A REVIEW OF DOE PADUCAH SITE OPERATIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

JANUARY 19, 2006

Serial No. 109-60

Printed for the use of the Committee on Energy and Commerce

Available via the World Wide Web: http://www.access.gpo.gov/congress/house

U.S. GOVERNMENT PRINTING OFFICE

26-814PDF WASHINGTON : 2005

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A REVIEW OF DOE PADUCAH SITE OPERATIONS

THURSDAY, JANUARY 19, 2006

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
Paducah, KY.

The subcommittee met, pursuant to notice, at 10:00 a.m., at the Paducah City Hall, 300 South 5th Street, Paducah, Kentucky, Hon. Ed Whitfield [chairman] presiding.

Members Present: Representatives Whