you have insisted on, Senator, is that focus be there. Assistant Secretary Jessie Robertson, we have in office right today, has agreed with your assessment with that and has set up the office in Lexington to get a focus on Paducah and Portsmouth.

With site budgets being established in 2000, which has assured that the funding goes to the site that they are allocated for, with a focus of a Lexington office to make sure there is adequate management attention, it is bound to be helpful in the future in dealing with this. But there are a number of issues that are outlined in the GAO report that we would not argue with as being the problems that have existed over the years. We think the way things are set up now, if we can get full agreement with the Commonwealth of Kentucky and with the EPA, that we could move this forward in a much more successful path than what you've seen in the past.

*Retained in subcommittee files.

Senator BUNNING. Let me ask this to the gentleman from the EPA. What is it going to take for you to sign up on the—in other words, what is missing?

Mr. JOHNSTON. It is something that is in addition. It is not so much what is missing. The accelerated cleanup projects and the plan to get to 2019, I think we have indicated we agreed with those. They are in the site management plan that is on the table now linked to a decision that we are not yet in agreement with. That is the cessation of cleanup activities after 2019 until some indefinite point in the future when the plant is closed. That is unique in any proposal and any agreement we've ever reached on cleanup of a Federal or private facility.

So delinking or taking that requirement out—we can debate it further. We can decide if it is agreeable or not, and get these projects built now. That would make it agreeable. We put that in writing as of Wednesday of this week, proposing to the Department of Energy that we are willing to sign up to the projects, to the work that needs to be done. But the question of ceasing operation of cleanup is unique, and that is something that——

Senator BUNNING. Are you familiar with Maxie Flats?

Mr. JOHNSTON. Somewhat.

Senator BUNNING. Well, I hope we do better—the EPA and the Department of Energy does better in the cleanup with this facility than we did with Maxie Flats where the—those who contributed the nuclear hazardous waste were penalized only for a period of 25 years, and then the Commonwealth of Kentucky gets stuck with the bill from 25 years to eternity, and I don't want that to happen here in Paducah.

So we did get at least $50 or $60 million, I'm not quite sure. I think it was 60, because I was in on the original estimates when I was in the State senate and finally got it solved when we worked in the House of Representatives and then signed up.

And unfortunately, the Commonwealth signed off with the responsibility, and I surely don't want the Commonwealth to sign off on this and then be stuck with the tab for the rest after 25 years.

Mr. JOHNSTON. That consideration is not on the table in Paducah.

Senator BUNNING. I just want to make sure that is not in the agreement.

Mr. JOHNSTON. Not at all.

Mr. LIST. If I might add—and EPA doesn't need me to say anything in their defense—however, focusing back on the recent Agreed Orders that are entered into, and the Letter of Intent that was agreed to, the State of Kentucky has felt that it was under such pressure throughout this process, first of all, by the confusion and questioning of the delegation inside the Beltway, for example, on what is wrong here.

The Paducah community that basically was concerned about what has taken place and what was going on and asking the same question, you know, "What is the matter here?" "What is wrong here?" The desire of the Governor of the State and the desire of the delegation in Washington to see something positive take place out of their efforts to this point, basically, put us into a position to abandon, to some extent, the tri-party relationship that we had

with EPA to go and try to negotiate on behalf of the community and the State of Kentucky an agreement with DOE that could get the diesel smoke and the dust moving again.

Therefore, we did not in so much unfairness hold the hands of EPA like we had for so many years prior to this year when we went to Washington and met with DOE and negotiated the agreement that resulted from our physically going up to Washington, sitting down on an all day meeting, working through the issues and coming up with what we thought were the solutions that did away with the obstacles that created the Agreed Order, that created the Letter of Intent that would bring about the ability to use these funds again on-site and get away from the status quo.

The status quo is unacceptable. That is that nothing was happening. So there are still some questions by EPA, and they are rightfully entitled to ask the questions of why did you all decide to do it this way, and they still have their right to question some of the provisions of this agreement. Therefore, they are playing their role as they see their role to be played.

I played my role as a chief policy maker in representing the State, trying to get an agreement, trying to get some resolution in place. And the nature of the FFA, the nature of the site management plan and that all of the things that are in place that were supposed to bring about meaningful activity at Paducah, they are there. They have been there. It just got complicated when the accelerated cleanup issue came along.

The FFA, the Federal agreement was there, and everything just kind of progressed along, and then additional money came in. And then going back to the Core Team that I mentioned earlier. All of a sudden that ceased to function. Therefore, to that extent, the everyday communication between all of the parties stopped.

Then we started talking about money. And then that is getting more complicated, how do we use it, where is it, what do we have to do to get it, and how best to use it. So basically, we ended up with more questions. Other than more action, we actually ended up with a whole lot more questions. And it has taken us, frankly, from spring of 2002 to October to get to the point where we had finally gotten these things decided and out of the way and got back to work.

Senator BUNNING. A question for DOE. Why has the Department changed its cleanup plans so often? Does the Department expect that this accelerated cleanup plan will be the last plan it will use, or should we continue to see more plans on the horizon?

Mr. MURPHIE. Two questions there. Why has the plan changed so often? I think it is a fair representation of the fact that the dynamics of the decision-making process, the Core Team that Secretary List referred to, these were real-time decision-making activities. And every time a decision was made to change the scope of work, we basically had to modify our plan. We have a large lifecycle baseline that is from the beginning to the end. And any time we make a change to it, we have to adjust it. So it is continuously changing or at least we refer to it as a living document.

Will this be the last plan? Absolutely not. We are going to have to continue to revise the plan to reflect the final agreements that we achieve with the Commonwealth of Kentucky and the EPA. And

the baseline of these estimates, and I will refer to the GAO to confirm this position, but the baseline is a living document.

It is a crystal ball, the best we can determine today, given what we known, given the basis of the general understanding we have with the regulators and the technical engineering approach that we have today. It is not a decision-making document in the sense that what we've assumed with regard to the burial grounds, with regard to the ground water, with regard to the surface water, those decisions have not yet been made, Senator. And I would be remiss to imply to you that those decisions have been made.

The GAO report accurately reflects the fact that we have fairly optimistic assumptions as to the ability to reach those agreements with the regulators and the State boards, because there are some very tough decisions still to be made at this site. As a decision is made—and this is in agreement with the regulators. As we go through the process and a decision is made, that decision will be reflected in the life cycle baseline, and it will be modified either up or down depending on what the actual decision is. And therefore, this will not be the last baseline.

Senator BUNNING. In other words, you don't know?

Mr. MURPHIE. That is correct.

Senator BUNNING. The Department of Energy's efforts in Paducah include seven—I am assuming this is correct—seven cleanup categories, each with an expected completion date. A, has the Department established interim milestones for each cleanup category that it can use to track its progress towards achieving the estimated completion date?

Mr. MURPHIE. The Department has milestones in the life-cycle baseline to tie to each of those——

Senator BUNNING. Each of the seven categories?

Mr. MURPHIE. Yes, sir. We do not have—I'm not sure if this is your question. They are not necessarily enforceable milestones with the EPA and the stakeholders. But in terms of the same document I just referred to, the life-cycle baseline, each one of those has a prescribed starting point, ending point, and the assumptions under which the start, end activities has been made.

Senator BUNNING. How does the Department of Energy keep the EPA and Kentucky informed on the actual progress being made? Does the EPA and Kentucky believe that the Department does enough to keep them informed? You are all free to answer.

Mr. MURPHIE. The progress or the process of keeping Kentucky and EPA informed is one that I would frankly admit that, over the last year or so, has diminished significantly because of the lack of communication overshadowed by the disputes and actually, in all frankness, the lack of action at the site. We clearly did get tied up in an administrative dispute process that brought everything to a stop at the site, and there was very little action or progress to report to anybody.

As I said a few minutes ago, we are quite happy with the fact that that has changed. Your question that you clearly are looking for is how we will be doing that? The process of providing monthly progress reports, senior management meetings, informal and direct communication with both EPA and Kentucky is one that I believe we have in the past demonstrated.

We are more than happy to work with EPA and Kentucky to try and define and improve that communication, to improve the availability of our documents that we use for internally planning and monitoring the progress of our projects. We've volunteered and suggested that we meet on a routine basis. We meet with Under Secretary Card on a quarterly basis, so we have some fairly high visibility in the Department of our progress. We talked with EPA and Kentucky about establishing a similar high-level senior management type of progress review to deal with the kinds of issues that are not getting resolved.

So I think the tools are there. I will not try to imply that those tools have been used as effectively and efficiently as they should have been over the last couple of years because of the reality. The progress wasn't there to support it, but we're committed to making this work. The agreement we have with the Commonwealth, we're very proud of. We think it is a significant achievement, and we're committed to working with EPA to get to that same point so that we are only talking about progress and not talking about disputes.

Senator BUNNING. Well, if you are going to come to us and have an accelerated cleanup plan and ask for a half a billion dollars a year to implement, you better be darn sure that you are going to spend the money for cleanup, not for litigation and paying fines, because we will be willing to work with you as far as getting the dollars for the cleanup. You know they are limited, what goes into the Department of Energy's budget for cleanup is limited. But if you sign up for an accelerated cleanup plan, you know that money is available. You know that Kentucky is the 22nd site of 22 to sign and not quite sign up yet, but they are the last of 22 sites.

And my question is, once operations cease at the Paducah plant, the Department of Energy would evaluate the site-wide risk and identify further actions necessary to close the site. When will DOE begin the decommissioning and decontamination of the plant?

Mr. MURPHIE. Unfortunately, Senator, as the EPA referred to——

Senator BUNNING. 2019? 2025?

Mr. MURPHIE. 2019 is the scope of work with what we currently know. And as far as that which we can clean up, what we've said is that the operations of the use of the enrichment plant are processes which are beyond our control. It is a commercial enrichment operation, and the Department of Energy will not and does not have any authority to make the decision on when that plant will shut down.

All we're saying is we're going to clean up everything—we are going clean up everything that is decided through this decision-making and tri-party agreement process between now and 2019. And there will be very little left at that point, with the exception of the D&D of the gaseous diffusion plant, and those pieces of the work which were essentially unavailable because of the operation of the decommissioning of the plant—I'm sorry. The operation of the plant—underneath the buildings and those kinds of things. It is not as though we're planning to leave behind massive unfinished work——

Senator BUNNING. We are not going to let you do that anyway, even if you would like to.

Mr. MURPHIE. And that is not our plan, sir.

Senator BUNNING. The site out there may or may not get another shot at enriching uranium in a new manner. It is a contest between Paducah and Portsmouth right now. But there is going to be built on the site a cleanup facility for the drums, and there has been, I think, $18 million allocated to build the building for that in this last budget, if I am not mistaken.

Mr. MURPHIE. You are referring to the '04 allocation?

Senator BUNNING. Yes.

Mr. MURPHIE. Yes, sir.

Senator BUNNING. So there is going to be a lot of activity for the next 25 years for that site.

Mr. MURPHIE. Absolutely.

Senator BUNNING. So I just want you to know that you are going to have to continue monitoring that site for a long, long time. Because even if we clean up everything that we know that is there now, in the use of that site for the next 25 years, we may contaminate more. So it is still a possibility that additional dollars besides what the GAO has already estimated will be needed.

Mr. MURPHIE. The Department and the Government is making no attempt to abandon the site and is not walking away from that site. I tried to make that clear to the stakeholders at our citizens advisory board meetings and in our discussions with the regulators. We fully understand and appreciate exactly what you are saying, which is we have a large cleanup mission to be undertaken today. We have a large cleanup mission when USEC decides to shut that plant down. And we have the DUF6 conversion project that will go on for many years, and we will continue to have a legacy long-term stewardship mission at that site for whatever period of time is necessary, and it may well be indefinitely.

Mr. LIST. Senator, one of the main concerns that the State of Kentucky and EPA have always had in their sole discussion is the final disposition of waste, and that still remains one of our big concerns, and I would also represent one of the potentially huge costs of remediating and cleaning up and finally closing out the problems that we've had at the site. I could encourage you and the staff to not forget—and you have not—but I just want to say that one of the important things is that just recognizing that the stuff exists is not enough.

The effort should be focused much, much more on the final disposition of these materials, whether they be on-site or off-site, and that the actual cleanup kind of gets lost in a lot of the discussions about appropriations and work and all these other things.

This is not to say that DOE does not intend to do this. It is just a constant frustration for us to go through all of these disputes and all of these negotiations, and ask, "Okay. We've gotten there. When is some of this stuff going to start being disposed of?"

Senator BUNNING. Well, as you might know, we have that problem not only here and on storage in many other places in the United States, but as you know what we did at Maxie Flats with the waste there. We concentrated it in containers, and now we find out that underneath the containers we're having a bigger problem. We forgot to put a lining in it, and we are having problems with

that. But you realize that we are working on a national site for disposing of or storing a lot of this waste.

Mr. LIST. Yes.

Senator BUNNING. I want to ask about the Lexington office, Mr. Murphie, because I want the people here to understand why I insisted upon the Lexington office. I put a provision in the fiscal year to the Energy and Water Appropriation Bill to require that the Department of Energy provide direct funding and communication from its headquarters to the Paducah plant. In response two years later, the Department finally has or is about to open in the next month its Lexington office to handle funding and oversight cleanup.

Mr. Boyd, in a meeting I had a couple of years ago with the Department, they said they believed that Oak Ridge had, in fact, skimmed money from the Paducah appropriation funds. Did Oak Ridge do this, and why did they skim funds? How much money do you estimate Oak Ridge took from the Paducah earmarked funds?

Mr. BOYD. Senator, I know that you had this concern. I have been in Oak Ridge on this job for about a year now, and I took a hard look at this, because it was brought to my attention that you were concerned about that.

In reviewing the budgets, starting in the year 2000 through 2004, which is a 5-year budget cycle, there are allocations or appropriations by the committees and allocations directly to the Paducah site. Prior to that, there were no site budgets. But starting in 2000, Congress appropriated money by site, and Paducah was called out in that budget.

In my review of that since 2000 through 2004, the Paducah site has gotten all of the money that the Congress appropriated for the Paducah site. Prior to that, the budgets were based on programs, not on site basis, and the way those decisions were made were by prioritizing program activity. And that was a combination of Oak Ridge program people, Paducah program people and Washington program people to decide where does waste management money go, where does restoration money go, and decisions were based upon those kinds of prioritizations and not on a site basis.

That naturally led to some concerns that money could have gone to one place versus another, but the Department had priorities, whatever drove those priorities in those days is how the monies got allocated. I assure you that I looked into the legality issues to make sure that funds that were either added to or taken away from Oak Ridge or Paducah or Portsmouth, which are the sites, at question that that was all done according to legal financial procedures. And what I have found in that review is that it was done legally.

It might have been of concern to you and others that programmatically the Department may not have done it the way it should have from a prioritization standpoint. But I am assured that everything has been done legally. There is an annual financial statement review of the Department of Energy to assure that movement of funds is done properly.

Since 2000, and all the way through this fiscal year, I can assure you that monies that you have appropriated for Paducah, those monies have gone to Paducah. And there is a new financial accounting responsibility for Paducah, as you well know. An account-

ing center in Washington is allocating funds directly to Paducah, not through the Oak Ridge office any longer.

Senator BUNNING. Mr. Murphie, can you explain what you expect the Lexington office to handle? Why has it taken the Department over 2 years to provide direct funding to the Paducah plant?

Mr. MURPHIE. The establishment of the new field office by the Department of Energy is something that obviously takes a fairly extensive amount of both resources and time. It requires coordination with the money, different parts of the Federal DOE. I can't defend why it should have taken this long, Senator. I believe we could have and should have been able to get a little faster than this. I am not sitting here trying to tell you I'm happy with the duration. Personally, it has affected my life. I would have liked to have this set up earlier, myself. And even something as simple as getting the build-out of my space in Lexington itself is two months behind schedule. The contractor committed to me that—not the contractor, but the building owner committed to have that space available for us.

It is just a process that has involved a significant—everything that involves the transfer of Federal employees from one site to the other, it has just taken us longer than I'm sure seems reasonable, but I'm not sure it is significantly longer than might be the case in other major changes of a line management program like this.

Senator BUNNING. We are going to hold you specifically responsible for seeing that every dollar sent to Paducah and to Portsmouth is directly appropriated to those areas, because we're going to put it in the bill as it comes out of the Senate and the House. Because if we eventually get an accelerated plan, we want to make sure that that money goes and we do get accelerated cleanup.

If the old plan was going to be 2010 and now we have an accelerated plan, and we can do it by 2019, according to the GAO, we want to make sure that that happens, and that we don't have you here two years from now explaining why it is not happening.

Mr. MURPHIE. I understand.

Ms. NAZZARO. The 2019 estimate, Senator, is DOE's estimate. We still have some concerns that that is a pretty soft number. In the seven categories that you mentioned as far as cleanup, there are some very soft numbers in there.

For example, for the North-South Conversion Ditch, that is only talking about cleaning up two of the five areas of the ditch. Also, with the burial grounds, that is only talking about monitoring with the idea of capping. Should they find that there has been further contamination and that there would then need to be excavation, that is not included in the cost as——

Senator BUNNING. Will your final report finalize what you think is going to really be the total time expenditure on those things?

Ms. NAZZARO. It will be given the optimistic assumptions that DOE is making as to what they plan to do and how much that is going to cost and how much time. But like I say, these are very optimistic assumptions, and they are not complete as far as the plans. So I don't——

Senator BUNNING. What will your final report say about it?

Ms. NAZZARO. It will talk about DOE's estimates and what——

Senator BUNNING. Just the estimates?

Ms. NAZZARO. What we will then do is say what the challenges are, what is not included in those estimates, so you will be able to know how soft those numbers are.

Senator BUNNING. Would anyone else like to comment before I allow the panel to go and do whatever they want to do?

Mr. LIST. If you want any more comments, Senator. Again, going back, the money has been allocated, the problems have been recognized as being significant problems. There should be significant action going on out there, and I think that all parties intend for that to happen. We think the Lexington office does present the opportunity for this communication again, this relationship that should be in place, that should make this happen. So I think we have already put in motion the mechanism. What is important now is the follow through, whether it be by staff or whether it be by communications with the new administration in the State of Kentucky to work together with the Beltway or whomever they have to to make sure that we have been trying to create as a better working atmosphere actually is followed through on and does actually get the results that you want.

Senator BUNNING. Thank you, Mr. List.

Anyone else?

Mr. MURPHIE. We just like to thank you for having us here, and we believe that there has been a significant amount of accomplishment in the last year as a result of your involvement in bringing us together and forcing us to work together. This is a difficult challenge for us. And the monies you are providing that have been above the DOE request will be used for accelerated cleanup.

Senator BUNNING. Thank you very much. If the second panel would mind coming forward. Robert Robertson, Director, Education, Workforce and Income Security, General Accounting Office; Tom Rollow, Director, Office of Worker Advocacy, Department of Energy; Pete Turcic, Director, Department of Labor Energy Employees, Occupational Illness Compensation Program; Larry Greathouse—where is Larry? Good to see you—Commissioner, Kentucky Department of Workers' Claims.

Mr. Robertson, you go right ahead.

STATEMENT OF ROBERT ROBERTSON, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY, GENERAL ACCOUNTING OFFICE

Mr. ROBERTSON. Thank you, Senator. It's great to escape the snows of Washington to be here in Paducah under clear blue skies to discuss——

Senator BUNNING. If you are going to have a meeting, have one right off of the floor. Thank you very much.

Mr. ROBERTSON. Thank you, Senator. I am going to be talking a little bit this morning about our work under the subtitle D of the Energy Employees Occupational Illness Compensation Act of 2000. And as you know, Senator, under this particular law, Energy is responsible for assisting contractor employees to obtain compensation for the occupational illnesses through State worker compensation programs.

My testimony today is based on an ongoing review of these matters. Before I go too much further, I need to put on my glasses to

make sure I don't say anything I don't want to. I am going to get into three points this morning. And the first point is simply that Energy has gotten off to a slow start.

As of June 30, 2003, 2 years after the law took effect, Energy has not begun processing more than half of the 19,000 cases received and fully processed only about 6 percent of the cases. The majority of these fully processed cases were found to be ineligible for benefits through either a lack of employment at an eligible facility or the absence of illness related to toxic exposure.

Forty-two of the fully processed cases, which is less than one percent of all 19,000 cases, have received a final determination from a physician panel on whether the reported illnesses were caused by exposure to toxic substances while working at an Energy facility.

My second point is that there have been two bottlenecks in the Energy's claims process that have contributed to delays in assisting claims and filing claims for the workers' compensation benefits. One bottleneck has been at the front end of the process, the case development part of the process, where case workers collect medical, employment and exposure records. In short, Energy was slow in this part of the process.

More specifically, when Energy first began developing cases in the fall of 2002, case development process had a staff of about 14 case managers and assistants. Energy officials subsequently acknowledged the need for substantially more staff. However, hiring was delayed by lack of office space until August 2003, at which time Energy more than tripled the number of staff dedicated to case development.

Energy officials now report that they are reaching their goal of completing the development of 100 cases per week, and that was a recent development.

The other more severe bottleneck is at the back end of the process where a panel of physicians makes a final determination of whether an illness is related to employment at an Energy facility. The problem in a nutshell is that Energy has had difficulty in finding enough qualified individuals to serve on physician panels.

Currently, about 100 physicians are assigned to panels each consisting of three physicians. Energy has requested that the National Institute for Occupational Safety and Health appoint an additional 500 physicians to staff the panels. However, NIOSH has indicated that the pool of physicians with the appropriate credentials and experience, including those that are already appointed, may be limited to about 200.

Even if Energy were able to double the number of physicians currently serving on panels, it could take seven years to process all cases. And that is the thought I'd like to leave you with on that point.

My third and final point is our analysis indicates that most cases are likely to have a willing payer of benefits, that is an insurer who by agreement with Energy will not contest these workers' compensation claims.

More specially, our analysis indicates that 86 percent of the cases in the nine States that account for more than three quarters of the claims filed nationwide will potentially have a willing payer of benefits. And I want to be clear here that this is not an estimate of

the number of cases that are likely to receive compensation. It is not an estimate of the number of cases that are likely to receive compensation. In fact, no claims have been finally resolved under the State workers' compensation programs.

Rather, our analysis is based on examining different types of worker compensation coverage used by the Energy facilities. More specifically, most of the facilities in these nine States have current contractors that are self-insured, which means that Energy can order them not to contest State worker compensation claims.

Furthermore, our estimate assumes all cases will receive positive determinations from the physician panel. We had to make this assumption, because efficient data was not available to project the outcomes in the physician panel process.

Senator, that about wraps up my prepared comments, and I will answer questions.

Senator BUNNING. Mr. Rollow.

STATEMENT OF TOM ROLLOW, DIRECTOR, OFFICE OF WORKER ADVOCACY, DEPARTMENT OF ENERGY

Mr. ROLLOW. My name is Tom Rollow. I'm the Director of the DOE Office of Worker Advocacy. Under Secretary Robert G. Card testified before the committee in Washington approximately 2 weeks ago on the Energy Employees Occupational Illness Compensation Program Act. I'd like to submit his written testimony of November 21 for the record.

Senator BUNNING. I was there, so we'll submit it.

Mr. ROLLOW. The DOE has heard loud and clear that Congress is frustrated with the pace at which we are processing part D applications. We too are greatly concerned. When Secretary Abraham spoke of this program last spring, we were processing less than 20 cases for physician panels per week. We have recently exceeded 100 cases per week. However, even with these improvements, DOE simply has not processed cases with the speed or efficiency desired by the Congress or by Secretary Abraham.

As a result, the DOE has taken the following actions. First, as I noted above, we have already started significant action to improve productivity and added resources to address this program, and we believe that such improvements will continue to bear fruit.

Second, we continue to have improvement with performing an accelerated top-to-bottom review. This review will identify those elements of the findings of the GAO, the Hays report and the in-house assessment that should be implemented if not already done.

In addition, we will examine every aspect of the program's policies, procedures and rules to further increase production both at the case development stage and at the physicians review panel. Nothing is off of the table in this review, and we believe we will have this plan available for review shortly.

Lastly, we have elevated this office to report directly to the Under Secretary in order to provide the visibility, the oversight and the resources that this program needs.

Again, Mr. Chairman, the Department hears your concerns and agrees that our performance to date has been inadequate, and we are taking steps that we can to improve the situation quickly, I am prepared to answer your questions.

[The prepared statement of Mr. Card follows:]

PREPARED STATEMENT OF ROBERT G. CARD, UNDER SECRETARY, DEPARTMENT OF ENERGY

Thank you for the opportunity to testify about the Department of Energy's implementation of the Energy Employees Occupation Illness Compensation Program Act of 2000 (EEOICPA). Broadly speaking, DOE has two areas of responsibility under EEOICPA: (1) gathering employment and workplace information to assist the Department of Labor (DOL) and the Department of Health and Human Services (HHS) with their work in carrying out the EEOICPA Part B compensation program; and (2) implementation of EEOICPA Part D, which focuses on providing assistance to DOE contractor workers in their efforts to obtain State workers' compensation benefits. My testimony today will primarily focus on DOE's activities under Part D.

DOE has heard loud and clear that Congress is frustrated with the pace at which we are processing Part D applications. We too are greatly concerned. Progress has been made in gathering records and processing cases. When Secretary Abraham spoke of this program last spring, we were processing less than 20 cases for physician panels a week. We have now exceeded 20 cases per day. However, in spite of these significant improvements, DOE simply has not processed cases with the speed or efficiency desired by the Congress or by Secretary Abraham. Therefore, I want to be very specific in my remarks to you today. The Department did not react quickly enough when it became apparent that the EEOICPA was a much larger program that originally anticipated. More resources are required. Therefore, we will be providing a request for approval of another transfer of funds to the appropriate Congressional committees very shortly. I ask for your timely support of this transfer of funds. Also, I am asking that the Committee support changes to the statute that would assist us in expediting the physician panel process even further.

I have included an Attachment * to my testimony that provides more detail concerning the issues I will discuss today, including some of the original expectations of the program, processes used by DOE and DOL to implement EEOICPA, our progress to date, and what we have learned from outside reviews of our work. I have also included information about the current safety record of DOE for your information.

Part D of EEOICPA sets up a somewhat cumbersome and complicated process that DOE's contractor workers must navigate if they are to benefit from Part D of the program. If a DOE contractor worker believes they may have an illness caused by exposure to a toxic substance while working at a DOE facility, the law allows the worker to file an application with DOE for assistance in filing a state workers' compensation claim. After determining that the applicant is eligible for the Part D program, DOE gathers records from around the country relating to the workers' occupational histories and their health conditions, and then refers the application to a panel of doctors. The physician panel then determines whether the worker's illness arose from exposure to a toxic substance while working at a DOE facility.

If the panel finds in the affirmative and DOE finalizes the finding, the workers are notified of the favorable finding. The workers may choose to file a State workers' compensation claim. Of course, the workers are free to file with their State workers' compensation office at any time, but hopefully the case file put together for the worker by DOE plus the positive physician panel finding will provide the worker a better chance of receiving benefits through their State workers' compensation agency. The statute then allows DOE, to the extent permitted by law, to direct the contractor who employed these workers not to contest State workers' compensation benefits for workers that have received a positive finding. Individual States' workers' compensation laws and rules determine benefits for that particular state. The EEOICPA statute does not provide for direct monetary benefits to Part D applicants from the Federal government.

At the present time, DOE has received more than 20,000 Part D applications with applications continuing to be filed at approximately 150 per week. In addition, there are currently more that 40,000 applications filed under Part B, the DOL Federal entitlement portion of the program, for which DOE provides information.

This is in stark contrast to some of DOE's original expectations for EEOICPA. Secretary of Energy Richardson, in an April 2000 press release, stated "The Administration's proposal, if enacted into law by Congress, would compensate more than 3,000 workers with a broad range of work-related illnesses throughout the Energy Department's nuclear weapons complex." This was prior to the enactment of EEOICPA, but the release did discuss a program that was very similar to the cur-

*The attachment has been retained in subcommittee files.

rent law, including lump sum benefits and help in obtaining State workers' compensation benefits.

The press release further identified the total program costs for all agencies, including administrative costs and worker benefits, to be about $120 million annually over the first three years the program was fully operational, declining to about $80 million per year after the backlog of claims was reduced. The basis for these estimates is not clear, but the implication is that it would take at least three years to clear a 3,000-claim backlog, and then several years beyond that to complete all claims. In fact, expected expenses for all of EEOICPA for all agencies just through fiscal year 2004 is expected to be $1.5 billion.

DOE's budget projections for Part D in 2001, after the statute was passed, are based on a projection of about 7,500 applications to DOE under Part D and 10 years to complete the program. Clearly, DOE expected significantly fewer applications to this program than we are currently receiving, and consequently fewer resources were requested. In fact, we have received nearly three times as many applications as originally projected when budgets profiles were developed.

Despite the fact that thousands more applications have been filed than were expected and despite the cumbersome processes established for Part D, DOE has worked very hard to carry out its Part D responsibilities. This work has occurred while we have also been obtaining and providing to the DOL and HHS the records for thousands of employees who have submitted Part B applications. The Department has continuously worked to improve our processes. First, because the number of applications was far exceeding our original estimates, we sought in July 2003 and the Congress approved in October the transfer of an additional $9.7 million in FY-03 money to be used for the DOE's activities in gathering records and processing Part D applications.

As we already have discussed with many of you, we soon plan to seek approval for the transfer of more than $30 million in additional funds in FY-04 to be used for this same purpose. These additional funds will go a long way towards allowing DOE to work off the large backlog of applications for which we are currently gathering records for physician panel review. In fact, we are now averaging 100 cases per week up to physician panel review. I have included statistics on our progress in the Attachment, and you can also see our weekly progress on the DOE Office of Worker Advocacy web site.

Second, several months ago DOE retained the Hays Group, Inc. to critically evaluate our Part D activities and suggest improvements and enhancements that would allow us to more effectively implement the Part D program. The Hays report is final, and is available on the Office of Worker Advocacy web site. I promise that we will work diligently to address the improvements identified in the report. We are also interested in the suggestions of the General Accounting Office (GAO) after it completes its critical review of the Part D program.

Third, the Secretary has directed that I personally take charge of DOE's implementation of its EEOICPA duties. I have recently made changes so that the Office of Worker Advocacy, the office that administers this program within DOE, will report to me directly.

We believe these funding and programmatic initiatives will go far towards expediting the processing of Part D applications that have been filed with DOE. We believe that these approaches are preferable to moving the administration of some parts of the Part D processing work to another agency, as was recently proposed as an amendment to the Energy and Water Appropriations bill. DOE and its contractors possess the employment and exposure records for Part D applicants, and DOE has spent almost three years carrying out Congress's directive to DOE to develop the processes and procedures to gather records and implement the Part D program. Moving portions of the program will not accelerate the processing of applications, and will, in my opinion, counteract the progress we have made to date.

While we believe that our recent efforts to speed the processing of Part D cases puts us on the right path to accommodate the large number of backlogged claims, we believe more can be done. Additional resources are certainly required. However, we are also evaluating DOE's Federal Rule that implements Part D to determine whether it might be appropriate to propose changes that could expedite the processing of Part D applications, especially in the area of physician panel reviews.

Finally, and as I noted earlier, the EEOICPA statute itself places a number of constraints and limitations on the Part D process that serve to slow down the pace at which DOE can process applications. A good example is the physician panels. Current statutory requirements may limit the population of physicians below a tenable level for the sufficiently speedy processing of applications through the panels, a problem which may be exacerbated by the Department's Rule requiring three physicians on every panel. We are exploring with other Executive agencies legislative

changes that may be needed to make more physicians available for panels, as well as developing possible changes to DOE Rules to best utilize the physicians we have. The statute also caps the level of pay for physician panel members at a level well below the market rate for such services. An initial description of those barriers that may benefit from legislative changes is included in the Attachment.

The statute contains other limitations that have been barriers to the processing of Part D applications. A table listing many of the barriers and possible changes is provided in the Attachment. I am looking for support from this committee as we evaluate the effectiveness of making these changes to deal with these barriers.

I also look forward to hearing any suggestions the next panel may have for improving DOE's implementation of Part D, within the existing statutory constraints and requirements. Various parties sometimes present recommendations to DOE about how its Part D processes might be changed, but often those recommendations ignore the limitations placed on us by the statute itself. In addition, some of these recommendations seem unaware of where the Department's responsibilities lay, a misperception that I believe is widespread throughout the community of former workers and those interested in their cases.

The fact of the matter is that the Department of Energy's responsibilities end, by statute, when the Department provides the Physician Review Panel findings to the worker, and where allowed, direct the contract employer to not contest the findings or claim with State workers' compensation agencies. No benefit is tied to this program, only the advocacy services of the Department. All benefits are determined in accordance with an individual State's workers' compensation rules. We appreciate any suggestions and recommendations from any party that respects the boundaries as set by the Congress.

DOE is committed to carrying out its responsibilities under EEOICPA Part D. We are committed to providing DOE contractor workers with the assistance they deserve under Part D as established by the Congress. In addition, we are committed to working with the Congress, to keep you informed about our progress and to address improvements in DOE's processes and in the statute itself.

I also want to assure all members of this committee that the Department of Energy as an agency and I personally as the Under Secretary of Energy believe that the safety of our workers is our most important responsibility. We do not want to leave an additional trail of injured and ill workers with legacy costs for the taxpayers. This is why I have included some of the safety statistics regarding our current operations in the Attachment. The DOE injury and illness rates have declined to a historic low in 2003. Our rates are less than half of private industry. DOE is one the safest places to work in the country. We fully intend to continue this performance while striving to improve our methods of protecting our workers, the public and the environment.

At this time, I would be glad to answer any questions you may have.

Senator BUNNING. Thank you, Mr. Rollow.

Mr. Turcic.

STATEMENT OF PETE TURCIC, DIRECTOR, ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM, DEPARTMENT OF LABOR

Mr. TURCIC. Thank you, Senator. I have submitted a full statement for the record.

Senator BUNNING. It will be entered.

Mr. TURCIC. My name is Pete Turcic. I'm the Director of the Energy Employees Occupational Illness Compensation Program with the Department of Labor. I am pleased to have the opportunity to appear before you today to discuss the progress that the Department of Labor has made in implementing part B of the Energy Employees Occupational Illness Compensation Program Act.

It is appropriate, 3 years after its enactment, that we review the progress to date in meeting this challenge.

Under the Executive Order, DOL was assigned primary responsibility for administering and adjudicating claims for compensation under subpart B of the Act. Briefly, subpart B, as administered by DOL, provides compensation of $150,000 lump-sum payment and

payment of medical benefits for current and former DOE employees, contractors and subcontractors, employees of atomic weapons employers and beryllium vendors. Qualified survivors of deceased employees may also be eligible for the lump-sum compensation payments.

The illnesses covered under subpart B are radiogenic cancers, beryllium diseases and chronic silicosis. DOL's initial responsibility was to insure that the program was fully operational by July 31, 2001. Since funding for the program was not available until January 2001, DOL faced a major challenge at the onset just to meet the congressionally mandated implementation date.

We succeeded in meeting that goal by accomplishing the following: We issued interim final regulations in May 2001. We established joint DOL-DOE resource centers to assist claims in areas where the most potential claimants resided. We established four Department of Labor district offices where to receive and adjudicate the claims. We established a national office infrastructure to develop policies and procedures that were necessary for the implementation and operation of the program throughout the organization, and we also established very high performance standards focusing on moving claims rapidly through the initial and secondary adjudication stages, and those standards were put in place and measured.

As a result of our success in completing these initial steps, Secretary Child presented a first payment under the program here in Paducah on August 9, 2001, just 10 days after the date of implementation of the Act.

Since then, DOL has taken in over 49,000 claims. We've conducted some 575 public meetings to inform potential claimants of the program and to help them to file claims, and we've issued decisions in over 36,000 cases and awarded in excess of $720 million in compensation and medical benefits with over $130 million of that in compensation benefits being awarded to workers from the Paducah Gaseous Diffusion Plant for their survivors.

Allow me to just briefly explain how claims filed with the DOL are processed. When a claim is filed, it is assigned to one of our district offices, either in Jacksonville, Florida; Cleveland, Ohio; Denver, Colorado; or Seattle, Washington, and it is based on the geographical location of the covered workers last employment.

It is then assigned to a claims examiner who will review the documentation and determine if the criteria established by the Act for covered employment and covered illness is met. The claims examiner will work with the claimant, with the Department of Energy and/or the private employer or employers involved to fully develop that case file as thoroughly and completely as possible.

There are different types of claims under part B of the Act, which require different processing steps. For example, Claims for $50,000 RECA—Radiation Exposure Compensation Act—supplemental benefits are the least complex, only requiring verification from the Department of Justice that a RECA award has been made.

And for claims involving specified cancers for workers at a Special Exposure Cohort facility, such as the Paducah Gaseous Diffusion Plant, the Act provides a presumption that any of these are

a result of the radiation exposure. And once the required documentation is submitted that establishes that the individual has suffered a specified cancer, then these claims can move fairly expediently and as can those involving beryllium disease and chronic silicosis.

For claims involving a cancer that is not covered by the Special Exposure Cohort Provisions, there is an intervening step in the process which requires a referral of the claim to the National Institute for Occupational Safety and Health. So the worker's radiation dose—the total amount and character of radiation to which that worker was exposed as a result of their employment—can be estimated.

After NIOSH completes those reconstruction processes, DOL then applies the estimated range of exposures to a probability of causation process to determine whether that individual worker's cancer was at least as likely as not, or 50 percent probable, that it could have been related to his or her covered employment.

Upon completion of the determinations involved in each of the processes, DOL will then issue a recommended decision regarding the claimant's eligibility for benefits. The claimant then has the right to accept that recommended decision or to further appeal that decision. After all appeals or waivers on appeal are resolved, a final decision is issued by the independent review body within our organization either awarding or denying benefits. I am pleased to report that all aspects of the EEOICPA subpart B program are fully operational.

Since the program's inception, we have accomplished the following: We have increased the timeliness of our initial decisions of either a recommended decision or a referral to NIOSH from 48 percent in the fiscal year 2002 to over 79 percent in 2003, and that means 79 percent of the cases that we received, received an initial decision within either 120 days, if it was a DOE facility, or 180 days of receipt of that claim.

We increased the timeliness of the final decisions to 77 percent. And again, if there is a no contest or a waiver, we'd issue a final decision within 75 days. We established an accountability review system of our process to ensure that the process is operational and where necessary in the adjudication process.

And of the over 49,000 claims received—and those were based on 37,192 individual cases or workers—DOL has issued more than 24,000 financial decisions, and we've paid more than $700 million in compensation payments to over 9,400 claimants and also paid over $21 million in medical benefits. In the coming year, we are prepared to adjudicate the thousands of cases that will be returned from NIOSH with the completed dose reconstructions. We have established a performance goal—which I might add that we have been meeting—is to issue a recommended decision within 21 days of receiving a dose reconstruction back from NIOSH.

And although, we have received more than 49,000 claims nationwide, we believe that this represents only a relatively small number of potential claimants who may be eligible for this program. And in this regard, we are committed to conduct, and have been conducting, significant outreach efforts to try to reach as many potential claimants as possible within the next two years.

And let me just briefly discuss the claim statistics for Paducah. As of November 27, 2003, we have received 4,515 claims from Paducah based on 3,479 individual cases or workers, and we've approved 942 cases. And we've paid in excess of $130 million in compensation to over 1,239 claimants from Paducah, and we have referred 769 cases to NIOSH for dose reconstruction.

Mr. Chairman, this completes my statement. And in addition to the programs, this needs to be provided. There is the attachment.* That completes my statement, and I will answer questions.

[The prepared statement of Mr. Turcic follows:]

PREPARED STATEMENT OF PETE TURCIC, DIRECTOR, ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM, DEPARTMENT OF LABOR

Mr. Chairman, my name is Pete Turcic, Director, Division of Energy Employees Occupational Illness Compensation Program (EEOICP), the Office of Workers' Compensation Programs (OWCP), Employment Standards Administration (ESA), within the Department of Labor (DOL).

I am pleased to have an opportunity to appear before the Subcommittee today to discuss the progress DOL has made in implementing Part B of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). It is appropriate, three years after its enactment, that we review our progress to date in meeting this challenge.

As you know, under Executive Order 13179, DOL was assigned primary responsibility for administering and adjudicating claims for compensation for cancer caused by radiation, beryllium disease and silicosis under Part B of the Act, and for ensuring that the program was up and running by July 31, 2001. Since funding for the new program was not received until January 2001, DOL faced a major initial challenge just to meet the congressionally mandated start date. We succeeded in issuing interim final regulations in May of that year and established a fully functioning program on schedule. The first payment was presented by Secretary Chao on August 9, 2001. Since then, DOL has taken in over 49,000 claims, conducted about 575 public meetings to inform potential claimants of the program and help them file claims, established 10 permanent resource centers in the locations where most potential claimants reside, established four DOL district offices and the infrastructure to support them, issued decisions in over 36,000 cases and awarded in excess of $720 million in compensation and medical benefits, with over $130 million in benefits awarded to workers from the Paducah Gaseous Diffusion Plant or their survivors.

Employees who worked for the Department of Energy (DOE), one of its contractors or subcontractors at a DOE facility, or at a facility operated by a private company designated as an Atomic Weapons Employer or a beryllium vendor, may be eligible for a lump-sum award and future medical benefits under Part B of the Act. Survivors of these workers may also be eligible for benefits. Part D of the Act established a system under which employees whose occupational diseases are determined by a panel of independent physicians to have been connected to work-related exposure to toxic substance receive assistance in obtaining state workers compensation benefits.

Under the Executive Order, four agencies have responsibility for administering the Act: DOL, DOE, the Department of Health and Human Services (HHS), and the Department of Justice (DOJ). The DOL, as the lead agency, determines eligibility for compensation and medical expenses for those conditions covered by Part B of the Act. The DOE provides employment verification to DOL relevant to claims under Part B, provides worker exposure information to the HHS for its use in making estimates of the radiation received by a covered worker, administers Part D of the Act, and designates private companies as atomic weapons employers and additional beryllium vendors. DOL and DOE jointly manage the ten outreach centers aimed at informing potentially eligible workers or their survivors about the EEOICPA programs.

HHS has established procedures for estimating radiation doses, and has developed guidelines to determine the probability that a cancer was caused by the exposure to radiation; it estimates radiation doses (dose reconstruction), determines additions to the Special Exposure Cohort, and provides support for the Advisory Board established by the Act. And finally, DOJ notifies uranium workers eligible for benefits

*The attachments were not received from the field hearing.

under the Radiation Exposure Compensation Act (RECA) that they may also receive compensation from DOL and provides DOL with documentation concerning those claims.

Several requirements must be met for a claimant to be eligible for compensation under the EEOICPA. For a worker (or eligible survivor) to qualify for benefits under Part B, the employee must have worked at a covered DOE, Atomic Weapons Employer, or beryllium vendor facility during a covered time period and developed one of the specified illnesses as a result of their exposure to radiation, beryllium or silica. Covered medical conditions include radiation-induced cancer, beryllium disease, or chronic silicosis (chronic silicosis is only covered for individuals who worked in nuclear test tunnels in Nevada and Alaska). Covered workers receive a one time lump-sum payment of $150,000 as well as medical treatment for the covered condition (medical services and evaluations only for beryllium sensitivity). The EEOICPA also provides compensation in the amount of $50,000 to individuals (or their eligible survivors) awarded benefits by the DOJ under Section 5 of RECA.

Allow me to briefly explain how claims filed with DOL are processed. When a claim is filed, it is assigned to one of our four District Offices Jacksonville, FL; Cleveland, OH; Denver, CO; or Seattle, WA based upon geographical location of the covered worker's last place of employment. It is assigned to a claims examiner who will review the documentation and determine if the criteria established by the Act for covered employment and covered illness are met. The claims examiner will work with the claimant, DOE and/or the private employer or employers involved to develop the case file as thoroughly and completely as possible.

There are several different types of claims under Part B of the Act, which require different processing steps. Claims for the $50,000 RECA supplement are the least complex, involving verification via the DOJ that a RECA award has been made, and documentation of the identity of the claimant (including survivor relationship issues). For claims involving beryllium disease, silicosis, or a "specified cancer" for workers at a Special Exposure Cohort (SEC) facility such as the Paducah GDP, the employment and illness documentation is evaluated in accordance with the criteria in the EEOICPA. The DOL district office will then issue a recommended decision to the claimant. The claimant may agree with the recommended decision, or may object and request either a review of the written record or an oral hearing (the latter will normally be held at a location near the claimant's residence). In either case, the Final Adjudication Branch (a separate entity within the DOL's OWCP) will review the recommended decision and any evidence/testimony submitted by the claimant and will issue a final decision, either awarding or denying benefits (or the Branch may remand to the district office if further development of the case is necessary). A Final Decision can then be appealed to the U.S. District Courts.

DOL can move directly to a decision on cases involving a "specified cancer" at a SEC facility because the Act provided a presumption that any of the listed cancers incurred by an SEC worker was caused by radiation exposure. For cases involving a claimed cancer not covered by the SEC provisions (that is, either a cancer incurred at a non-SEC facility, or a cancer incurred at an SEC facility that is not one of the specified cancers listed in the Act), there is an intervening step to determine causation, called "dose reconstruction." In these instances, once DOL determines a worker was a covered employee and that he or she had a diagnosis of cancer, the case is referred to the National Institute for Occupational Safety and Health (NIOSH), part of the Centers for Disease Control and Prevention (CDC) within HHS, so that the individual's radiation dose the total amount and character of radiation to which the individual was exposed related to his or her employment in the nuclear weapons complex can be estimated.

After NIOSH completes the dose reconstruction and calculates their dose estimate for the worker, DOL takes this estimate and applies methodology prescribed by HHS, in its "probability of causation" regulations, to determine if the statutory causality test is met—that is, whether the individual's cancer was at least as likely as not (at least 50 percent probability) related to covered employment. DOL's district office then issues a recommended decision on eligibility for EEOICPA benefits, which is subject to the same subsequent administrative procedures and appeal rights described above with regard to other claims.

DOL is committed to measuring the accomplishment of outcomes and holding ourselves accountable for achieving the fundamental goals of all the programs we administer. With respect to the Energy Compensation program, we established high performance standards focused on moving claims rapidly through the initial and secondary adjudication stages. Our Government Performance Results Act (GPRA) goals, even for the first full year (FY 2002), were challenging in light of the large number of first year claims and program start-up activities.

Our goal for initial processing was to make initial decisions in 75 percent of the cases within 120 days for cases from DOE facilities and in RECA claims, and within 180 days for AWE, beryllium vendor, and subcontractor cases (for which employment and other critical information is generally more difficult to obtain). Because we had nearly 30,000 cases on hand to start with, we knew in advance we would not meet those goals, which were conceptualized in terms of a normal, steady-state flow of incoming claims. However, we knew that the customers of this program had been waiting for years for their illnesses to be addressed, and establishing rigorous performance goals signaled to our own staff and to those potentially eligible for benefits that we were committed to efficiently and promptly processing claims. In fact, we took timely initial actions (either recommended decisions or referral to NIOSH for dose reconstruction) in about 48 percent of the cases during that first year of operation (FY 2002), despite the backlog of aged cases that we brought into the year. The smaller number of final decisions completed in FY 2002 met our GPRA timeliness goals in 76 percent of cases.

Although we had received over 47,000 Part B claims by the end of FY 2003, we have made recommended decisions or referred to NIOSH for dose reconstructions all of our backlogged cases and currently have a working inventory of only 2000 cases. Further, we met our GPRA goals in FY 2003. Through the efforts of our district office and Final Adjudication Branch staff, we made timely initial decisions in 79 percent of the cases processed, in excess of the 75 percent goal. With regard to final decisions, 77 percent of the decisions were within the program standards, also in excess of the goal of 75 percent. Accomplishment of these goals took the persistent, case-by-case effort of the entire staff of our Division of Energy Employees Occupational Illness Compensation Program, as well as the continuing support of our Solicitor's Office.

DOL has also focused on achieving quality decisions, and on providing clear and effective communications to our customers and stakeholders. The program instituted an intensive Accountability Review process to ensure that samples of case work are scrutinized by objective reviewers, and where quality issues are identified in these samples, to take strong and immediate corrective action. The headquarters staff has developed effective and comprehensive procedural and policy guidance, a difficult task in the context of a new and still evolving compensation program. Although no workers' compensation program is without conflict, the level of appeals has been relatively low.

Since the effective date of the Act, DOL has received 49,113 claims which were filed based on 37,192 individual cases or workers. As of December 2, 2003, we have made recommended decisions or referred the case to NIOSH for dose reconstruction in 95 percent of these cases. There have been over 24,000 Final Decisions issued and over $700 million in compensation payments made to over 9400 claimants. Additionally, over $21 million in medical benefits has been paid. A detailed listing of current program statistics is displayed in the attached Program Status Report.

In the coming year DOL is prepared to adjudicate the thousands of cases that will be returned by NIOSH with completed dose reconstructions. We have established a performance goal to issue a recommended decision within 21 days of receiving a dose reconstruction report from NIOSH. We have been exceeding this goal so far. We also have made a commitment to conduct significant outreach efforts to reach as many potential claimants as possible and inform them of the program. These efforts will include a significant number of strategically located traveling resource centers to provide assistance to potential claimants, as well as coordination with pension funds, unions, and other groups which may be able to extend our message about the program to retirees and workers or their survivors who no longer live in proximity to a DOE facility.

Let me briefly discuss the claim statistics for the Paducah GDP. We have received 4,515 claims based on 3479 cases or workers from the Paducah GDP. In these cases, we have issued Final Decisions in 2364 cases with 904 approvals for $130,800,000 in compensation benefits awarded to 1239 claimants. In addition, we have referred 769 cases to NIOSH for dose reconstructions.

In summary, I'm pleased to report that all aspects of the EEOICPA Part B program are fully operational. We believe that we have established a credible program and forged effective working relationships with our partner agencies DOE, HHS, and DOJ as well as with the DOE contractors and labor unions. For example, DOL and DOE have worked cooperatively to improve the employment verification process and have instituted a number of efficiency measures. These efforts have resulted in the average time for completion of employment verification at DOE facilities to be reduced from nearly 90 days at the beginning of FY 2002 to a current average of less than 45 days. Similarly, the time for corporate verifiers to respond to employment verification has been reduced from about 75 days to the current average of

24 days. DOL and HHS also work in cooperation to improve the efficiency and effectiveness of the transfer of cases and case information of referrals for dose reconstruction. These efforts have resulted in processes that ensure that recommended decisions are issued within 21 days of receipt of the dose reconstruction report from NIOSH.

I'll be pleased to answer any questions you may have.

Senator BUNNING. Thank you very much.

Mr. Greathouse.

STATEMENT OF LARRY M. GREATHOUSE, COMMISSIONER, KENTUCKY DEPARTMENT OF WORKERS' CLAIMS

Mr. GREATHOUSE. I thank you very much for the invitation to appear here today. In preparation of this, let me say that my statement will be submitted into evidence with the attachments, and we would move that that be submitted.*

Senator BUNNING. It will be part of the record.

Mr. GREATHOUSE. In preparing these statements, I had the opportunity to look at the GAO testimony of November 21 as well as the testimony from Leon Owens about the program, which was also rendered that day, in thinking through these statements from the Department of Workers' Claims. I am the commissioner of that department, and I am going to make some conclusions that are in the 20 pages of the statement for a brief overview and then be able to go into more detail with the questioning.

First of all, at the encouragement of the Department of Energy last October 2002 or last September, the Commonwealth of Kentucky entered into an agreement with the Department of Energy with respect to the subtitle D claims of wherein the Department of Workers' claims would receive a claim filed by an eligible worker who had been identified by a Federal panel of physicians at the Department of Energy level and then give some direction and assistance to that claimant of how to file their claim within the State workers' compensation system. The Governor entered that agreement with a representative of the Department of Energy in September, and that is attached as attachment 1.

One of the reasons for recommending that the State enter into that agreement was the Department of Energy's being able to encourage or induce or direct certain employer contractors at the Paducah facility site over the years to not contest the merits or the things like technical defenses, statute of limitations, which are in our State law with respect to workers' comp, occupational disease claims. Because we have, I think? With 16 law judges and three workers' comp board members and then with the direct appeal to the Court of Appeals and the Supreme Court of Kentucky, we have the capability to process all of these claims in the Department of Workers' Claims. And there is an estimated 2,000 potential claimants, either claimants or their surviving spouses.

One of the problems that we have with respect, however, to any employer since the 1950's at this Paducah site—and we have given the committee on Attachment 3 a timeline of every employer that was here since the 1950's up until the present day and whether or not that employer was a self-insured employer of had commercial insurance, workers' comp coverage. And I think the GAO report is

*The attachments were not received from the field hearing.

probably correct, from my analysis of it, that about one-half to 900-some of the potential claimants were under a self-insured employer. About 900-plus were under a carrier, a workers' comp carrier, during that period. So I think that is right.

I think it is also a good conclusion of the GAO that we are going to have a self-insured employer as we had on this site, whether it was USEC or others previously to that, that an agreement between DOE and that contractor could be enforceable so that they would not contest, either on the merits or the technical things like statute of limitations, in order that our law judges can then deal with that claim immediately.

And I think if that were the case, we're talking about a turnaround time of about 3 to 4 months working towards an adjudicated plan in our law judge system.

On the other hand—and that would be a filing of a notice of nonresistance by that employer who is identified as an employer at the time that employee was last exposed to the hazards of the occupational disease.

There is a clear case of the problems that are entailed with Kentucky's statutory scheme in making application to that, and Clara Harding, in her case, is the one, and she filed a case on behalf of her husband in 1983. Mr. Harding had worked for over 18 years, beginning with Union Carbide in the 1950's, up until 1971. In 1972, he filed a claim. It was withdrawn at some point, probably because of the statute of limitations problem. They withdrew it without prejudice. He died in March 1980, and 3 years to the date later, Ms. Harding filed a claim on behalf of herself and his exposure under State law.

That case took 14 years to get to the court of appeals in Kentucky in 1997. The bottom line of it is that it was denied. It was denied, because we had a statute of limitations that could not be properly applied to her claim. There was a settlement, which was of little monetary value to her, of $12,500 after an appeal to the Supreme Court was withdrawn.

Union Carbide's two insurance carriers, Aetna and Travelers, paid $7,500 in that settlement, and the Special Fund paid an additional 5,000, which is the 60 percent/40 percent arrangement under the law appropriate on the date of his last exposure in 1971.

So all of those claims have to be viewed from the date of last exposure and appropriate law at that time has to be applied to the claim. Other than with respect to self-insured employers at this site, any employer's insurance company, unless the Department of Energy—and I don't know—no one has indicated to us that they have an agreement with Travelers or Aetna or any of these other numbers of companies to not contest these claims—in addition to those that they will contest and will be in long periods of adjudication possibly with little ability for any conclusion to an award on behalf of the family.

There is one other problem in Kentucky. You have to bring in something called the Special Fund. The Special Fund was Kentucky's second interview fund created after World War II to help employers and to encourage them to hire disabled people. And if they got hurt on the job, their prior situations they had physically would be paid by a Special Fund with special assessments against

all employers in Kentucky, and like other States, to help take care of that.

Our program is also based on the coal industry in Kentucky with respect to occupational disease. So that if an employee like Mr. Harding, who worked for one employer for 18 years, if he should have received benefits, 60 percent of the award would have gone against Union Carbide back at that time, 40 percent by the Special Fund. And that was about the arrangement of that settlement in 1997.

If an employee who is eligible to file a State occupational disease claim has multiple employers—and there is about seven designated multiple employers since the 1950's, and employers change and they are different entities and they are either self-insured or they have other workers' comp insurance—in that situation, if an award was made, 75 percent of the award comes from the Special Fund. The fund paid into by all employees. 25 percent only against company who was the employer at the time of last exposure.

I might say one other thing as to the Special Fund's problem. In 1987, it was determined that mainly because of coal employee claims to coal employers, that fund was about $1.7 billion in debt. A 30-year prearrangement for all employers to pay that debt off was undertaken by the General Assembly.

In 1996, that fund was $2.2 billion in debt. And in a pretty tough reform, the Special Fund was abolished for any future claims by employees. The date set for the payment of that debt by employers in Kentucky is December 2018 to pay off this debt. So what that means today for someone who was last exposed to a disease for which they would have a proper claim to file in Kentucky after December 1996, which was the effective date of that law, there would be no Special Fund liability. There would be no 75 percent award to be paid, even if it was a self-insured employer who agreed to waive all these defenses that are there.

But those are the kind of problems we have to deal with in terms of processing through a State workers' compensation system. I am convinced that our 16 judges can handle these claims. Two thousand claims would be only about another 25 percent increase in the workload currently which our judges do each year. We probably couldn't handle them all in one year. But you would have to understand that the Special Fund, which still exists to pay off claims of the past—there is only about 10 people left in that fund. But they would have to defend with their attorneys every claim aggressively.

They are fiduciaries of all assessments against all employers of Kentucky that pay into that fund. They cannot agree to a notice of non-resistance to pay. So you have to think with every claim—they'll be involved in every claim from 1954—that they would have to defend those with everything that the remedies would allow them to do under the due process of constitutional issues that they had. For all of those 900 or so employees who worked for a self-insured employer when they were last exposed, we could enter into an adjudication model if the claimant understood with that award that was granted, they may not have that Special Fund part. And if, at least, the employer on site at the time would agree to pay their share, whichever was appropriate at the time, that could be done.

With an occupational disease claim, there is only one thing. Our law judges could not use the Federal panel of physicians report as a presumption of weight for that claim, but it can be submitted to support the claim like any claim is. Under law on every OD claim, occupational disease claim, the commissioners are required to refer that claim to one of our medical schools at either the University of Kentucky or the University of Louisville where a specialist, like the Federal specialist, will be asked to evaluate that claim as well. The employer who was last on the hook for last exposure will have to pay for that evaluation under law. The ALJs can use that report as presumptive weight for a claim.

So if those things—it is less than what we all have available for claimants, but we have a part of the process that can be utilized under which we have some manner of control in terms of time limits. We have judges who are at circuit court judge capability qualified, board members have to have the qualification to the court of appeals judges. The supreme court amended their rules to allow direct appeal to the judiciary for this workers' comp board. So we can move that system pretty well.

In addition, we have workers' comp specialists overseen by lawyers on staff in-house. Claimants without attorneys could process this with our agency without any litigation requirements, particularly if the employer who was there at last exposure is going to not defend the claim and file with us a notice of non-resistance so that we can deal directly with the merits of the claim.

So with that and with those concerns and with the testimony I've submitted to you, I have also given you an attachment which shows every claim that has ever been filed by any employee here in this facility since the 1950's in a report to you showing the nature of the injury with the employer, whether it was an insurance carrier at that time or whether self-insured, which will help from the GAO's concerned, how does the employer figure out how much liability we've got for these claims. I've given you a benefits schedule showing the amounts that would be paid through those years so that it can now be put together in form at someone's level to give you a potential estimated cost of what would be expected if they all won an award. Thank you.

[The prepared statement of Mr. Greathouse follows:]

PREPARED STATEMENT OF LARRY M. GREATHOUSE, COMMISSIONER, KENTUCKY DEPARTMENT OF WORKERS' CLAIMS

Mr. Chairman and members of the committee, my name is Larry M. Greathouse. I am the Commissioner of the Kentucky Department of Workers' Claims (DWC) located in the Frankfort, Kentucky office. This agency of state government processes work-related traumatic injury and occupational disease claims, under the statutory provisions of Chapter 342 of the Kentucky Revised Statute (KRS), through both an informal process, if early resolution of disputes are possible, and adjudicates claims before sixteen (16) administrative law judges (ALJs), at hearing sites located throughout Kentucky, including a hearing site in Paducah, Kentucky.

Right of appeal is granted, to either the employee, employer or other party in a claim who is aggrieved by an ALJ decision, to a three (3) member Workers' Compensation Board. Further appeal may be taken to the Kentucky Court of Appeals and Supreme Court of Kentucky under special rules adopted by the Supreme Court.

Kentucky's adjudication model includes ALJs and Board members who are appointed by the Governor for four (4) year terms. The Governor must select an individual candidate from a list submitted by a Workers' Compensation Nominating Commission.

Further, an appointment to an ALJ or Board position is subject to confirmation proceedings before the Kentucky State Senate. Professional standards for ALJs and Workers' Compensation Board members are based on comparable judicial standards of Circuit judges and Court of Appeals judges. Canons of Judicial Ethics govern the performance of these officials.

DWC CAPACITY TO PROCESS SUBTITLE D CLAIMS

This brief overview of Kentucky's workers' compensation adjudicative system is significant. It was a basis, in part, for my recommendation to the Governor in September 2002, that the Commonwealth of Kentucky enter into a Memorandum of Understanding with the United States Department of Energy (DOE) to facilitate coordination and cooperation under Subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 (Act) (Pub.L. 106-398). ("Attachment 1"). The state official responsible for implementation of this agreement is the Commissioner, Kentucky Department of Workers' Claims. Should the DWC process an estimated two thousand (2,000) potential occupational disease claims under Subtitle D of the Act, this would represent an additional 25% increase in claims before the department, utilizing current resources.

An important aspect of this agreement was DOE's procedure of physician panels to screen claimants as to presence of a disease attributable to the work environment at the Paducah facility. However, a more important basis, in my judgment, for undertaking this federal/state collaborative effort, was the inducement on the part of DOE in providing a mechanism to "direct" or "encourage" a DOE contractor-employer from contesting the merits of a claim or raising technical defenses, such as statute of limitations, which would, in many instances, require dismissal and early rejection of the claims at the state level.

This concern is best illustrated by the saga of Clara Harding. She filed a claim as the widow and on behalf of her deceased husband, Joe T. Harding, who died on March 1, 1980 as a result of cancer of the gastrointestinal tract caused by his exposure to radiation while working for Union Carbide for over eighteen (18) years at the Paducah Gaseous Diffusion Plant. Mr. Harding's last date of exposure was February 26, 1971 when he ceased working at the plant.

The last day of exposure to the hazards of an occupational disease in a claim for state disability benefits is paramount. Under Kentucky law, that date triggers all of the appropriate law in effect at that time to be applied to a claim by an ALJ, including statute of limitations and benefit levels that may be awarded.

Workers' compensation is a creature of statute in state jurisdictions. Changes to the law governing benefit structure and standards by which claims are decided occur historically at almost each Regular Session of the Kentucky General Assembly. Major "reform" occurs less often. Most observers, however, would view the comprehensive amendments to Kentucky's workers' compensation statutes and regulations, as "major reform" during "Extraordinary" Sessions of the General Assembly in October 1987 and December 1996, and, during Regular Sessions held in 1990, 1994, 2000 and 2002. This is one of the reasons for problems others, in previous testimony before this Committee, have noted in determining potential contractor-employer liability for employees who were last exposed to hazards of the disease at the Paducah facility over previous years.

Clara Harding's claim was impacted by statute of limitations amendments of the 1972 Session of the General Assembly. While there was disagreement on Clara Harding's claim at the Court of Appeals as evidenced by a dissenting opinion, the result of her claim, filed for death benefits on March 1, 1983 was not concluded until fourteen (14) years later by an appellate court decision which became final in September 1997. Her claim was barred by a statute of limitations. And, though one final appeal was made to the Kentucky Supreme Court in her claim, an ALJ approved a settlement requested by all parties in the amount of $12,500. Union Carbide's workers' compensation insurance carriers, during Mr. Harding's last exposure in 1971, Aetna Casualty and Surety Company, and Travelers Property & Casualty Insurance Company, paid the sum of $7,500. The Special Fund, a state agency whose budget is appropriated from special assessments from all employers in Kentucky, paid the sum of $5,000. ("Attachment 2").

And so, I must say to this Committee that without the inducement of agreement between DOE and its contractor-employers to file notices of non-resistance to claims, including technical defenses of limitations, I could not have, in good faith, recommended the signing of this agreement by the Governor on behalf of the Commonwealth of Kentucky with DOE.

Moreover, during the interim of time since the Memorandum of Understanding was entered, the DWC has undertaken steps in the training sessions of ALJs and

the WCB to make certain our adjudicative staff anticipate the filing of Subtitle D claims.

Kate Kimpan, Senior Policy Advisor, Office of Worker Advocacy, US DOE was instrumental in coordinating the agreement between DOE and the Commonwealth, agreed to make a presentation of the program at our Adjudicator Fall Training Seminar held this past October, 2003 at General Butler State Park. The audience for her presentation included all sixteen (16) ALJs, three (3) WCB members, the Commissioner's staff, Workers' Compensation Specialists staff from the Frankfort and Paducah offices, and claims processing staff.

Accordingly, the DWC has the capability of processing and adjudicating Subtitle D claims.

DWC HAS PROCESSED WORKERS' COMPENSATION CLAIMS BY WORKERS AT THE PADUCAH FACILITY SINCE THE 1950S

1. Coverage Issues Every employer in Kentucky is required by state law to provide workers' compensation coverage for their employees. The DWC, or its predecessor, has been the responsible state agency with enforcement of this provision since 1916. Employers produce evidence of this coverage through the voluntary market of commercial insurance or through self-insurance, if the DWC certifies that the employer has the financial ability to cover its own employees.

Employers at the Paducah Gaseous Diffusion Plant, since the 1950s have, at times, covered their employees through voluntary market insurance carriers and at other times, by self-insuring their own workers' compensation liabilities. With self-insurance certification, the department requires surety to be posted with the department in an amount determined after reviewing losses and expected losses for the future.

"Attachment 3" is a timeline from 1950 to the present, indicating the contractor-employer and how the employers covered their employees with workers' compensation coverage.

Until May of 1986, Union Carbide Corporation and subsequently, Martin Marietta Energy utilized voluntary market commercial insurance coverage. Beginning May 1, 1986, Martin Marietta was certified as a self-insured employer. Following policy initiatives in 1992 at the federal energy level, United States Enrichment Corporation (USEC) was created to take over the government's uranium enterprise.

Thereafter, the timeline attachment indicates USEC contracting with Martin Marietta Utility Services for operations on July 1, 1993 continuing with self-insurance coverage. Lockheed-Martin Corporation, following merger in March 1995 continued operations with self-insurance coverage.

In July 1998, USEC Inc. was established as a private entity and filed a separate policy of insurance as proof of coverage for five (5) employees working off-site, with Ace American Insurance Company.

In February 1999, Bechtel Jacobs filed proof of coverage for workers' compensation for cleanup projects by an insurance policy from American International South Insurance Company. This policy also covers employees of forty-five (45) listed subcontractors which are identified in "Attachment 3".

Finally, on May 18, 1999 and continuing to the present time, USEC assumes operations of the plant and all past and future self-insured workers' compensation obligations. USEC still retains self-insurance status with DWC. All, then current, employees of Lockheed-Martin became employees of USEC for self-insurance compensation purposes.

U.S. Enrichment Corporation submitted a continuous liability bond covering all past and future self-insured periods. This surety is bond in favor of the DWC is in the amount of $1,046,863.00. The bond's surety is National Union Fire Insurance Company of Pittsburg, PA, dated July 24, 2000. Should USEC or any self-insured employer at the Paducah Gaseous Diffusion Plant ever default on an award to a claimant, the Commissioner, DWC, is empowered to make a default finding and make demand of the bond proceeds. Under law enacted in 1996, the proceeds would be transferred to the Kentucky Individual Self-Insurers Guaranty Fund for payment of claims under provisions of KRS 342.900 through KRS 342.912.

2. Claims processed through DWC and/or its predecessor by Union Carbide and all subsequent contractor-employers.

"Attachment 4" illustrates detail claim information within the records of the DWC as to all claims filed by injured employees while employed for contractor-employers at the Paducah Gaseous Diffusion Plant. These records provide the claim number assigned to any first report of injury. If a formal claim was filed following injury the disposition of the claim is noted in "Disp. Code." The nature of each claim is given. The date of injury or date of last exposure is noted. The contractor/employer

is identified and the insurance carrier is identified. If the employer was self-insured on the date of injury or last exposure that is also identified.

FILING THE OCCUPATIONAL DISEASE CLAIM

Since January 1, 1973, a claim for occupational disease benefits by an employee must be filed "within three (3) years after the last injurious exposure to the occupational hazard or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, whichever shall last occur . . ." KRS 342.316. Moreover, the statute of repose for radiation disease is twenty (20) years from the date of last exposure. Prior to January 1, 1973, this was a ten (10) year statute.

This statute has been interpreted by the courts to mean that a worker must file his claim within three (3) years of last exposure or within three (3) years of the first time the worker experiences a distinct manifestation of the disease, whichever is later. If the worker relies on the date of distinct manifestation (such as a physician's diagnosis), it still must be filed within twenty (20) years of last exposure.

More importantly, if death results from the disease during the twenty (20) year limitation period, the claim by the surviving widow and/or dependent children, must be filed within three (3) years of the date of death.

If the claim is not barred by limitations or the limitation's defense is waived (as contemplated here in Subtitle D claims) by certain DOE contractor-employers, the claim would be instituted with the filing of a Form 102, Application for Adjustment of Occupational Disease Claim.

The application must be accompanied by at least one medical report (including x-rays and pulmonary tests, if applicable). It would be my judgment that the report of the federal panel could serve for this requirement. The federal physicians panel report, however, could not be afforded any presumptive weight in the evidence before an ALJ.

With the claim filed before the DWC, the employer or insurance carrier on the risk on the last day of the claimant's exposure would be served. That employer or carrier would have forty-five (45) days in which to accept or deny the claim.

The worker would then be referred by statutory requirement (KRS 342.315) to one of the university medical schools (University of Louisville or University of Kentucky) for an evaluation of the condition. The employer or carrier is required to pay the cost of the university medical school physician evaluation and to pay travel expenses for the claimant in advance. Under law, the report from the university medical school evaluation is to be afforded presumptive weight by the ALJ.

Where the worker is now deceased, the medical records and the federal physician panel report would probably be forwarded to the university medical school for evaluation and report.

If the date of last exposure was prior to December 12, 1996?, and there had been at least five (5) years of exposure by the claimant at the Paducah Gaseous Diffusion facility, the Special Fund (now a part of the Division of Workers' Compensation Funds) should be named as a party defendant pursuant to KRS 342.316 and KRS 342.120.

For a single exposure to the hazards of the disease with one employer, the contractor-employer would be liable for 60% of the total dollars awarded as benefits. The Special Fund would be liable for the remaining 40%.

In cases of multiple exposure, where for example, a claimant has worked for several contractor-employers over time, and with a last exposure after January 1, 1973, the employer would be liable for 25% of the total dollars awarded as benefits and the Special Fund would be liable for the remaining 75%. For multiple exposures with the last exposure prior to January 1, 1973, all liability would rest with the Special Fund.

The statutes in Kentucky also impose interest on past due benefits to the prior date of last exposure. For some awards this could be substantial.

BENEFITS FOR WIDOWS/CHILDREN

Special provision is made in calculating benefits for widows and/or children of workers who died from exposure at the workplace.

Except for after-born children from a marriage that existed at the time of disability, the relationship with the deceased must have been in existence at the time the disability began. KRS 342.316(8). Thus, if the marriage took place subsequent to the date of last exposure or the first distinct manifestation of the disease, the widow would be precluded from recovering benefits. Surviving widow or widower would receive 50% of the average weekly wage (AWW) of the deceased, but no more than 50% of the statutory maximum for permanent total disability. KRS 342.750.

(See "Attachment 5" Schedule of Maximum Benefit Levels). Weekly benefits cease upon remarriage, but widow or widower is entitled to a lump sum equaling two years of indemnity benefits. Duration of benefits to widow or widower who has not remarried is based upon the life expectancy of the worker who is deceased. Also, KRS 342.730(4) now provides that "all income benefits payable . . . to spouses and dependents shall terminate when such spouses and dependents qualify for benefits under the United States Social Security Act by reason of the fact that the worker upon whose earnings entitlement is based would have qualified for normal old-age Social Security retirement benefits. "This provision became effective on 12/12/96. If one (1) child living with widow or widower, then widow receives 45% of AWW but not more than 50% of the statutory maximum for total disability and the child receives 15%. If there are two (2) or more children, the widow or widower receives 40% and the children split 30% equally. If there are children, but no surviving spouse, the statute provides:

- One (1) child receives 50% of the AWW, but no more than 50% of the statutory maximum; and
- 15% is added for each additional child (with benefits divided equally between each child).

Under these circumstances, the maximum income benefit for all beneficiaries shall not exceed 75% of the statutory maximum for total disability. Unless a child is physically or mentally incapable of self-support, benefits to children cease upon death, marriage, at age eighteen (18) (if not a full-time student), or at twenty-two (22) (if a full-time student). Parents and siblings may also receive benefits if they were actually dependent on the deceased worker.

WILLING PAYER CONCERNS

1. The DWC is precluded from directing an insurance carrier or the Special Fund to not defend claims on procedural technical grounds or on the merits.

From the GAO testimony before the Committee on Energy and Natural Resources, U.S. Senate, on November 21, 2003, it is noted that about 1,957 cases for Kentucky were identified in Figure 3, page 7 of the report.

The GAO report notes that those contractor-employers who were self-insured should be considered as probable willing payers since they will have an order from, or agreement with, Energy to not context claims. id. at page 9.

The GAO report further notes that "In such situations where there is a willing payer, the contractor's action to pay the compensation consistent with Energy's Order to not context a claim will override state workers' compensation provisions that might otherwise result in denial of a claim, such as failure to file a claim within a specified period of time . . ." id. page 10.

The GAO report noted that about 14% of cases in the nine (9) states analyzed may not have a willing payer. Specifically, the report identified the cases that lack willing payers involve contractors that (1) have a commercial insurance policy, (2) use a state fund to pay workers' compensation claims, or (3) do not have a current contract with Energy. id. page 10.

In Table 1. on page 11 of the GAO report it was noted that about 978 cases as reported in Energy data at the Paducah facility were covered through self-insurance thus potentially a willing payer. But, that another 977 cases, as reported in Energy data at the Paducah facility, were cases where commercial insurance policies were utilized by contractors for workers' compensation coverage, or had no agreement with Energy to not contest the claims, or simply leased Energy's facilities.

From the analysis provided by the GAO report, we would request that several concerns remain from the state's jurisdiction perspective.

a. Where the contractor was self-insured, the DWC would anticipate that the employer, with these cases would file notice of non-resistances to these claims within forty-five (45) days of being notified of the filing of the claim.

b. In this circumstance, the ALJ as fact-finder could make determination of the claim under evidence submitted from the federal physician panel and the university medical school evaluation provided in KRS 342.315.

c. The applicable law as to contractor-employer liability would be based upon the benefits available as of the last date of exposure of the worker at Paducah's Gaseous Diffusion Plant.

d. The award made by the ALJ is enforceable in the Circuit Court of McCracken County.

However, even in circumstances of those employees who were last exposed while in the employ of a self-insured contractor, if the requirements of KRS 342.316 and KRS 342.120 were met, the claim would bring in the Special Fund as a party defendant.

The DWC is precluded from directing the Special Fund to waive any defenses it might have under law. The Special Fund is a fiduciary for a state insurance fund. If there is potential liability, the Special Fund is not in a position to waive such defenses as notice, exposure, or limitations.

It would be possible where the contractor was self-insured, that the claimant, contractor and DOE could waive Special Fund liability. That would limit the amount of any award to 60% in total dollars if the employee was exposed only under the employment of one employer. The award would be further limited to 25% in total dollars where the employee had worked at the Paducah facility for multiple employers.

In essence, where an employee was last exposed to the hazards of this occupational disease when the employer was in a self-insured status, and was a willing payer by order or agreement with Energy, and where the claimant and contractor-employer both agree to waive liability against the Special Fund, the adjudication of these type claims before an ALJ of the DWC should be processed and concluded within a reasonable time of three (3) to four (4) months.

2. In about 50% of the potential claims identified in the GAO report, commercial insurance was utilized by the contractor-employer in covering its worker's compensation liability.

In these claims, both the workers' compensation insurance carrier and the Special Fund will contest all aspects of the claim. There will simply be no willing payer to prevent formal adjudication of claims.

However, should the issues of proper notice and statute of limitations be overcome, each of these claims will have the opportunity to be adjudicated before an ALJ. The parties will have right of appeal to the Workers' Compensation Board, and direct appellate review by the Court of Appeals and Supreme Court of Kentucky.

3. Special concern of potential liability of Special Fund must be noted if additional liability should result from Subtitle D awards at the state jurisdiction.

BENEFIT RESERVE FUND

A Special Session of the General Assembly in 1987 created the Kentucky Workers' Compensation Funding Commission and the Benefit Reserve Fund. Liabilities of the Special Fund, Kentucky's second injury fund, was actuarially determined to have past losses estimated at $1.7 billion dollars. The Special Fund, created in the 1950s as incentive for employers to employ disabled workers, paid for prior occupational disability of injured workers and, in the 1960s, began paying 75% of coal workers' pneumoconiosis (black lung) claims. In the 1987 enactment, assessments were paid by all employers. In addition, add-on assessments from coal companies were required. These assessments paid for operating liabilities of the Special Fund. Excess assessments collected were invested with the intention of funding past losses and pre-funding future incurred losses. A thirty (30) year funding plan was adopted and implemented. By 1996, however, statutory benefit levels were such that the deficit had grown to $2.6 billion with only $350 million in assets for the debt payment methodology.

The reforms contained in House Bill 1, enacted December 12, 1996, closed the Special Fund to any new liability for future claims. A new occupational disease fund was created for coal workers' pneumoconiosis (CWP Fund), supported by the insurance premium assessments paid by coal employers and an assessment on every ton of coal severed. The funding plan was restructured to pay down the $2.6 billion deficit by continuing assessments through the year 2018. KRS 342.122.

The legislation also adjusted the manner of collecting assessments for the obligations to be paid by coal employers. Instead of direct payment, these assessments were to be paid through the coal severance tax. KRS 342.122(1)(c); KRS 143.020; KRS 342.1223; KRS 342.1224; KRS 342.1227.

Because, the policy of the Kentucky General Assembly requires Kentucky employers to pay out this funding plan by December, 2018, and has ended the second injury fund from any future liability after December 12, 1996, the Special Fund will be required to aggressively defend any claim for liability against it. Accordingly, the Special Fund will not be a vehicle for fulfilling a role of "willing payer."

At this time, I would be glad to answer any questions you may have.

Senator BUNNING. Thank you, sir. I am going to ask a few questions just to shore up some of the things that is stated here. As of November 10, the Department of Energy has completed .03 percent each of the over 2,400 Kentucky cases filed under subtitle D, and so far zero claimants have received compensation. In contrast, the

Department of Labor, as Mr. Turcic has stated, has completed 68 percent of over 4,515 Kentucky cases filed under subtitle B and has paid over $130 million in compensation.

At the hearing on November 21, it was suggested—and believe me, the committee really felt very strongly about this—it was suggested that the Department of Labor should take over most of subtitle D to serve the sick workers better. What would you, Mr. Robertson, Mr. Rollow, Mr. Turcic, think of this suggestion?

Mr. ROBERTSON. A couple of things to remember. Number one, DOL has been in the business of doing this type of work, processing claims——

Senator BUNNING. That has been brought to our attention very clearly.

Mr. ROBERTSON [continuing]. A lot longer than DOE, so it has some experiences in that area. And again, that is a benefit to having this type of a process in the DOL's area. What would make that decision particularly tough right now would be a couple things.

No. 1, the DOE has—again, in just the last month—speeded up the front end processes, the case development part of this process, and that is a good thing. The question, of course, is whether or not they are going to be able to sustain that higher level of productivity. So to the fact that in recent times the DOE has improved its speed in processing these claims is a good thing and would make that decision about shifting more difficult.

The other thing that I am not real clear about is how that shift would affect the physician panel problem that I spoke about earlier. That still could be a point——

Senator BUNNING. We understand that, but that will be handled by some kind of legislation to correct it to get a bigger pool.

Mr. ROBERTSON. Right. Exactly. Those would be my thoughts on the pluses and minuses of shifting.

Senator BUNNING. Mr. Rollow.

Mr. ROLLOW. Mr. Chairman, first of all, the Department of Energy's objective here is to move forward and carry out the law as described right now, which is under the responsibility of the Department of Energy, to the best of our ability and to a much improved production rate than you've seen in the past. We are also working on, as we shared with you at the hearing 2 weeks ago, changes to our policies and our rules to fix the physicians panel problems.

With that said, I think the Department and actually, the administration through the Office of Management and Budget took a position, and it was—my words, not exactly their words—disruptive at this point in time to transfer from one agency to another. But our aim is really to focus on the production and move it forward, until if and when you make a decision on the transfer from one agency to another.

Senator BUNNING. How does the Department of Labor feel?

Mr. TURCIC. Mr. Chairman, we've been focusing our efforts on adjudicating part B, and as you know, part B in the Act gave the president the option of where to put it, whereas it spelled out for several reasons that DOE would operate the Part D. We know that DOE is working real hard to try to improve the processing, and that, again, we have—Department of Labor has been in this type of business for quite some time, and we may have some ideas, and

we do share them with Mr. Rollow and his group. And we would be willing to do whatever we possibly could to assist them. Mr. Rollow said that the administration position is that——

Senator BUNNING. We know the administration's position. Mr. Card testified as to the administration's position. That doesn't make any difference to us. What makes a difference is making sure that the people that need to be compensated have been taken care of in a reasonable way. They are not being compensated right now in a reasonable fashion, like the Department of Labor is taking on subtitle B. The Department of Energy has not fulfilled its obligation under subtitle D.

Undersecretary Bob Card testified at our November 21 hearing that the Department was not examining how to solve the lack of a willing payer in many States, including Kentucky. Mr. Greathouse, does the Kentucky compensation system have the capability to insure that all claims approved by the Department of Energy's physician panels for an illness suffered at the Paducah plant will be paid? I know you just explained an awful lot about——

Mr. GREATHOUSE. The answer is no.

Senator BUNNING. The answer is no. Are there any limitations, and has the Department of Energy discussed those limitations with you?

Mr. GREATHOUSE. Kate Kimpan, who is the senior policy analyst with DOE and who helped put some of this act together with the States last summer and helped with these agreements, we invited her to come to an ALJ training seminar in October here in Kentucky. And she came and spent a whole afternoon screening our staff about things that they are doing. No. The best recognition that she could give to that, they don't have a way to force anyone to pay other than those contractors who were self-insured, that they can have an agreement about that for reimbursement. Otherwise, there are no silver answers to that.

Senator BUNNING. And there is no Special Fund right now to handle any part of the payment.

Mr. GREATHOUSE. There would be no Special Fund to handle any claim that was brought by an employee today who was last exposed after December 1996. The problem is the Special Fund could be a payer under the law, but because they will have to as fiduciary for employees of all——

Senator BUNNING. They would have to fight.

Mr. GREATHOUSE. They would have to fight every case until conclusion to the Supreme Court. That is the problem.

Senator BUNNING. Mr. Greathouse, what will happen to the claimants when the Department of Energy cannot direct—for example, USEC or an insurance company in Kentucky—not to contest claims approved by physician panels? Will those companies be able to assert affirmative defenses such as statute of limitations when they are not a willing payer?

Mr. GREATHOUSE. Yes. With respect to USEC, who was certified by our Department as a self-insured employer, the bond that we have, the surety to back up that particular self-insurance status—and I've noted that in the testimony before you—is a million dollar $45,000 bond from an insurance carrier. Now, when they were self-

insured—so that the point would be they can raise the issues. They were directed not to do that as a self-insured. They ought to follow that.

If they are unwilling to pay or if they default on that payment of a claim, I have the authority as commissioner to seek demand of that surety bond and have that insurance company send the entire amount to the Department, which I'll transfer to the guarantee fund for payment of those claims. So if USEC doesn't agree to pay the award—they still may be able to assert their defenses and due process rights if the Department of Energy and USEC cannot agree with each other about reimbursing for those claims—but we would still process to a conclusion of an award. And if they did not pay, we would, first of all, seek demand on the bond, call them into default, and pay out of a fund of at least a million dollars. It is for all our self-insured employers, so that doesn't go very far.

With the total disability for a spouse, for a husband or for dependent children, that won't go very far. Three, four, five claims, that will evaporate that bond, and that will be all we have from that perspective to do with the payer.

Senator BUNNING. Will the GAO in its final report be making recommendations on how to solve this problem?

Mr. ROBERTSON. We're going to be working hard on coming up with recommendations on how to address the DOE subtitle D problems. Yes, we will. Can I say one other thing?

Senator BUNNING. Certainly.

Mr. ROBERTSON. I am really pleased that you had Mr. Greathouse here today, because I think he adds a perspective that we haven't heard in hearings before. And that is simply that once you get past the front end, the DOE part of the process, and perhaps you've gone through the physician panels and even got a positive determination, that doesn't mean you are going to be compensated. You've got another State system to go through to determine that. And every State system is different. So——

Senator BUNNING. We are just worried about the Kentucky system right now. According to the memorandum of understanding signed between Kentucky and the Department of Energy, the Department will provide assistance to DOE contractor employees in filing claims under the Kentucky workers' compensation system. What kind of assistance does the Department of Energy intend to provide to employees, or does it expect the workers to simply fend for themselves?

Mr. ROLLOW. Mr. Chairman, I know this was discussed briefly in the hearing 2 weeks ago in Washington. I just want to clarify. We have in Paducah, Kentucky, here, what we call a resource center, and that resource center is staffed by people that work for my office. And we provide assistance not only in filling out the form, but in clarifying for those people some of these requirements. So we will be providing the service after the sale, so to speak.

We do need to be careful that there is the sovereignty of the State process that we as the Feds are not allowed to get into. We will not cross that boundary. But at the same time, a lot of these people come in confused and need to have some of these issues clarified for them, and we can provide that advice to them.

Senator BUNNING. Mr. Greathouse and Mr. Robertson, what do you see as the largest obstacle for Kentucky's workers' compensation system in dealing with the current setup in subtitle D?

Mr. GREATHOUSE. The biggest would be that there would be an unreasonable expectation for these families to file claims at the State level when we know there will be no award monies available. So without a willing payer, it is going to be a lot more tragedy. The saga of Clara Harding will be repeated over and over again in the State system. So without a willing payer to process—we can handle the claims, but——

Senator BUNNING. And determine whether they are eligible for a claim and still not have any money coming to that person.

Mr. GREATHOUSE. That is correct.

Senator BUNNING. I think that is the worst——

Mr. GREATHOUSE. I think that is the worst thing to place on these families, yes.

Senator BUNNING. The Department of Energy at the November 21 hearing stated that it had examined all 20,965 cases filed and found only 1,038 cases ineligible for consideration by the physician panels. Does this figure mean that the remaining 99.5 percent of the cases are eligible for examination by the physician panels?

Mr. ROLLOW. Within the limits of approximations, Mr. Chairman, yes. In other words, we screen through cases as they come in the front door, and we look to see if people are of a class that is eligible for this program, and that class means they either have an illness that could be caused by working at DOE, and they worked at a facility that is covered by the program.

As we get into the cases in more detail—and we've only been into about 25 percent of the cases. When we get into them with more detail, we may find additional reasons that they cannot qualify for the program, and they will may be determined ineligible at that time. But roughly 1,000 out of 20,000 is the percentage we would expect to see of ineligible cases.

Senator BUNNING. Mr. Robertson, when the GAO examined this issue, did it appear that the Department had been able to examine all the cases filed to make a final determination on which cases were ineligible?

Mr. ROBERTSON. The work that we did was based on statistics as of June 2003, and there was a good portion of those—there were 50 percent that hadn't been processed at all.

Senator BUNNING. Completely had not been touched?

Mr. ROBERTSON. Right.

Senator BUNNING. Mr. Rollow, how many Federal staff in the office of Workers Advocacy have ever worked with a workers' compensation program?

Mr. ROLLOW. I have one staffer who is extremely experienced and has spent their whole career in workers' compensation, and then the remainder of my staff has been involved in this program for at least 3 years.

Senator BUNNING. Do you believe that Bechtel Jacobs could serve as a willing payer for cases presently here?

Mr. ROLLOW. It is my understanding that Bechtel owns what is called the tail end of the responsibility for paying workers' compensation cases from employees of the Paducah Gaseous Diffusion

Plant prior to the USEC takeover in 1998. Now, there will be some time periods—and Mr. Greathouse has illustrated that for us—where a commercial insurance will come into play. And so the Bechtel Jacobs—the U.S. Department of Energy may not have a contract with Bechtel Jacobs to not contest those claims. If the liability is actually with some of the commercial insurance, then we have no legal reach to those commercial insurance companies.

Senator BUNNING. You have no legal reach?

Mr. ROLLOW. No legal reach if the risk liability was accepted by an insurance carrier sometime in the past.

Senator BUNNING. Until May 2003, the Department of Energy told Congress that it did not need additional funds to implement subtitle D. That is you. Recently, the Department announced that one of the reasons it has a backlog of claims is a lack of funds to implement the program and requested an additional $33 million for fiscal year 2004, reprogramming request. What caused the Department to change its position and ask for more funds?

Mr. ROLLOW. Mr. Chairman, we flatly underestimated the efforts. Originally, we had planned to accomplish this task over a 10-year period, and that was quickly recognized as unreasonable. We have people waiting for these claims. We need to process them more quickly.

Senator BUNNING. By the time 10 years is up, a lot of these people might not be here.

Mr. ROLLOW. Yes, sir. Absolutely. And secondly, we also underestimated the number of claims. We originally estimated about 7,500 claims. We've got over 20,000 in.

Senator BUNNING. And that is why you made the reprogramming request for——

Mr. ROLLOW. Yes, sir. Mainly for the acceleration. And I've been on board this project for about 9 months now, and I was brought on board just for that purpose.

Senator BUNNING. I am not going to tell you what the major full committee of the Department of Energy is going to do, but I can assure you that this program of subtitle D is being looked at very thoroughly, and the Department of Energy, unless they get themselves in gear, is go to be stripped of subtitle D, and it is going to be placed in some other place. I don't care how much you have geared up. You are still not getting the results that we as a Congress expected of you when you first were given the job of doing this. We expected something like the Department of Labor has done. It is that important to us as a committee. So I appreciate you all testifying today. Thank you very much.

If the third panel will come forward, we would appreciate it. Leon Owens, president, Paducah, Kentucky Plant PACE Union; Steve Liedle, president and general manager of Bechtel Jacobs; Ken Wheeler, chairman, Greater Paducah Economic Development Council; and Bill Paxton, the great mayor of Paducah.

I also would like to acknowledge the County Judge Executive Orazine, who is with us today, and he has been right on the ball with this Paducah Gaseous Diffusion Plant from the day I got involved with it, and I appreciate you being here, too, Judge.

All right. Leon, if you want to start, go ahead.

STATEMENT OF LEON OWENS, PRESIDENT, PADUCAH, KENTUCKY PLANT PACE UNION

Mr. OWENS. Good morning, Senator Bunning.

Senator BUNNING. Good morning.

Mr. OWENS. Good morning.

Senator BUNNING. Thank you very much. My name is Leon Owens. I am employed as a cascade operator at the Paducah Gaseous Diffusion Plant, and I'm presently employed by USEC, the U.S. Enrichment Corporation, and I also serve as president of the Paper, Allied-Industrial, Chemical and Energy Workers Local 5-0550 at the Paducah plant.

In addition, I serve on the advisory board of Radiation and Worker Health, which advises the Secretary of Health and Human Services on the implementation of NIOSH's responsibilities under the Energy Employees Occupational Illness Compensation Program Act. However, I am here today in my official capacity as president of the local union.

Our members appreciate that Senator Bunning held a Senate Energy Committee Field Hearing here in Paducah on September 20, 1999, to investigate how and why workers at the Paducah Gaseous Diffusion Plant were exposed to highly radiotoxic substances, particularly plutonium and neptunium, for years without knowing, being monitored or protected. I want to take note of his leadership to strengthen worker safety by enacting new legislation.

Current and former workers of the Paducah plant thank Senator Bunning for his leadership in securing a GAO investigation on the effectiveness of DOE's implementation of subtitle D, and spearheading an oversight hearing before the full Senate Energy Committee on November 21, 2003, which directed a spotlight on problems with DOE's implementation.

Valued leadership has been provided by Senator Bunning and Congressman Whitfield in proposing reforms to EEOICPA, and we look forward to working with their offices, interested members of Congress and the committees of jurisdiction to enact meaningful reforms.

My testimony today addresses three key points. Point one, DOE workforce transition to new contractors. On November 26, the Department of Energy issued a Request for Proposals to solicit bids for a cost-plus contract for site infrastructure services at Paducah and Portsmouth without workforce transition protections. After calls from congressional offices and press attention, the DOE released a set of workforce transition provisions on December 4, a mere 36 hours before the hearing, and unfortunately, after our testimony was electronically submitted to the Energy Committee.

Our testimony shifts focus to the defects in the workforce transition provisions and the flawed process by which DOE developed them.

Under DOE's workforce transition provisions, the replacement contractor will not be required to honor the terms and conditions of the existing collective-bargaining agreement for hourly workers employed by Bechtel Jacobs and some contractors—Weskem and Swift and Staley. It is disturbing that DOE is seeking to use its Request for Proposals to invalidate a contractual successorship provision requiring new contractors and subcontractors to adhere to

the existing labor agreements. It is even more disturbing, because DOE had reviewed and approved this important successorship provision before allowing Bechtel Jacobs to execute the labor contract in 2001.

Mr. Chairman, this is the first time in Paducah or Portsmouth that DOE has failed to assure a seamless transition for workers. Indeed, when DOE awarded contracts for the DUF6 plant, when it awarded the M&I contract for Bechtel Jacobs, and when USEC was privatized, the protections embodied in the labor agreements were always retained. Why may I ask in this case has the DOE chosen to turn its back on the workers?

Although the RFP provides incumbent workers with a "right of first refusal" to their current jobs—and this is required by section 3161 of the fiscal year '93 Defense Authorization Act—and the Service Contract Act imposes limited wage/benefit protections, DOE has made a conscious decision to allow the new contractor to reneg on previously approved benefits.

Moreover, the RFP prohibits USEC workers from participating in the sites' Multiple Employer Pension Plan if they are laid off and subsequently hired by the new infrastructure contract. Today, workers have that right at Paducah and at Portsmouth.

Bechtel Jacobs manages workforce transition between multiple contractor employers at both sides in a way that maintains stability while allowing ample flexibility for small business subcontracting. This useful function is absent in the DOE's infrastructure RFP. Since the Remediation RFP has not been issued, DOE has not disclosed if this function will be retained. The Department should combine the Infrastructure and Remediation activities under a single prime contract. It would be far less disruptive to the workforce for DOE to meet its small business set aside quotas through a subcontract.

Despite requests from workers in Paducah and Portsmouth, and communications from members of Congress, DOE has never consulted with the affected workers or their elected representatives.

It is imperative that DOE stop stonewalling and work with the affected workforce representatives and the relevant Kentucky and Ohio congressional offices to promptly resolve workforce transition issues for the Infrastructure and Remediation RFP's.

Point two, DOE safety rules. On December 2, 2003, Assistant Secretary of Energy Beverly Cook posted draft regulations to implement the Bunning-Kennedy Amendment that calls for improving health and safety protections at DOE facilities by making DOE's worker safety orders enforceable through fines and penalties.

I am disappointed to note that DOE's draft rule has gutted this provision—which was included in the fiscal year 2003 Defense Authorization Act—by failing to establish minimum enforceable standards for all DOE workplaces.

At Paducah, USEC is required to comply with OSHA standards, but DOE is refusing—despite the directives contained in this legislation—to impose the same enforceable requirements on its contractors at Paducah and elsewhere. DOE needs to go back to the drawing board, and failing that, Congress may need to provide further direction.

Point three, the Energy Employees Occupational Illness Compensation Program Act. DOE has failed by every conceivable measure to honor congressional intent in its implementation of subtitle D. As of December 2, DOE reports that zero claims out of 2,260 filed by Paducah workers have been processed in the physician panels in 3-plus years. And DOE has identified no willing payer for at least 50 percent of these claims.

Testimony provided to the Senate Energy Committee recommends that Congress move the three key DOE responsibilities to the Department of Labor: Claims processing, physicians panel and establishing benefit levels and issuing payments. Only records retrieval should remain with the Department of Energy. We do not support DOE's request for $33 million in additional funds until structural reforms have been made by shifting this program to the Department of Labor. Thank you very much, Senator Bunning.

[The prepared statement of Mr. Owens follows:]

PREPARED STATEMENT OF LEON OWENS, PRESIDENT,
PADUCAH, KENTUCKY PLANT PACE UNION

My name is Leon Owens. I am employed as a "cascade operator" at the Paducah Gaseous Diffusion Plant (PGDP) in Paducah, Kentucky. I am presently employed by USEC, Inc., and serve as President of Local 5-550 of the Paper, Allied-Industrial, Chemical & Energy Workers Union (PACE), which represents hourly maintenance, production and environmental cleanup workers at the Paducah plant. My address is 315 Palisades Circle, Paducah, KY 42001. Phone: 270-554-7818 (h).

I also serve on the Advisory Board on Radiation and Worker Health (ABRWH), which advises the Secretary of Health and Human Services on the implementation of NIOSH's responsibilities under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). However, I am appearing here today in my capacity as President of the PACE Local Union.

Our members appreciate that Senator Bunning held a Senate Energy Committee Field Hearing in Paducah on September 20, 1999 to investigate how and why workers at the Paducah Gaseous Diffusion Plant ("PGDP") were exposed to highly radiotoxic substances, particular plutonium and neptunium, for over 40 years without knowing, being monitored or protected. I also want to thank Senator Bunning for his leadership in securing a GAO investigation on the effectiveness of the DOE's implementation of Subtitle D of EEOICPA, and spearheading a probative oversight hearing before the full Senate Energy Committee on November 21, 2003. Further, I want to note that Senator Bunning and Representative Whitfield have taken leadership roles in proposing reforms to EEOICPA and we look forward to working with their offices, interested members of Congress and the committees of jurisdiction to enact meaningful reforms.

My testimony today addresses three key points:

1. On November 26, the Department of Energy issued a Request for Proposals to solicit bids for a cost-plus contract for site infrastructure services at Paducah and Portsmouth without providing any requirements for workforce transition. Despite the absence of well defined requirements, DOE is rushing forward with a bidders conference 48 hours from now on December 8. Workers employed by Bechtel Jacobs, or subcontractors such as Weskem and Swift & Staley, are left wondering whether or not they will have a right of first refusal, whether the new contractor will participate in the Bechtel Jacob's Multiple Employer Pension Plan or whether they will lose pension continuity and years of service credit, and whether the successful offeror will honor the terms and conditions of the existing collective bargaining agreement for hourly workers. Despite requests from workers in Portsmouth and Paducah, and communications from U.S. Representatives Ed Whitfield and Rob Portman, DOE has never consulted with the affected workers or their representatives. We urge that DOE withdraw this RFP, reissue it as a draft RFP with workforce transition provisions that maintains workforce stability, and solicit public comment for 30 days. Further, we urge DOE to combine the Infrastructure and Remediation RFPs into a single M&I contract.

2. On December 2, 2003 Assistant Secretary of Energy Beverly Cook issued draft regulations to implement the Bunning-Kennedy amendment that calls for improving health and safety protections at DOE facilities by making DOE's worker safety Or-

ders enforceable through fines and penalties. I am disappointed to note that DOE's draft rule has gutted this provision which was included in the FY 2003 Defense Authorization Act—by failing to establish minimum enforceable safety standards for all DOE workplaces. Such safety standards already apply to all private sector workplaces. Workers in DOE facilities should not be required to work under conditions which have lower standards of safety that those in the private sector. Indeed, USEC is required to comply with OSHA standards at Paducah, but DOE is refusing, despite the directives contained in this legislation, to impose the same enforceable requirements on its contractors at Paducah and elsewhere. Assistant Secretary Cook should go back to the drawing board, and failing that, Congress may need to provide even more prescriptive direction to DOE.

3. DOE has failed by every conceivable measure to honor Congressional intent in its implementation of Subtitle D the Energy Employees Occupational Illness Compensation Program Act of 2000. As of mid-November, DOE reports that only 1 claim out of 2228 field by Paducah workers had been processed through the physicians panels in three years. DOE has identified no willing payor for at least 50% of the claims at Paducah. Testimony provided to the Senate Energy Committee by an array of experts points to a simple reform: move the three key responsibilities for claims involving exposures to toxic substances from DOE to the DOL, including: (1) claims processing, (2) physicians panels, and (3) establishing benefit levels and issuing payments. Only records retrieval should remain with DOE. We do not support DOE's request for $33 million in additional funds to the DOE for Subtitle D until structural reforms have been made to this program to make it functional.

DOE'S INFRASTRUCTURE PROCUREMENT AT PADUCAH/PORTSMOUTH FAILS TO PROTECT SALARIED AND HOURLY WORKERS WHEN THE CONTRACTORS CHANGEOVER

On November 26, 2003, DOE issued a Request for Proposals for direct procurement of infrastructure services (No. DE-RP24-04OH20178) at the Paducah and Portsmouth Plants. DOE's Ohio Field Office is requesting responsible small business concerns to submit proposals to perform these services. DOE intends to award two cost-plus-award-fee (CPAF) contracts resulting from this infrastructure solicitation for work scope that is presently performed by workers under Bechtel-Jacobs ("BJC") and its many subcontractors. The deadline for bidders to submit their proposals is January 28. In addition, DOE intends to compete out a separate remediation contract, but the RFP is not issued at this time. The RFP is silent on all key matters involving workforce transition for hourly and salaried (non management) personnel, despite Congressional and union inquiries to the DOE over the past year. The PACE Local at Paducah sent a letter by overnite mail to DOE-HQ a month ago, urging that it incorporate provisions in the contract to protect workers, their pensions and their hard earned seniority. It also urged DOE issue a draft RFP before issuing a final RFP, so that the public would have an opportunity to comment on DOE's proposed procurement strategy. The Portsmouth PACE Local in Ohio faxed a letter to Mike Owen, DOE's Director of the Office of Worker and Community Transition in June 2003. No reply has been received to either letter.

Instead, Section H.20 of the RFP states:

> "H.20 Work Force Transition and Human Resources Management [Text to be provided at a later date]"

We question why DOE is breaking out the infrastructure work from the rest of the remediation work at these sites, when this $23 million worth of scope is intimately woven into the cleanup work at both sites. Is DOE doing this simply to meet a quota for a small business set aside? If so, why not roll this infrastructure support contract into the remediation contract, and award it to a small business that way? If the goal is to meet a quota, we believe it may be time re-examine the Craig amendment dealing with small business set asides within DOE.

By breaking this work out into two separate prime contracts, it is imperative that DOE describe how it will assume work force transition responsibilities now carried out by Bechtel Jacobs. We question whether DOE has the federal staff and the capacity to manage transitions between the two prime contractors and their many subcontractors. Today, BJC manages 300 employees at Paducah performing work for itself and 2 subcontractors, and 350 employees and 10 subcontractors at Portsmouth, and BJC coordinates workforce transition amongst the prime and subcontractors in a way that maximizes potential stability and minimizes social and economic impacts.

For example, if work is finished by one subcontractor and layoffs are impending, advance notice is given to BJC who arranges for displaced workers to move to another subcontractor or into a BJC self-performed project, based on a matching of skills requirements and seniority. Despite the constant ebb and flow of workforce

changes, all workers remain participants in a site wide pension plan, and BJC oversees a common set of human resources policies that flow down to its subcontractors. We are at a loss to understand why DOE has discarded its past practice of addressing human resource issues up front and in a prescriptive manner before RFPs are on the street. This is the least it can do as a good neighbor. For example, in the Paducah/Portsmouth depleted uranium hexaflouride conversion contracts (DUF6) and the Management & Integrating (M&I) contracts at Oak Ridge, Portsmouth and Paducah, a draft RFP was issued prior to a final RFP. In 1997, the DOE worked with Congress and the affected workforce to assure a seamless transition when DOE replaced Lockheed Martin Energy Systems, which used a Management & Operating contracting model, with Bechtel Jacobs, which brought in numerous subcontractors under an M&I contracting model.

In both of these cases, there was extensive dialogue between the DOE and workforce representatives over the conditions incorporated in the final RFPs. There appears to be a disconnect in this instance, because Assistant Secretary of Energy Jesse Roberson specifically committed to "take into consideration" concerns of workforce "as part of the process to procure services for the Portsmouth and Paducah Sites" in a May 13, 2003 letter to Congressman Rob Portman. Given the absence workforce protections, we have the following questions: Will all workers be provided a right of first refusal (excluding senior management)? Will all workers be assured that the new contractor will participate in the Multiple Employer Pension Plan, and maintain the retiree health care benefit program? Will the same medical benefit plans be offered at the same cost? Will the workers' wages and benefits be continued at the same levels? Will the new contractor have to honor the terms of the existing PACE collective bargaining agreements and recognize PACE as the representative of the workforce? What will happen to workers who are laid off from the infrastructure contractor? Will they have a right to come to work for the remediation contractor or subcontractors? Who will coordinate these workforce transitions?

Workers and the bidders both need to understand the rules of workforce transition up front. We recommend:

1. That the DOE withdraw the Infrastructure RFP and reissue it as a draft, and solicit comments for 30 days. Further, the Remediation RFP should be issued at the same time as the Infrastructure RFP to assure continuity between the two.

2. That the DOE set up a meeting within the next ten days with the affected workforce representatives and the relevant Congressional offices to promptly resolve all workforce transition issues for inclusion in both the Infrastructure and the Remediation RFPs.

3. That DOE reconsider its approach and simply combine the Remediation RFP from the Infrastructure RFP. DOE should meet its small business set aside quotas through a subcontract for infrastructure services.

In sum, DOE should not be allowed to steamroll the workforce at Paducah or Piketon. Our local union supported the establishment of the Portsmouth/ Paducah regional office because we thought it would be more responsive to the unique concerns at the GDPs. Let's hope this idea was not misplaced. DOE's Draft Rules to Enhance Worker Health and Safety Undermines the Congressional Intent Behind the Bunning-Kennedy Amendment to the FY 03 Defense Authorization Act

Unlike the private sector, DOE's nuclear sites are self-regulating with respect to worker health and safety. At Paducah, USEC is regulated by NRC and OSHA, whereas DOE self-regulates its contractor's safety compliance. While DOE's nuclear safety rules are enforceable, and fines may be assessed by DOE's Office of Enforcement against contractors, the DOE's industrial and construction health and safety Orders are not legally enforceable.

To enhance worker health and safety protections and increase contractor accountability, Congress authorized the Secretary of Energy to assess civil penalties against Department of Energy (DOE) contractors for violation of any regulation relating to industrial or construction health and safety promulgated by DOE. Section 3173 of the FY 03 Defense Authorization Act directed the Secretary to promulgate industrial and construction health safety regulations in one year, and these should be based on DOE Order No. 440.1A (1998). Rules would go into effect one year after the date of promulgation of the regulations. DOE Order 440.1A encompasses the health and safety standards developed by OSHA for all private sector facilities for industrial and construction safety, including worker protections related to toxic chemical exposures, electrical safety and hazardous waste operations. It is the baseline set of requirements for industrial safety in the DOE complex today. Fines are capped at $70,000 per violation in the act.

This approach, if implemented in good faith, was intended as a middle ground between DOE self-regulation and external regulation by OSHA/NRC. One added factor that drove this legislation was a concern that DOE was actively working eliminate

Order 440.1A and convert it into mere "guidance." This prospect raised alarms at the Defense Nuclear Facility Safety Board, which cautioned DOE against downgrading the content and legal significance of its most important worker health and safety order.

DOE released its draft regulations on its web site on Tuesday, December 2, 2003. These draft regulations, I am sorry to report, do not establish a set of enforceable health and safety standards embodied in DOE Order 440.1A, as intended by Congress. Rather, the draft regulations merely require contractors to develop health and safety plans, and DOE will, after reviewing these plans, enforce self-reported noncompliance with these plans. In utter defiance of the law, DOE's draft regulations downgrade Order 440.1A to mere guidance and specifically prohibit the enforcement of any OSHA health and safety standards incorporated in DOE Order 440.1A. The bottom line: these draft regulations do not provide for a minimum enforceable safety standards that are at least equivalent to OSHA regulations (except for beryllium). Workers in the DOE complex deserve the same safety standards of safety with which DOE contractors must comply in the private sector. These regulations must be withdrawn and revised, and failing this, Congress may need to provide additional legislative clarity.

DOE'S PROGRAM FOR COMPENSATING SICK NUCLEAR WORKERS IS IN NEED OF REFORM

My testimony at the November 21, 2003 hearing covered the following points: After a whistleblower lawsuit and well-publicized investigations by the Washington Post and Kentucky newspapers, DOE confirmed that workers were placed in ultra-hazardous working conditions without their knowledge or consent for over 40 years.

An AEC memo uncovered in that investigation indicated that the government chose not to test hundreds of workers for uptakes to neptunium-237, an extremely radiotoxic transuranic element, for fear that the union would use this as a justification for hazardous duty pay.

The medical screening programs at Paducah have identified an occupational contribution to lung disease in 24% of the nearly 2000 workers who have been screened.

DOE performance in processing claims is abysmal. Only 1 out of 2,215 claims that were filed at Paducah under Subtitle D was decided by the DOE physicians panel as of 11/11/03. Not a single claim has been paid through DOE's Subtitle D program at Paducah. With <1% of its claims processed through physicians panels in the past three years, DOE's overall performance is simply inexcusable.

By contrast, the Department of Labor has issued 2,511 recommended decisions out of 3,469 cases filed by Paducah plant claimants, with 941 recommended approvals and 1,570 recommended denials. Most of these payments are to members of the Special Exposure Cohort.

Besides the glacial pace of claims processing, GAO's November 21st testimony to Congress states at approximately 50% of the Paducah claimants will not have a "willing payor." GAO's final conclusions may indicate that the percentage is even higher once they have access to more complete data. Paducah workers lack a "willing payor" because:

DOE cannot direct USEC, Inc., which was privatized and leases the Paducah Gaseous Diffusion Plant, to serve as a "willing payor."

DOE cannot direct Aetna or other insurance companies to pay claims on insurance policies they issued decades ago for Paducah contractors like Union Carbide. DOE has not clarified if Bechtel Jacobs, which is self-insured, will assume responsibility at Paducah for all claims that were "owned" by Aetna or others.

Many of Paducah's subcontractors used private worker compensation insurance carriers to provide worker compensation insurance. Private insurers are not bound by DOE physician panel determinations.

When EEOICPA was finalized as part of the FY 01 Defense Authorization Act in October 2000, many important implementation issues were left unresolved. Congress directed DOE to propose legislative reforms to assure appropriate agencies, benefit levels and coverage for hazardous substances were addressed

However, Under Secretary of Energy Bob Card's testimony at the November 21, 2003 hearing before the Senate Energy Committee stated:

Although DOE believes the current process is awkward, DOE does not intend to propose legislation affecting the basic structure of Part D. DOE may, however, propose legislation leading to process improvements.

The incremental legislative changes proposed by DOE will help them hire more physicians, but will not bring in a competent agency that can run this program effectively, nor does it address the imperative to assure a "willing payor" for all valid

claims. If DOE won't step up to the plate and propose structural reforms, which they concede are needed, we urge Congress to fill the vacuum.

DOE has also suggested it will amend its regulations to expedite claims processing. There was a strenuous effort made to bring these regulations to fruition with the help of a bipartisan group of Members of Congress, and we view with deep concern any significant changes to these regulations at this time.

DOE'S REQUEST FOR ADDITIONAL FUNDING

In the meantime, we do not support providing DOE with the additional $33 million for claims processing which they are requesting. This request is above and beyond the $25 million Congress already provided for FY 04. We do not support the notion of rewarding failure by giving DOE more money for this program. Rather, we firmly believe the best way to spend federal resources is to move deliberately towards legislative reforms which moves three key responsibilities from DOE to the DOL (1) claims processing, (2) physicians panels, and (3) payment responsibilities. Records retrieval will remain with DOE.

Summary It has become clear over the past three years, that DOE and its contractor lack the skills and capacity to carry out the basic claims development and management of physicians panels. So far the only winner in this program is SEA, DOE's support service contractor, who has made over $16 million so far and stands to double that in FY 04 no matter how badly workers fare in this system. And they are lobbying to keep it this way. Three years is plenty long enough for DOE to get the program operational.

Claimants are ill and dying and don't have time for DOE to learn on the job. One Senator noted at the November 21st hearing that the costs of programs like EEOICPA and Veterans benefits programs tend to decline as people die off. DOE's consultants have warned that EEOICPA Subtitle D may generate unanticipated costs for DOE's Environmental Management Program. Thus, the logic of delay may ultimately explain the lack of urgency with which DOE has pursued its mission.

Senator BUNNING. Thank you.

Mr. Liedle.

STATEMENT OF STEVE LIEDLE, PRESIDENT AND GENERAL MANAGER, BECHTEL JACOBS COMPANY, LLC

Mr. LIEDLE. Yes. Good morning, Senator.

Senator BUNNING. Good morning.

Mr. LIEDLE. I am Steve Liedle, president and general manager of Bechtel Jacobs, the management and integration contractor for the Department of Energy's management work in Oak Ridge, Paducah and Portsmouth, Ohio. Our work at Paducah includes environmental monitoring and remediation, maintenance of the depleted uranium hexafluoride inventory and infrastructure support. We've been working under a contract at Paducah since 1998.

I wanted to thank you, Senator, and the subcommittee, for the opportunity to testify today. I will present a brief overview of our progress since early in the year 2000 when the GAO team initially assessed the status of the cleanup effort.

Since the initial visit by the GAO to Paducah in January of 1999, a great deal of cleanup work has been accomplished at the site. These accomplishments include the cleanup of ground water and surface water contamination, scrap metal removal, decontamination and decommissioning of the inactive facilities and waste treatment disposal. Let me briefly review our accomplishments in these areas.

To address ground water contamination, we have cleaned more than 700 million gallons of ground water with pump and treat systems, treating the most contaminated water from the two main plumes and returning drinkable water to the natural ground water recharge system. We have conducted just recently the first ground

water remediation using new technologies called Lasagna and Six-phase heating. That is making me hungry for lunch.

In tests on-site, the technology has proven to be more than 99 percent effective in removing the contamination. And after review by the regulatories, we're looking to employ one of these technologies this fiscal year, fiscal year 2004.

To address surface water contamination concerns, we have permanently prevented the spread of contamination to areas outside of the plant fence by installing nearly one-half mile of piping which diverts water around the North-South Diversion Ditch, which was mentioned earlier this morning. We are now cleaning up the most contaminated portion of the ditch, the portion within the plant fence where we have excavated some 1,500 cubic yards of soil for final categorization and ultimate disposal, and we are completing a detention base to capture surface water runoff into the ditch within the plant.

In 2002, we completed a large sedimentation control system surrounding the outdoor scrap metal piles ensuring the removal of the scrap does not create a new environmental hazard by scattering contaminated scrap.

It is in the scrap metal removal that we have had our most visible accomplishments. Drum Mountain, which was mentioned earlier, again, this morning, was removed and shipped for disposal in 2000. Removal of this 35-foot high pile contaminated scrap eliminated the potential source of surface water contamination and was the first readily visible change in the skyline of the Paducah plant in many years.

We have also disposed of the entire inventory of contaminated aluminum ingots, totaling nearly 2,000 tons, and are in the process of removing another 29,000 tons of miscellaneous scrap. In the decontamination and decommissioning area, we have initiated action in the largest inactive facility on site, the feed plant, reducing fire hazards and stripping out interior piping and wiring.

We have removed waste and reduced fire hazards in the second-largest inactive facility, the metals plant. We have begun renovation of a portion of the feed plant to support decontamination of fluorine cells to be transferred to the Paducah Area Community Reuse Organization.

The DOE materials storage areas are numerous and diverse. We have assessed all 160 areas to insure that any nuclear criticality concerns have been addressed. We have also completed detailed examination of nearly 60 percent of the total contents, or over 480,000 cubic feet, and found only one one-hundredth of one percent of that material to be hazardous.

We completely eliminated the contents of eight of these areas in fiscal year 2003 and plan to clean out four more in fiscal year 2004, totaling nearly 100,000 cubic feet of material which will be removed from the site.

Waste treatment and disposition has been an especially active part of our work. We have placed special attention on reducing the site inventory of PCBs. More than 6,250 55-gallon drums of old waste, better than half the legacy waste stored outside at the site, have been repackaged for disposition off site. We have shipped and

disposed of enough waste to fill 7,100 55-gallon drums since October 2000.

Renewed operation of the on-site landfill has also helped to accelerate site cleanup. Both the scrap metal removal project and the North-South Diversion Ditch excavation generates substantial volumes of waste that need the disposal criteria for this landfill, saving funds for off-site disposal of waste which present the potential of hazards. In addition, more than 6,600 tons of non-hazardous waste has been disposed of in the landfill in the last 15 months.

In 2002, we completed an upgrade to the last gravel bed cylinder yards with concrete pads. Doing this gets all the cylinders over concrete and improves the drainage below the cylinders, reduces corrosion and the potential for leakage.

In all of our work, safety is our first concern. Our employees and our subcontractor team have achieved a safety record of only one accident resulting in time lost away from work in more than 4.5 million job hours. Bechtel Jacobs Company employees on the Paducah project did not have a lost time accident since the initiation of our contract with DOE in April 1998, covering over 1.5 million hours of work. According to OSHA statistics, firms performing our type of work average more than 50 lost-time accidents over similar periods of time.

Extensive environmental monitoring is the cornerstone in environmental protection. In a given year, we collect and analyze more than 4,500 environmental samples from more than 1,000 locations. Our monitoring shows that some of the contaminates of concern, like PCPs, have declined over the last several years while others have remained at low levels. These contaminates do not pose a current health risk to the public.

We need many partners to succeed. I personally want to express my appreciation to our PACE employees, whose commitment to safety, training, adherence to proper procedure and getting the job done right, helps keep us safe on a daily basis.

In recent years, the public in the Paducah area has expressed considerable interest in cleanup of the plant. Their interest has brought us opportunities to hear and learn from their concerns and to discuss our work in a variety of forms. The involvement of the Paducah Citizens Advisory Board and support of areas local-elected officials, business executives and community leaders have been invaluable to the progress we have made today.

Significant progress has been made in the cleanup of the Paducah Gaseous Diffusion Plant since early 2000. The signing of the new agreements between DOE and Kentucky has already brought about acceleration of our work. We anticipate this acceleration will continue.

Bechtel Jacobs strongly supports DOE's risk-based approach to cleanup. The risk-based approach directs effort to projects that present the greatest potential risk first. We find the schedule negotiated by DOE and Kentucky realistic, given our best current information, and the proposed funding appears well matched to the work plan. I'd be happy to take any questions.

[The prepared statement of Mr. Liedle follows:]

PREPARED STATEMENT OF STEVE LIEDLE, PRESIDENT & GENERAL MANAGER, BECHTEL JACOBS COMPANY, LLC

Good morning. I am Steven D. Liedle, President and General Manager of the Bechtel Jacobs Company LLC, the management and integration (M&I) contractor for the Department of Energy's environmental management work at Paducah, Kentucky and Portsmouth, Ohio. We perform similar work for DOE at Oak Ridge, Tennessee under an accelerated closure contract. Our work at Paducah includes environmental monitoring and remediation, maintenance of the depleted uranium hexafluoride inventory, and infrastructure support. We are not involved in the ongoing enrichment operations, nor in the effort to design and construct conversion facilities for depleted uranium hexafluoride.

Bechtel Jacobs' primary mission as DOE's M&I contractor is to effectively execute the Department's cleanup program. Although we perform some of this work directly, most is performed through integration of the work of our 33 subcontractors.

Our first concern in the performance of our work is the safety of our workers and the public. Second only to our focus on worker and public safety is the protection of the environment, which is the very reason for our presence at the Paducah site.

In order to complete our mission, we have established excellent relationships with the Paper, Allied-Industrial, Chemical and Energy Workers (PACE) Local 5-550, our subcontractors, and the local community. We take these relationships seriously and work hard to maintain them through trust and communication.

ACCOMPLISHMENTS SINCE EARLY 2000

Since the initial visit by the General Accounting Office to the Paducah Gaseous Diffusion Plant in January 2000 and their subsequent April 2000 report, a great deal has been accomplished in the cleanup of the Paducah site. These accomplishments include cleanup of groundwater contamination and surface water contamination, scrap metal removal, decontamination and decommissioning of inactive facilities, waste treatment and disposal, contaminated soil cleanup and more.

Groundwater

The primary contributor to health risk at the Paducah site is groundwater contamination. Bechtel Jacobs administers the DOE Water Policy, paying the water bills of residents north of the plant on behalf of the Department to ensure that there is no need to use well water contaminated by past plant operations. We also operate the Pump and Treat system, which has removed contaminants from approximately 710 million gallons of highly contaminated groundwater and returned that water to the environment at drinking water quality.

At the end of 2001, we deployed a new technology called Lasagna. The technology utilizes electro-osmosis, sending electric currents through buried electrodes. The electricity moves water particles containing the groundwater contaminant, trichloroethylene (TCE), through treatment zones of iron filings where the solvent is captured and broken down into harmless components. Lasagna proved surprisingly effective. TCE concentrations in the soil were as high as 1,760 parts per million (ppm). The goal of the project was to reduce TCE to less than 5.6 ppm. Final results show that TCE in the target area was down to 0.33 ppm after the initial two years of operation. An optional third operating year was clearly unnecessary and the project was concluded.

Lasagna was designed to remove contamination from shallow soils before they can reach groundwater aquifers, where it becomes more difficult and less efficient to remove. At the Paducah Gaseous Diffusion Plant, the technology was deployed at a location where the downward movement of contaminants was slowed by a relatively shallow layer of clay. Demonstration of the Lasagna technology at Paducah has shown its applicability at other sites across the country.

Another technology, called Six-phase Heating, uses electrical resistance heat to vaporize groundwater and contaminants in the groundwater aquifer. Six-phase Heating proved to be very effective during the Treatability Study field testing completed this Fall, as it removed more contamination from the groundwater aquifer than had been expected. Final groundwater samples showed that 99 percent of the TCE in the target area had been removed. Removing this contamination at the source, thereby preventing further spread of contaminated groundwater, is now the cornerstone of DOE's approach to groundwater remediation at Paducah. Plans are being developed to deploy this technology at the Paducah site in 2005.

The combined application of the conventional Pump and Treat system with new technologies such as Lasagna and Six-phase Heating is effectively addressing the groundwater contamination problem at the site.

Surface Water

In 2003 the North-South Diversion Ditch, a prominent feature of the site, was eliminated as a path for the spread of surface water contamination from within the plant to areas outside the plant fence. This was accomplished by installing 2600 feet of hard piping, which carries water away from the ditch into a water treatment system. We are now completing a detention basin to capture runoff into the ditch, and have excavated approximately 1500 cubic yards of soil for disposal.

In 2002 we completed construction of a sedimentation control system, including a large sedimentation basin, to ensure that contamination which might be mobilized during removal of scrap metal from the site does not move outside the present scrap metal area.

We have also upgraded signage and controls on outfalls and creeks. This ensures that areas presenting an increased risk of exposure to contaminants are more readily recognized by plant neighbors and users of the recreational areas north of the plant. In 2001 we also removed several piles of slightly contaminated concrete rubble totaling approximately 4000 cubic yards of material—from DOE property outside the plant fence, eliminating the public concern that accompanied posting of these piles.

Scrap Metal Removal

It is in scrap metal removal that we have made our most visible cleanup progress. Drum Mountain was removed by the end of September 2000 and shipped for disposal by the end of that calendar year. Elimination of the 35-foot high, 2647 ton pile of contaminated scrap removed a source of surface water contamination and was the first readily visible change in the skyline of the Paducah Gaseous Diffusion Plant in many years.

We are in the process of removing another 29,000 tons of miscellaneous scrap, which will eliminate the remainder of the outdoor scrap piles. To date, we have processed another 2850 tons of the outdoor scrap.

In 2003, we also completed disposition of the inventory of contaminated aluminum ingots from Paducah. This waste stream totaled nearly 2000 tons. We continue to monitor 9700 tons of contaminated nickel ingots for DOE pending a determination of the feasibility of recycling this resource.

Decontamination and Decommissioning

In 2002, we initiated fieldwork on the 250,000-sq. ft. feed plant complex, removing and disposing of piping, process equipment, and stored materials. This is the largest of the 17 inactive facilities on the site.

Removal of the hydrofluoric acid tank farm outside the feed plant is nearly complete. All piping, stairways and protective structures have been removed, and we are proceeding to disposition the tanks.

A new criticality alarm system is now being installed in the feed plant to support the safety of future D&D work inside the facility. We are also preparing a portion of the feed plant for use in decontaminating several fluorine cells prior to transfer of the cells to the Paducah Area Community Reuse Organization.

We continue surveillance and maintenance of all 17 inactive facilities to ensure that they do not become safety or environmental hazards.

DOE Material Storage Areas

The DOE Material Storage Areas (DMSAs) have presented challenges both because of their number and because of the diversity of the contents of the indoor and outdoor areas. To date, we have completed criticality assessments of all 160 DMSAs to ensure that any possibility of nuclear criticality was fully recognized and addressed, and characterized nearly 60 percent of the total contents. Only one one-hundredth of one percent of the material characterized has been discovered to be hazardous.

The contents of eight DMSAs were eliminated in Fiscal Year 2003. We are aggressively disposing of waste from the outdoor DMSAs at this time and plan to eliminate four more DMSA's, currently containing nearly 97,000 cubic feet of material by the end of Fiscal Year 2004.

Waste Treatment and Disposition

Waste disposition has been an especially active area of our cleanup work. We have shipped and disposed of approximately 7100 55-gallon drum equivalents of waste at permitted off-site disposal facilities since FY 2000. This includes a special focus on disposal of PCB-contaminated transformers and the shipment of 913 lead-acid batteries for recycling.

Since mid-2000, 1250 cubic meters of low-level waste stored outside has been repackaged. This is approximately 6250 55-gallon drum equivalents, more than half

of the inventory of 12,000 55-gallon drum equivalents cited in the April 2000 GAO report. Characterization and repackaging of remaining legacy waste is continuing, as are the waste treatment and disposal activities specified in the Site Treatment Plan for Mixed Waste.

Since 2000 we have also treated and shipped 6.5 cubic meters of pyrophoric uranium chips for disposal, and treated 80,000 gallons of contaminated wastewater from the feed plant complex.

We have installed and continue to inspect and maintain a PCB collection and containment system for the operating plant, consisting of over 16,000 troughs. Collection of this waste helps prevent the contamination of operating facilities, thereby reducing the complexity and cost of future decontamination and decommissioning.

On-Site Landfill

Operation of the active on-site landfill and maintenance of the two closed landfills is another part of Bechtel Jacobs' work for DOE. Operation of the active landfill helps to accelerate progress of other site work, particularly the Scrap Metal Removal Project and the North-South Diversion Ditch excavation.

More than 6600 tons of non-hazardous waste has been disposed in the landfill in Fiscal Years 2003 and 2004. To ensure continued safe operation of the landfill, Bechtel Jacobs performed a seismic study of the landfill in 2003 and we are currently designing and installing an upgraded leachate treatment system. We use a system of 35 groundwater monitoring wells to ensure that the landfills are functioning as intended, and that they do not contribute to groundwater contamination.

Soils

In 2003, Bechtel Jacobs removed 600 cubic yards of petroleum-contaminated soil from an area of new cylinder yard construction for disposal in an appropriately licensed off-site facility. We also took quick action to address three old underground storage tanks found in the cylinder yard area and to prevent movement of the contamination to groundwater and surface water.

Cylinders and Cylinder Yards

In 2002, Bechtel Jacobs completed construction of a new 10.8-acre cylinder yard. Also in 2002, the last DOE gravel bed cylinder yard was upgraded to a concrete pad, improving drainage and reducing cylinder corrosion.

Along with the construction and management of the DOE cylinder storage yards, Bechtel Jacobs conducts surveillance and maintenance of more than 38,000 depleted uranium hexafluoride cylinders at the Paducah Gaseous Diffusion Plant.

PROTECTING WORKERS AND THE PUBLIC

Worker Safety

As mentioned at the outset of this testimony, safety is our first concern. We have consistently communicated this priority to our employees and our subcontractor team. The results are apparent. Over the term of our contract at Paducah, since April 1998, we have experienced only one accident resulting in time lost away from work in more than 4.5 million labor-hours. Bechtel Jacobs employees have worked 1.5 million hours of that total without a single lost-time accident.

Firms performing similar work could expect more than 50 lost-time accidents over a similar period, according to statistics of the Occupational Safety and Health Administration. This record is a tribute to the focus and commitment of our workforce, and is evidence of the value of an integrated safety management approach that incorporates employees in their own day-to-day safety decisions. We continue to involve our workforce in safety decisions as an integral part of work planning every single day. Our unwavering goal is zero safety incidents.

Public Safety

Protection of the public is the fundamental reason for our work. By identifying and reducing or eliminating risk, we protect the public in both the near- and long-term.

As stated earlier, groundwater contamination is the primary contributor to health risk at the Paducah site. Thus, we have focused on this risk by providing alternative sources of drinking water, treating groundwater to remove contamination and removing sources of contamination from the soil and aquifer. Removal of the groundwater contamination sources will substantially reduce risk in the future.

Every action to remove contaminants from the site, and every action to better control the contaminants that remain on-site, reduces risk to the public. We do recognize, however, that our actions to maintain and clean up the site sometimes have the potential for unexpected threats to the environment, such as spill of contami-

nated water from a filtering system or a release of dust into the air during scrap metal removal. We work hard to prevent, minimize and mitigate such an outcome. We appreciate the essential role of the Environmental Protection Agency and the Cabinets of the Commonwealth of Kentucky in helping to ensure that actions intended to increase public safety do not have unintended consequences.

Protecting the Environment

Extensive environmental monitoring is the cornerstone of environmental protection. In a given year, we collect and analyze more than 4500 environmental samples. Routine samples are collected from 850 locations in and around the plant site. Additional sampling in support of particular projects pushes the total sampling locations to more than 1000.

Sampled soil, water and other substances are analyzed for more than 100 different metals, radionuclides and chemicals. We frequently split our samples for analysis in separate accredited laboratories as one of several verifications of the accuracy of our data. Samples are also routinely split with Kentucky regulatory agencies for their independent analysis, and these agencies maintain their own independent sampling programs.

Our monitoring shows that some of the contaminants of concern in the environment near the plant, such as PCBs, have declined over the last several years, while others have been essentially unchanged. The levels of contaminants are generally low, and do not present a current health risk to the public. Our Partnership with PACE

In 2001, Bechtel Jacobs signed a five-year labor agreement with PACE Local 5-550. This agreement confirmed our recognition of PACE as an essential partner in our cleanup mission. Our positive relationship has been and will continue to be critical to our progress in cleanup.

I personally want to express my appreciation to our PACE employees for their commitment to safety, training, adherence to proper procedure, and getting the job done right. Their participation in our work is one of our key assets.

Involving the community

Over the last few years, the public in the Paducah area has expressed considerable interest in cleanup activities at the Paducah plant. This interest has given us more opportunities to hear concerns and to assist DOE in gathering input to cleanup plans.

This interest has also brought us opportunities to discuss our work with community leaders and with the general public in a variety of forums. We appreciate both their support and their recommendations. Our cleanup efforts are better as a result.

It has been our pleasure to provide staff support to the Paducah Gaseous Diffusion Plant Citizens Advisory Board, and to respond to their inquiries on various projects. We have seen the quality of the Board's input increase over time as these dedicated volunteers strive to provide valuable early input to DOE's environmental management decisions.

In particular, I want to thank the Paducah area's local elected officials, business executives, and community leaders, who have come together to support this cleanup effort in a united and productive fashion. Without their participation, we would not have made the progress we have achieved to date.

I also must thank you, Senator Bunning, and your fellow members of the Kentucky delegation, particularly Senator McConnell and Representative Whitfield, for your continued support of the funding that makes this cleanup possible.

CONCLUSION

Significant progress has been made in the cleanup of the Paducah Gaseous Diffusion Plant site since early-2000. We have ensured supplies of clean water for residents near the plant, treated more than 700 million gallons of groundwater, applied a new technology to remove contamination from shallow soil, and shown the feasibility of using a developing technology to remove the groundwater contamination source from the aquifer. We have prevented surface water contamination from scrap removal operations and eliminated the possibility of future contamination via the North-South Diversion Ditch. We have removed more than 7500 tons of scrap metal and ingots, initiated decontamination and decommissioning activities, characterized and removed waste from DOE Material Storage Areas, disposed of more than 7000 drums of waste and repackaged more than 6000 drums, eliminating these materials as potential sources of future contamination. We have improved depleted uranium hexafluoride cylinder storage and removed contaminated soils. We have carefully monitored the environment. We have protected our workers and the public.

With the signing of the April 2003 agreement on near-term milestones, the Letter of Intent and the Agreed Order between the Department of Energy and the Commonwealth of Kentucky, has come a welcome acceleration of the cleanup effort. We anticipate this accelerated pace will continue.

Bechtel Jacobs strongly supports DOE's approach to accelerating site cleanup. The risk-based approach directs effort to those projects that present the greatest potential impact on the public and the environment. We find the schedules negotiated by DOE and Kentucky realistic given our best current information, and the proposed funding appears well matched to the work planned.

The Department of Energy's Office of Oversight Phase I Investigation Team stated in their October 1999 report on the Paducah plant that "current operations do not present an immediate risk to workers or the public." In April 2000, the Report of the Commonwealth of Kentucky's Task Force Examining State Regulatory Issues at the Paducah Gaseous Diffusion Plant found "no immediate threat to public health that had not been previously disclosed and posted." The Agency for Toxic Substances and Disease Registry, in the Paducah Public Health Assessment released in May 2002, said the Paducah Gaseous Diffusion Plant "poses no apparent public health hazard for the surrounding community from current exposure to groundwater surface water, soils and sediment, biota, or air." We concur in these assessments.

We will continue to work for the protection of the environment through thoughtful planning and execution of our work, as directed by DOE, supported by the skill of our subcontractors and assisted by the guidance of the regulatory community. First and last, we will not lose sight of the real bottom line our first concern will always be the safety of our workers and the public.

Senator BUNNING. Thank you, sir.

Mr. Wheeler.

STATEMENT OF KENNETH WHEELER, CHAIRMAN, GREATER PADUCAH ECONOMIC DEVELOPMENT COUNCIL

Mr. WHEELER. Thank you, Senator. My name is Kenneth Wheeler, and I am testifying today in my capacity as chair of the Greater Paducah Economic Development Council. I have not been employed at any site activities during my tenure at Paducah, but my prior career includes some 25 years in the nuclear power industry, including direction of site remediation and decontamination activities. I appreciate the opportunity to testify today to you.

My remarks will focus upon the impact of the Paducah Gaseous Diffusion Plant upon the community's efforts to enhance economic opportunities for its citizens. But first, Senator, I would like to express our appreciation to you for your efforts in our behalf to move the site cleanup effort forward. Without your continued involvement, I doubt that the recently consummated accelerated cleanup agreement would ever have been completed.

I would also like to take this opportunity to thank Secretary List, Governor Patton and Assistant Secretary Roberson for their personal efforts in finalizing the agreement.

However, having an agreement on paper is just the first step. Unless there is sincere, dedicated effort on the part of DOE, the Commonwealth of Kentucky and the EPA to improve working relationships in the future, the progress towards cleanup of the site will continue to lag as it has in the past.

One might ask at this point why the community should care about getting the site cleaned up. Cleanup activities are currently providing some 600 jobs to the community and can be expected to do so for many years to come. Why then should the community be concerned about delays in effecting cleanup? In fact, if viewed purely from the standpoint of jobs, it might appear that it is in the community's best interest to string out the cleanup activities as long

as possible, thereby generating more employment and income for our citizens. Senator, let me state emphatically that this is not the case.

In a nutshell, we are tired of having the national reputation as a contaminated community. When it became apparent some two years ago that Paducah and western Kentucky might no longer be able to rely upon the site as a major source of employment, we embarked upon an aggressive campaign to develop new job opportunities in the region.

Since then, we have started development of a large regional industrial park, raised several million dollars in local industrial development funds, hired a world-class economic development executive and greatly increased marketing efforts for the region to attract new industry.

After having relied upon the PGDP for many years as a primary source of employment, Paducah and the Purchase region are now aggressively seeking new opportunities for growth.

But in order to be successful in our efforts, we need to shed the national image that Paducah has of being a contaminated community. Perhaps the best evidence of the challenge we face is contained in a recently published *National Geographic* article. We're tired of being displayed as a centerfold for nuclear waste sites. We need the site cleaned up so this community can move on to other things.

While nuclear-related activities, such as the DUF6 plant, will continue to be welcome, we simply must not rely on cleanup activities, with their limited horizon, as the backbone of our economic development efforts.

Therefore, Senator, we must urge you to continue your role of oversight for the cleanup and to continue to demand better performance of all involved parties. With the completion of the accelerated cleanup agreement, the door is open for significant progress. We have assurance from Secretary Roberson, as well as Governor-elect Fletcher, that DOE and the State will work cooperatively to minimize regulatory and administrative issues that have so delayed physical progress in the work.

We have been here before. Already, we hear talk of missed schedules. Just one example, the selection progress for a new cleanup contractor at the site has already been rescheduled several times and may take as much as another year to be fully implemented. No matter how talented and dedicated the new contractor is, he will face heavy weather if the regulatory and administrative roadblocks that have plagued this project are not resolved.

In this regard, DOE is determined that a qualified small business can best handle the site cleanup at the PGDP. We take no issue with this decision, but we have identified to DOE several areas where we feel that this action may effect the community, and have been assured that our concerns will be recognized during the award process. I can assure you that we will be watching the process closely, along with your office.

Senator, let me close by reiterating the pride that Paducah, McCracken County and the entire Purchase region feel in being a vital part of the nation's nuclear capability. This pride was amply demonstrated during our 50th anniversary celebration of the PGDP

last year, which you attended. We have a dedicated workforce that wants to do a good job of cleaning up the site. All they need to make a success of cleanup at the site is the willingness of all parties to let them do their job. Thank you again for your efforts in making this possible.

Senator BUNNING. Thank you.

Mayor Paxton.

STATEMENT OF BILL PAXTON, MAYOR, PADUCAH, KENTUCKY

Mr. PAXTON. Good morning, Senator Bunning. Welcome back to Paducah, Kentucky. It's good to have you here this morning. My name is William F. Paxton. I am testifying today in my capacity as mayor of the city of Paducah. My political career began when I was elected city commissioner in December 1998 and served a 2-year term. I was elected as mayor of the city of Paducah in January 2001, and I very much appreciate this opportunity to testify.

I want to make it clear, Senator, as you said earlier that I'm up here making this presentation, but it is important that everyone knows that this is a team effort between the city and the county. Judge Orazine and I have worked extremely close on both the new generation centrifuge plant coming to Paducah, or not coming to Paducah, and also the cleanup effort. So Judge Orazine and I cooperate on a city/county basis, and the remarks I will make today will be from both of us.

I want to focus on the cleanup of the Paducah Gaseous Plant and the surrounding area. I also want to express my appreciation to you, Senator Bunning, for your efforts on our behalf to move the site cleanup efforts forward. As Mr. Wheeler said, without your involvement I doubt the recent accelerated cleanup agreement would have ever been completed. I also want to thank Secretary List, Governor Patton, Assistant Secretary Roberson for all of their efforts in finalizing this agreement.

When Paducah and McCracken County realized that the Paducah Gaseous Diffusion Plant might not be in McCracken County in the foreseeable future, this area started an aggressive campaign to go after new industry for this area. As of the date of this testimony, we still do not know for sure whether the plant will be located in Paducah, Kentucky, or Portsmouth, Ohio.

This community, the city, the county, the Chamber of Commerce, Greater Paducah Economic Development have worked extremely hard to help USEC to make the decision to locate the plant in Paducah, Kentucky. I have no second thoughts about anything we have done in this regard, but I am now ready for the decision to be made so this community can move forward.

Some of the things that we have done as a community is the city and county working together, along with the other cities and counties in the Jackson Purchase Area, to build a regional park in northern Graves County that will be roughly 2,500 acres in size. We have also hired a top-notch Economic Development Director named Wayne Sterling, and we are currently marketing Paducah, McCracken County both nationally and internationally.

This community is not sitting still, Senator. We are working hard to be successful in diversification if in fact the plant does move to Ohio. This community needs to be successful in cleaning up the site

at the plant. This community is going to do everything it can to get the existing area cleaned up so it can be used in the future for economic development.

The Paducah Gaseous Diffusion location is a wonderful location for future economic development, and we, the city and county, are determined to do everything we can as a community to concentrate on working with our contractors, our officials in Frankfort, our Federal delegation in trying to get this area cleaned up as quickly as possible.

We understand that DOE has determined that a qualified small business can handle the cleanup in the Paducah Gaseous Diffusion Plant. We are fine with this decision and have been meeting over the past month with perspective companies that will be bidding on the cleanup.

As mayor, I am prepared to work closely with our Federal Delegation, Bill Murphie, Secretary Roberson, Governor Fletcher and the entire staff at the plant to hopefully make better progress over the next 5 years than we have over the past 5 years. I have told the contractors that Judge Orazine and I would very much like tours on a regular basis, quarterly or at least semiannually, to make us feel comfortable with the new progress that is going to be made out there. As mayor, I want to be very involved, as does the county judge, in making sure that we are on the right track and that we are cleaning up this area as quickly as possible.

Thank you, Senator, for your efforts in making all this possible, and I look forward to working with you in the future.

Senator BUNNING. Thank you, mayor. We've got a few questions that we would like to ask this panel. Mr. Owens, what do you think about the Department of Labor taking over subtitle B of the compensation program? Do you know of any problems that the Department of Labor is having with subtitle B of the compensation program?

Mr. OWENS. Senator Bunning, in regard to the first part of your question, we feel that it is critical for any progress to be made for the Department of Labor to take over the responsibilities of subtitle D, with the exception of what we stated in our earlier testimony, which would be the claims retrieval or the records retrieval information. In regard to the Department of Labor, as it has been noted, the Department of Labor has the infrastructure. They have the capacity since they have worked through their backlog of claims to move forward with the subtitle M claims. The only unfinished business is the willing payer issue, which we are hopeful that we will be working on next session to address some type of legislative fix.

Senator BUNNING. In bringing that up, the previous panel suggested that Bechtel Jacobs may serve as a willing payer, but DOE is planning to switch to small business contractors to replace Bechtel Jacobs. Who is a willing payer if DOE proceeds with this action? Who do you think a willing payer would be? We've heard how many USEC can handle. It seems like they can handle about five people.

Mr. OWENS. Yes, sir. It would be very difficult for a small business to be able to serve as a willing payer. We think there are tremendous challenges, even with the infrastructure contract as it has been put out in RSP form, for a small business to be successful. So

even with this willing payer issue, we do not feel that they would be able to be successful.

Senator BUNNING. Mr. Liedle, has the Department of Energy requested Bechtel Jacobs to serve as a willing payer? If so, which contractors and subcontractors and over which period of time is the company designated to serve as a willing payer?

Mr. LIEDLE. BJC has had some discussions with DOE, but has not yet been specifically requested to pay an EEOICPA claim. BJC is prepared to follow DOE direction under its contract to pay such claims, in accordance with Kentucky workers compensation law, filed by employees of BJC or its subcontractors. BJC is prepared to discuss, and is also awaiting DOE direction with regard to certain other claims that may be filed by former employees of prior site prime contractors.

Senator BUNNING. What if I asked you?

Mr. LIEDLE. We would have to evaluate it, and if consistent with the testimony that we heard this morning, we would have to figure out how we would do that most effectively and be consistent with State law.

Senator BUNNING. What do each of you think are the biggest obstacles facing the cleanup at the plant? Anybody?

Mr. LIEDLE. I can take a shot at it. I believe the most significant obstacle is getting the strategy on the table, getting input from the communities and getting our customer, the Department of Energy, and the regulators to agree on how that strategy is going to be used. The actual execution of the work that needs to be done at the site, while it may sound complicated, in actuality is not that complicated. And once a very clear road map is laid out for what needs to be done at that site, any reasonably experienced contractor could execute that work.

Mr. PAXTON. In my experience, and Judge Orazine's experience over the past several years, I think it's imperative that there is communication and cooperation between the State and the Federal DOE. There has not been a whole lot of communication between those two areas in the past, and I feel like—like the gentleman said, it is not terribly complicated, but the right hand needs to know what the left hand is doing. And so I'm looking forward to Governor-elect Fletcher's administration, working with you and the Federal people in trying to keep those lines of communication open.

Senator BUNNING. I sincerely believe that the Lexington office and its proximity to Frankfort and the direct line of funding that is supposed to be in line for Paducah and for Portsmouth will implement a faster facilitating of this cleanup. At least, that is my thought right now. I may 3 years from now think differently if we don't get the results we're hoping for. But right now, I am pretty optimistic that they are going to be able to at least accomplish a heck of a lot better job of doing it than sending it through Tennessee, then to Paducah, Kentucky. So we hope that is the case.

Mr. OWENS. May I respond to that question? I think often times when we talk about the ability to cleanup the site, we talk in terms of State and of course, in terms of DOE, but we often leave out major stakeholders. And the actual work at the site is accomplished by the workers in conjunction with the contractor. And so the workers have an institutional knowledge of the site. They have

knowledge of the jobs that are to be performed and oftentimes, when they are asked, they have knowledge of ways in which we can work safer and smarter.

So any discussion relative to the cleanup and ways for it to be more efficiently and safely must include a major stakeholder, which is the workers. I'd like to further state that there has been an inability, and there has been an inability on the part of the Department of Energy, to include not only the local union in Paducah, but the local union in Portsmouth, in any discussion. And we think that is unacceptable, and we stand ready at any time to meet with Mr. Murphie, Secretary Roberson, to address these issues so that everyone can be on the same page. And the major stakeholder, which is the workers, they can add value to discussions.

Senator BUNNING. Thank you, Mr. Owens.

Mr. Liedle, early on sensitivity has been found in a number of Paducah numbers, with at least 42 workers having at least one positive blood test so far and one case of chronic beryllium disease. Is this in Bechtel Jacobs' work scope?

Mr. LIEDLE. Bechtel Jacobs doesn't deal directly with beryllium on-site. The beryllium on-site came from past activities, primarily work for others, and most of that was associated with weapons-related work at the site. However, the potential exposure to our employees is of critical concern to us.

Senator BUNNING. I wanted to follow-up and ask this. What is the plan for monitoring beryllium contamination in the buildings by the Department of Energy to USEC and getting it cleaned up so that we are not making anymore workers sick? What is the expected cost to monitor that? What would that be presently for Bechtel Jacobs?

Mr. LIEDLE. We have already completed a study, and the results came in, I believe, a couple of months ago. And we completed that study. The first step was to look at the past history of the site and give us an indication whether any of the areas on-site, facilities or external areas, could be reasonably expected to have an inventory or to have beryllium present.

Based upon that information, we then conducted sampling and analysis. It is primarily air sampling, but also did what is called a swipe sampling, to determine if beryllium was present. The vast majority of the locations, beryllium was not present, and if it was present, it as present in very low concentrations.

However, there was a number of locations where beryllium was found, and we have made an inventory of that. And when the work would be done in these individual areas, it would be a requirement that appropriate personal protective equipment be used for the protection of beryllium. The actual cost of the beryllium analysis to date, Senator, I don't have the exact number, but it is fairly small, fairly low.

Mr. OWENS. Senator Bunning, might I add? In respect to Mr. Liedle's comments, one of the problems that we have experienced at Paducah during the work for others program and some of the other Department of Defense programs, a lot of that information still remains classified, and it is contained in the classified vaults in Oak Ridge, Tennessee. We have had our Environmental Safety and Health representative to view that information. But due to the

classified nature in the classified areas, samples have not been performed in some of those particular areas.

So although the sampling has been performed to date has not shown as large of a presence of what we initially thought, we are very concerned that some of these other areas that continue to be classified and have not been stated could possibly pose continuing beryllium contamination.

Senator BUNNING. Thank you, Mr. Owens. I have no more questions. And I want to thank, first of all, all of our witnesses who have testified today. I have some additional questions that I will submit for the record, that I would like for you and other witnesses who have testified today to respond to in writing.

For those of you who have additional statements or questions to submit for the record, please submit them to the Senate Energy Committee by Monday, the 15th of December by 5 p.m. on Monday the 15th. The hearing is adjourned.

[Whereupon, at 11:46 a.m., the hearing was adjourned.]

APPENDIX

RESPONSES TO ADDITIONAL QUESTIONS

BECHTEL JACOBS COMPANY, LLC,
Oak Ridge, TN, January 15, 2004.

Mr. RICHARD L. SMIT,
Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, DC.

DEAR MR. SMIT: In reviewing my testimony, I noted one remark which I would like to clarify.

Senator Bunning asked me whether the Department of Energy (DOE) had asked Bechtel Jacobs Company LLC (BJC) to serve as a willing payer for exposure claims filed by workers at the Paducah Gaseous Diffusion Plant. While DOE has not yet provided us a written request or contract direction regarding payment of these claims, BJC has had some verbal discussions with DOE on this subject.

I would like to clarify that BJC is prepared to follow DOE direction under its contract to pay claims, in accordance with Kentucky workers compensation law, filed by employees of BJC or its subcontractors. BJC is prepared to discuss, and is also awaiting DOE direction with regard to certain other claims that may be filed by former employees of prior site prime contractors.

I appreciate the opportunity to review the transcript and to provide further clarification.

Sincerely,

STEVEN D. LIEDLE,
President and General Manager.

U.S. GENERAL ACCOUNTING OFFICE,
Washington, DC, January 27, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate.

DEAR MR. CHAIRMAN: On December 6, 2003, I testified before your committee at a field hearing on DOE's cleanup of its Paducah, Kentucky, Uranium Enrichment Plant.[1] This letter responds to your request that we provide answers to posthearing questions submitted for the record. The questions and responses follow.

Our responses to these questions are based on ongoing work. We expect to issue our final report on the Paducah cleanup in April 2004. For additional information on our work on the Paducah cleanup, please contact me on (202) 512-3841.

Sincerely,

ROBIN M. NAZZARO, Director,
Natural Resources and Environment.

RESPONSES TO QUESTIONS FROM THE COMMITTEE

Question 1. Congress has increased its appropriated funding for cleanup at the Paducah plant over the last several years. For each fiscal year from fiscal year 2000 through the current fiscal year, how much of the annual funding that Congress appropriated for the cleanup at the Paducah plant has DOE spent on cleanup?

Answer. As I testified on December 6, 2003, from 1988 through 2003, DOE spent $823 million, adjusted to 2002 constant dollars, on the Paducah cleanup. Of this total, DOE spent $372 million (45 percent) for a host of operations activities, includ-

[1] U.S. General Accounting Office, *Nuclear Waste Cleanup: Preliminary Observations on DOE's Cleanup of the Paducah Uranium Enrichment Plant*, GAO-04-278T (Washington, D.C.: Dec. 6, 2003).

ing general maintenance and security; $298 million (36 percent) for actions to clean up contamination and waste; and almost $153 million (19 percent) for studies to assess the extent of contamination and determine what cleanup actions were needed.

As indicated in the table below, appropriations to Paducah have ranged from $62.2 million to $113.1 million, and DOE has spent amounts ranging from $17.7 million to $61.6 million on actions to cleanup the contamination and waste at the site since fiscal year 2000.

Table 1: APPROPRIATIONS AND EXPENDITURES AT PADUCAH, IN ACTUAL DOLLARS, FISCAL YEARS 2000-2003

[Dollars in Millions]

Year	Amount appropriated *	Amount spent on cleanup actions **	Percent of expenditures spent on cleanup actions ***
2000	$ 62.2	$17.7	33%
2001	104.0	39.4	49%
2002	111.0	61.6	53%
2003	113.1	55.2	48%

Source: GAO analysis of DOE data.

Note: Fiscal year 2003 is the last year for which complete expenditure data is available. Appropriations from the Uranium Enrichment Decontamination and Decommissioning Fund to Paducah for fiscal year 2004 are $120.2 million.

* Starting in fiscal year 2001, these figures include appropriations to Paducah for uranium activities and safeguards and security.

** Includes expenditures on remedial and removal actions, and waste treatment and disposal at Paducah.

*** Percent of annual expenditures does not equal percent of appropriations because DOE had carryover funds available at Paducah during these years.

Question 2. Has the GAO uncovered any indication that DOE has misused any of the appropriated funds for the Paducah plant?

Answer. During the course of our investigation we have not found any indication that DOE has misused any of the funds appropriated to Paducah. In addition, our analysis of the percentage of funds expended for cleanup activities at Paducah indicates that they are similar to those DOE's Office of Environmental Management found for all of its cleanup programs: only about one-third of the environmental management program budget goes toward actual cleanup and risk reduction work, with the remainder going to maintenance, fixed costs, and miscellaneous activities.[2]

DEPARTMENT OF ENERGY,
CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, February 20, 2004.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On December 6, 2003, Gerald Boyd, Manager, Oak Ridge Operations Office, accompanied by William Murphie, Manager of the Paducah and Portsmouth Project Office, testified regarding cleanup at the Department of Energy's Paducah plant in Paducah, Kentucky. Mr. Tom Rollow, Director, Office of Worker Advocacy, also participated in the hearing.

Enclosed are the answers to eleven questions submitted by Senator Bunning directed to Mr. Boyd and Mr. Murphie, and eight questions directed to Mr. Rollow. The answer to Mr. Rollow's question number five is being prepared and will be forwarded to you as soon as possible.

If we can be of further assistance, please have your staff contact our Congressional Hearing Coordinator, Lillian Owen, at (202) 586-2031.

Sincerely,

RICK A. DEARBORN,
Assistant Secretary.

[Enclosure]

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[2] Department of Energy, *A Review of the Environmental Management Program*, (Washington, D.C., Feb. 4, 2002).

RESPONSES OF GERALD BOYD, MANAGER, OAK RIDGE OPERATIONS OFFICE, AND WILLIAM MURPHIE, MANAGER, PORTSMOUTH/PADUCAH PROJECT OFFICE TO QUESTIONS FROM SENATOR BUNNING

PAYMENT OF REGULATORY VIOLATIONS

Question 1. How much has the DOE spent on paying regulatory violations that the state has issued? How has this delayed the cleanup at the Paducah plant?

Answer. The Department has agreed to pay the Commonwealth of Kentucky a $1 million penalty [and to perform an Environmental Project valued at $200,000 in order] to settle outstanding regulatory violations alleged by the Commonwealth.

The magnitude of the penalties has not caused any separately identified delay to the project. The process to resolve the regulatory issues which resulted in the agreed upon penalty, and lengthy period involved for resolving other outstanding disputes that have been sources of delay to the project.

CARRYOVER FUNDS

Question 2. The G.A.O. stated that the DOE has had carryover funds for the past several years at the Paducah plant. Why has the Department not been able to spend all of the funds available for cleanup?

Answer. For any given year, the Department anticipates a certain amount of carryover funding for various reasons, including continuity of operations, Departmental grants or awards that have not been fully expended, and funds for fixed price multi-year contracts. Additional project carryover funding is tied to activities that were delayed. The actual amount of carryover funding due to schedule delay for Paducah at the end of FY 2003 was about $20 million. The delay in spending these funds was due primarily to the unavailability of waste disposal, both on-site and off-site, and the contractor's suspension of waste shipments resulting from an off-site shipment that did not meet the Nevada Test Site disposal criteria upon receipt. On-site disposal was primarily delayed by the dispute with the regulators and approval of a permit modification.

Some activities were delayed due to disagreement with the regulators, but the Department attempted to offset these delays where it could with "work- arounds." Unfortunately, our inability to dispose of waste reduced our ability to adequately find alternative activities to offset the delays and the Department was not able to spend all the funds it anticipated to spend in FY 2003. The Department anticipates the carryover at the end of this calendar year to be significantly less as a result of the increased work currently ongoing at the site.

PADUCAH PROJECTED CLEANUP DATE

Question 3. Prior to the Letter of Intent and the proposed site management plan, the Department of Energy's projected completion date for the Paducah cleanup was 2030. What changes did the Department make in its cleanup scope and approach to achieve the 2019 accelerated completion date given in the November 15, 2003, Site Management Plan? What assurances can the Department provide that it will be successful in implementing the accelerated cleanup plan and complete the cleanup as scheduled?

Answer. There is no significant change in scope between the 2030 and 2019 baselines. The principle schedule acceleration results from the Administration's commitment to increase the funding targets from the previous baseline. Additional schedule acceleration is available pending agreement with the regulators on future cleanup decisions.

The Paducah cleanup is still in its early stages of decision-making and subject to compliance with the Federal Facility Agreement, the Agreed Order, and future environmental regulatory decisions. Without the necessary Records of Decision that some other cleanup sites have already completed, Paducah's cleanup plan is subject to uncertainties and unknowns that will impact the current schedule. The Department believes additional acceleration is available and that the recently signed Agreed Order with Kentucky will reduce the frequency of delays and disagreements. The Letter of Intent also provides for an approach that should support accelerated cleanup.

At the same time, beryllium, classified materials, nuclear safety, and unexpected contamination arising in areas not previously expected, will tend to off-set project acceleration. In response to Congressional and stakeholder expectations, the Department has implemented a new Project Office in Lexington to increase the direct management communication and the project has been put on the Deputy Secretary's Quarterly Review list. We will continue to keep Congress informed in the event of any changes as soon as possible.

CLEANUP AGREEMENT

The G.A.O. in its recent investigation has found the main challenge in completing the cleanup is achieving agreement among the stakeholders—the Department, the state, and the E.P.A.

Question 4a. Can you explain why you have had problems coming to an agreement with the other parties on the plans for the cleanup and what you see as the biggest challenges to coming to an agreement in the future?

Answer. It has been difficult to reach agreements with the other parties for many reasons. There were disagreements at the staff level, including technical disagreements on risk reduction that remained at the staff level for too long before senior management could bring the relative policy perspectives to the dispute. There were also some disagreements about financial and funding issues.

We have now moved beyond the point of formal dispute and are working cooperatively to get the project back on track. Our biggest challenge in coming to agreement in the future will likely revolve around risk-based decision making. In this regard, the Department has initiated a major effort with our stakeholders across all the sites to develop Risk-Based End State documents. We will be working to reach consensus on this issue and believe our approach will significantly reduce the potential for disagreement later when preparing the final decision documents at Paducah.

Question 4b. What obstacles is the DOE currently facing with the accelerated cleanup agreement and how are these challenges affecting cleanup at the site?

Answer. The Department is still working with the regulators on the proposed FY 2004 Site Management Plan. This document formalizes the concepts of the Agreement with the Commonwealth and will formalize the tri-party agreement on the path forward. At this time, nothing has been identified that would warrant notification that the Plan will not be agreed upon. In the interim, the full implementation of the concepts in the recently signed Letter of Intent with Kentucky remains to be fully implemented within the tri-party Federal Facility Agreement. In addition, the Agreed Order has been challenged in court by a limited number of stakeholders. This continues to cloud the finality of the settlement and creates uncertainty with its implementation. These issues are not directly impacting the cleanup at this time.

DUTIES OF LEXINGTON OFFICE

Question 5. Can you explain the expected duties of the Lexington Office?

Answer. The Lexington Office will combine the responsibilities previously held by Oak Ridge Operations in Tennessee and the Paducah and Portsmouth site offices. The Lexington Manager will have direct responsibility for the sites and report directly to the Assistant Secretary for Environmental Management in Washington, D.C. The scope of these responsibilities includes all the environmental cleanup actions, including the Depleted Uranium Conversion Project, the continuing Cold-Standby Operations at Portsmouth, and the transfer of the former centrifuge facilities to USEC, Inc. Activities performed with Environmental Management funding will be managed by the Lexington Office with staff at each site. Oak Ridge Operations will continue to administer the lease held by the USEC, Inc., for its commercial operations at both sites.

NEW CONTRACTS AT PADUCAH

Question 6. Can the Department of Energy explain its plans for the new contracts at the Paducah plant?

Answer. The Department is competing the scope of the current Bechtel Jacobs Company (BJC) contract to perform environmental remediation and infrastructure services at DOE's Portsmouth and Paducah sites. BJC's contract to perform environmental cleanup at Portsmouth and Paducah was separated from the Oak Ridge contract in 2003 as part of the establishment of the new Portsmouth/Paducah Project Office in Lexington, Kentucky.

In November 2003 and January 2004, DOE issued two solicitations, one for infrastructure services and the other for environmental remediation services at both sites. These new procurements are part of the Department's initiative to increase the number of small business prime contracts awarded by DOE. It is anticipated that two separate contracts will be awarded for each site; i.e., each site will have a contract for the environmental cleanup and another for maintaining the site infrastructure.

As noted, these activities are both part of the current BJC contract, and have been split to both allow the remediation contractor to focus on cleanup and to increase the amount of work available to small business. DOE intends to award the

contracts this summer and provide for a transition period with BJC for work under each contract before the end of the fiscal year.

SMALL BUSINESS CONTRACTS AT PADUCAH

Question 7. The Department of Energy is considering issuing two new contracts to small business contractors at the Paducah site. Why is the DOE considering issuing a small business contract at the Paducah site? Does the DOE believe that a small business contract will be an efficient way to achieve cleanup given all the complexities at the Paducah site? Does the Department believe that the new contracts will delay cleanup at the plant? Has the DOE issued small business contracts at any other DOE site for similar size work that is expected at the Paducah site?

Answer. The DOE Environmental Management (EM) strategy for the Paducah site includes issuing two new small business contracts, one for infrastructure services and one for environmental remediation services. These anticipated contracts are part of a DOE commitment to increase the number of prime Federal government contracts awarded to small businesses in accordance with its Small Business Policy that supports the Administration's Small Business Agenda.

It is anticipated that two separate contracts will be awarded to small businesses for work at the Paducah site. The scope of the infrastructure contract must be in accordance with NAICS Code 561210 (Small Business size standard $30M gross annual receipts) and the scope of the environmental remediation contract must be in accordance with NAICS Code 562910 (Small Business size standard 500 employees). The anticipated contract types are cost-plus-award-fee (CPAF) and cost plus incentive fee (CPIF), respectively.

The Contracting Officer is required by FAR 19.502(b) to set aside any acquisition in which there is a reasonable expectation that the solicitation will result in offers from at least two or more responsible small business concerns and award will be made at fair market prices.

Additional market survey analysis was conducted in December to validate the small business set-aside decision before release of the Request for Proposal (RFP) for environmental remediation services. DOE concluded that it is likely that it will receive offers to this RFP from at least two responsible small business concerns at fair market prices. Small businesses interested in these solicitations have responded to the Department's Sources Sought Announcements with capability statements, attended Department-sponsored Small Business Conferences, and attended Pre-Proposal Conferences/Tours. Teams have been formed to propose on these solicitations and appear to possess the capabilities required to accomplish the complex scope.

Therefore, the Department believes this contracting approach to be efficient with the potential for significant innovation without delaying cleanup of the Paducah site. We anticipate that the competitive environment will help to re-focus and accelerate cleanup activities.

Recently, the Department set aside other work for small business, including the decontamination and decommissioning work at the Fast Flux Test Facility in Washington State and the Columbus Closure Project awarded in November 2003. However, the Portsmouth/Paducah environmental remediation solicitation is the largest set-aside for small businesses by estimated cost to date for the Environmental Management Program.

NEW INFRASTRUCTURE RFP

Question 8. Can the DOE explain its new Infrastructure RFP? Why does the DOE believe that the RFP will continue to provide adequate protection for all employees as previous contracts provided? Why did the DOE change the definition of "Grandfathered Employee" and what effect will this have on existing grandfathered employees? Will the DOE issue a draft RFP for the Remediation Contract?

Answer. DOE intends that the new infrastructure contractors, at the Portsmouth and Paducah sites, will provide work needed to maintain the sites. The scope is essentially the same as that currently being performed by Bechtel Jacobs Company (BJC). This work includes, but is not limited to, surveillance and maintenance of facilities, janitorial services, grounds maintenance, site security, environment, safety and health, and real and personnel property management.

The anticipated infrastructure service contracts require that the infrastructure contractors' human resource actions meet the following objectives: achieve an orderly transition; be fair to incumbent employees and maintain a productive and flexible work force; minimize the cost of transition and its impact on other DOE programs; and promote those practices that will result in stable collective bargaining relationships.

DOE believes adequate protection will continue to be provided for employees. The solicitation requires the contractors to comply with specific and stringent hiring preferences. Credit for years of service will be protected for BJC employees and employees of BJC's first- and second-tier subcontractors. Pension benefits of employees (BJC, and first and second tier subcontractors) who are vested in the BJC Multiple Employer Pension Plan (MEPP) will be protected, as well as their other health and welfare benefits under the BJC Multiple Employer Welfare Arrangement (MEWA). The new contractors will be required to comply with the terms and conditions of these plans. This also means an individual who may not currently be an employee of BJC, but has the right to participate in the MEPP, may still participate in the MEPP, if hired by a participating employer (e.g., the new contractors or BJC).

DOE has ensured adequate protection for the individuals, other than those identified above, by requiring that the contractor provide market-based retirement and medical benefits, which are competitive for the industry. The contractor cannot provide less than what the competitive market is providing for employees in the same industry. A reduction in the benefits the employees are currently receiving will only occur if the employees are receiving more than what is currently provided in the competitive marketplace. The non-pension benefits will be maintained at a level that is substantially equal in the aggregate for the first year. After that time, the contractor will be required to provide these benefits based upon what the market is providing and competitive for the industry. The solicitations comply with all applicable laws and guidance regarding continuity and benefits. The Department believes that reasonable protection has been provided for the workforce.

Terms and conditions of employment, including salary and benefits of employees of the new contractor, BJC, and first- and second-tier subcontractors who are members of Paper, Allied-Industrial, Chemical & Energy Workers (PACE), or any other bargaining unit will be governed by the applicable collective bargaining agreements.

The definition of "Grandfathered" as contained in the solicitation is interpreted by DOE as being more protective than the definition of the term currently being used in other contexts. All persons, including those employed by USEC, retain their interests and/or rights under the MEPP, including the right to participate if they return to employment with BJC or the new contractor, consistent with the terms and conditions of the MEPP. Although there has been some confirmation on this matter, additional clarification was provided by the procurement's website on January 30, 2004.

The solicitation for environmental remediation services at the Portsmouth and Paducah sites was issued on January 16, 2004. Proposals are due March 16, 2004. No draft solicitation was issued.

USE OF UNPROVEN TECHNOLOGIES

Question 9. The G.A.O. in its 2000 report on the cleanup at the Paducah site found that one challenge to the cleanup was the Department's use of unproven technologies, such as its experimenting with technology to eliminate high concentration levels of T.C.E. contamination. The Department has said its analysis of the data from its latest experiment to clean up T.C.E. will be available soon. How much has the Department spent on trying to cleanup the T.C.E. contamination at the site? Why has the Department not just dug up the area instead of spending so much money on unproven technologies?

Answer. The Department has spent approximately $55 million on groundwater cleanup at Paducah to date. This includes: the "lasagna" technology; six-phase heating; permeable treatment zone technology; "C-sparge" technology; and the pump and treat systems for the northwest and northeast plumes. Annual operation of the pump and treat systems cost approximately $2 million per year.

Digging up the contaminated area would involve exhuming material in both the shallow vadose zone and the groundwater. The plumes extend some 150 feet deep and to the river mixing zone area. Also, the extent of the excavation would encroach ongoing USEC enrichment operations and adversely impact its commercial enrichment process. In addition, any such clean up would be subject to the cleanup decision process under the Federal Facility Agreement.

The path proposed by the Department for groundwater remediation is being pursued in accordance with the Federal Facility Agreement and will involve stakeholder and regulatory agreement. The results of the six-phase treatability study indicate that our path forward will remove the most significant source of TCE at the site without impact to ongoing USEC enrichment operations.

BERYLLIUM CONTAMINATION

Question 10. Beryllium sensitivity has been found in a number of Paducah workers with at least 42 workers having at least one positive blood test so far and one case of chronic beryllium disease. What is the plan for monitoring beryllium contamination in buildings leased by Department of Energy to USEC and getting it cleaned up so we are not making any more workers sick? What is the expected cost of the monitoring and cleanup, and what is the schedule?

Answer. A substantial sampling campaign was undertaken in May-June 2003. All of the results from the nearly 700 samples taken have been shared with the USEC, Inc., and the union. Only a very limited number of samples have been found to contain trace levels of beryllium. Administrative controls have been implemented to prevent exposure and the spread of contamination to site workers. Additional samples will be taken to increase our database and to collect samples in some additional areas that have subsequently been identified as potentially contaminated. Total sampling costs are estimated to be about $400,000.

Once sampling is complete, decisions regarding the need for decontamination prior to the final plant decommissioning will be made based upon current use and contamination levels. Only at that time will we be able to estimate the cost, if any. Based on the very low levels of beryllium detected to date, it is our expectation that the current monitoring program will be sufficient and any incremental monitoring cost will be nominal. In addition, the incremental cost for cleanup is not expected to be significant given the current requirements for ensuring radiological safety when decommissioning the plants.

SCHEDULE FOR DUF_6 PLANT

Question 11. What is the schedule for groundbreaking, construction, and operations for the DUF_6 plant? Are there any expected delays in meeting statutory and contractor schedules for the DUF_6 plants?

Answer. The current plan for groundbreaking is July 31, 2004. Groundbreaking is expected to include limited work for contractor mobilization, ground clearing, and some site preparation leading to full construction following approval of the final design. This schedule is subject to completion of the appropriate National Environmental Policy Act (NEPA) documentation. The schedule for completing the remaining NEPA process is very tight. The Department will perform parallel reviews and work extremely hard to make this schedule; it is a high priority and has senior management's personal attention. The schedule for full construction following final design approval will be Fall 2004. The schedule for operations is subject to completion of the final design and preparation of a completed baseline by the contractor. A revised construction data sheet is provided in the FY 2005 Budget Request and reflects the Department's most recent estimate for the start of operations, the 2nd Quarter of 2008.

RESPONSES OF TOM ROLLOW, DIRECTOR, OFFICE OF WORKER ADVOCACY, DOE TO QUESTIONS FROM SENATOR BUNNING

Question 1. Why does the DOE believe that the Department of Labor has been able to complete more cases under Subtitle B of EEOICPA program than what the Department of Energy has completed under Subtitle D?

Answer. The EEOICPA Part D program administered by DOE, and the Part B program administered by DOL, utilize fundamentally different adjudication schemes. The statute established two completely different programs covering a different (though sometimes overlapping) range of illnesses and involving different procedures and structures.

Part D of EEOICPA involves work-related exposures to a wide variety of toxic substances that may involve a very wide range of associated illnesses or conditions. Establishing and documenting these exposures requires document searches, including related employment, medical, exposure, and industrial health records, as well as relevant facility industrial health data.

In accordance with EEOICPA, Part D claims are also considered under different procedures. EEOICPA also mandates a "physician panel" review process for Part D applications. The law has complicated the administration of these panels. Part D establishes a cap on the rate of pay for physician panel doctors, which severely limits the number and availability of physicians that are qualified and willing to commit significant hours to working on a physician panel. As a result, even once cases are processed up to the physician panels, applications have been further delayed be-

cause there have been insufficient numbers of physicians willing to work on the cases.

Moreover, and as the preamble to DOE's final EEOICPA Part D rules makes clear, "a State Agreement with a particular State is necessary before [DOE] can refer to a Physician Panel a claim by an applicant who will file his/her worker's compensation claim in that State. Part D is clear that any action by DOE must be in accordance with the terms and conditions of the relevant State agreement. Currently, there are cases that are being held from moving forward to Physicians Panels because DOE and the relevant States have not yet reached closure on a State Agreement. Further, at the onset of this program, no State Agreements could be signed until the notice and comment rulemaking was completed and the Final Rule was issued, which occurred in August 2002.

In addition, the current Physician Panel rule may not allow for processing of applications in the fastest and most efficient way possible. The procedures set forth in the rule were developed based on the input of many commentators including organizations representing DOE contractor employees. Yet, the pace at which the Physician Panel rule has allowed DOE to process applications has not met DOE's expectations or, it appears, the expectations of Congress and the worker community. This is exacerbated by the lack of sufficient physicians willing and qualified to work on the Panels, as discussed above, and the fact that almost all of them are working part-time, requiring extensive coordination between the physicians, coordination which initial data indicates doubles the time to make the determination. DOE is working to streamline the Physicians Panel process.

Furthermore, the number of claims filed under Part D have almost tripled expectations, which has contributed to the backlog of cases. DOE continues to work to address the EEOICPA Part D issues that are within its control, and has improved case processing up to the physician panels more than seven fold over the last nine months.

Question 2. Has the DOE asked any contractor at the Paducah plant to act as willing payers under Subtitle D?

Answer. In accordance with the Bechtel Jacobs Company (BJC) current contract at Paducah, BJC will handle workers' compensation claims for BJC employees' injuries or exposures as well as workers' compensation claims from workers of some predecessor contractors [Lockheed-Martin Energy Systems (LMES), Martin-Marietta Energy Systems (MMES), and Union Carbide]. For positive physician panel findings associated with the Paducah cases, which involve injury or exposure due to work at BJC or one of the predecessor contractors (LMES, MMES and Union Carbide), the DOE will direct BJC not to contest these cases. This does not include subcontractors.

Question 3. Can Bechtel Jacobs serve as a "tail" for Paducah employees of all previous contractors and subcontractors at the Paducah plant and serve as their willing payer? For which previous contractors and subcontractors do you believe that Bechtel Jacobs can serve as a willing payer?

Answer. The BJC current contract provides that BJC will handle workers compensation claims of some predecessor contractors (LMES, MMES and Union Carbide). Other contractors are not covered under the current contract, nor are subcontractors.

DOE has undertaken to review and identify at the major DOE sites which contractors fall within the parameters set in EEOICPA and DOE's regulations whereby DOE "may to the extent permitted by law, direct the DOE contractor who employed the applicant not to contest such claim or such award." However, only with sufficient numbers of positive determinations of causation (as defined in 10 C.F.R. 852) and the results of subsequent State workers compensation proceedings will the true extent of any "willing payer" issues be ascertainable. Workers for which DOE cannot order a contractor to not contest may in fact be paid by insurance proceeds, former DOE contractors, or various state funds. On the other hand, some contractor employees for whom DOE can issue an order not to contest may receive no payment because they are entitled to no benefits under state law and/or for some other reason.

EEOICPA Part D does not authorize DOE to initiate a legal relationship between BJC and other private companies such as subcontractors for the purpose of providing for a so-called "willing payer". Part D simply states that "the Secretary . . . may, to the extent permitted by law, direct the Department of Energy contractor who employed the applicant not to contest such claim or such award." Part D also does not authorize DOE to give directives to persons who are not DOE contractors. In the preamble that accompanied DOE's final EEOICPA regulations, DOE stated that it believes the regulations provide for the maximum level of assistance to claimants seeking workers compensation. For example, section 852.19(e) states: "All

workers' compensation costs incurred as a result of a workers' compensation award on a claim based on the same health condition that was the subject of a positive Physician Panel determination are allowable, reimbursable contract costs to the full extent permitted under the DOE contractor's contract with DOE."

Question 4. If the DOE rebids the contract at the Paducah plant, will the new contractor be able to serve as a willing payer "tail" for employees? For which previous contractors and subcontractors do you believe that the new contractor could serve as a willing payer?

Answer. The new contractors will be responsible for their own employees in accordance with applicable state law and the terms and conditions of their contracts. DOE is currently considering various options with respect to how new contracts should deal with any responsibility for workers compensation claims asserted against previous contractors at Paducah. With regards to any new contractor's workers compensation liabilities for the previous employer's contract employees, such liability is determined in the negotiations between the incumbent and the incoming contractor during the turnover, if there is one. Therefore, it would be impossible to determine such relationships prior to a new contractor assuming the contract for a DOE facility.

As noted above, the issue of where DOE can and cannot issue directives to not contest workers compensation claims is not clear cut, and is affected by years of contractor relationships and turnovers. Therefore, DOE has undertaken to review and identify at the major DOE sites which contractors fall within the parameters set in EEOICPA and DOE's regulations whereby DOE "may to the extent permitted by law, direct the DOE contractor who employed the applicant not to contest such claim or such award." However, only with sufficient numbers of positive determinations of causation (as defined in 10 C.F.R. 852) and the results of subsequent State workers compensation proceedings will the true extent of any "willing payer" issues be ascertainable. Workers for which DOE cannot order a contractor to not contest may in fact be paid by insurance proceeds, former DOE contractors, or various state funds. On the other hand, some contractor employees for whom DOE can issue an order not to contest may receive no payment because they are entitled to no benefits under state law and/or for some other reason.

Question 5. What arrangements has the DOE made with USEC to serve as a willing payer for claims, including subcontractor claims, at the Paducah site?

Answer. The Administration is continuing to develop the response to this question and DOE will provide an update as soon as possible.

Question 6. What percentage of claims does DOE believe it will have a willing payer for Paducah claims under Subtitle D of EEOICPA?

Answer. At this time, DOE does not have a reliable estimate of the percentage of Part D applications with respect to which the applicants can submit State workers compensation claims and for which there will be a contractor to which DOE can issue a directive not to contest the claim. DOE does believe, however, that a significant percentage of the claims will be covered by a "willing payer."

As noted above, the issue of where DOE can and cannot issue directives to not contest workers compensation claims is not clear cut, and is affected by years of contractor relationships and turnovers. Therefore, DOE has undertaken to review and identify at the major DOE sites which contractors fall within the parameters set in EEOICPA and DOE's regulations whereby DOE "may to the extent permitted by law, direct the DOE contractor who employed the applicant not to contest such claim or such award." However, only with sufficient numbers of positive determinations of causation (as defined in 10 C.F.R. 852) and the results of subsequent State workers compensation proceedings will the true extent of any "willing payer" issues be ascertainable. Workers for which DOE cannot order a contractor to not contest may in fact be paid by insurance proceeds, former DOE contractors, or various state funds. On the other hand, some contractor employees for whom DOE can issue an order not to contest may receive no payment because they are entitled to no benefits under state law and/or for some other reason.

Question 7. Mr. Greathouse testified that self-insurance at Paducah did not extend beyond 1984 for DOE/USEC prime contractors. What happens to illnesses that arose prior to that time?

Answer. Workers compensation claims from employees of BJC at Paducah (and LMES, MMES, and Union Carbide) will be processed by BJC through September 2004. This includes illnesses that are due to employment at Union Carbide prior to 1984.

Question 8. Will there be a willing payer for claims owned by private insurers?

Answer. Private workers' compensation insurers will pay claims as dictated by state law and the terms of their policy. DOE cannot forecast those outcomes. However, DOE is not aware of any private workers compensation insurers who are also

DOE contractors subject to do not contest directives for state workers compensation claims arising from Part D positive determinations.

Question 9. What happens to claims for those employed by subcontractors, and will there be a willing payer for these claims?

Answer. Employees of subcontractors are covered by the workers compensation arrangements of the companies for which they worked. Employees of DOE subcontractors may submit Part D applications to DOE, and DOE will provide assistance to those workers. Among other assistance, the workers can receive a physician panel ruling. Whether subcontractors can be "willing payers" of workers compensation claims filed by Part D applicants, and whether DOE can issue a do not contest order to that subcontractor, depends upon their contractual relationships with their prime contractors and those contractors' relationships with DOE.

As noted above, the issue of where DOE can and cannot issue directives to not contest workers compensation claims is not clear cut, and is affected by years of contractor relationships and turnovers. Therefore, DOE has undertaken to review and identify at the major DOE sites which contractors fall within the parameters set in EEOICPA and DOE's regulations whereby DOE "may to the extent permitted by law, direct the DOE contractor who employed the applicant not to contest such claim or such award." However, only with sufficient numbers of positive determinations of causation (as defined in 10 C.F.R. 852) and the results of subsequent State workers compensation proceedings will the true extent of any "willing payer" issues be ascertainable. Workers for which DOE cannot order a contractor to not contest may, in fact, be paid by insurance proceeds, former DOE contractors, or various state funds. On the other hand, some contractor employees for whom DOE can issue an order not to contest may receive no payment because they are entitled to no benefits under state law and/or for some other reason.

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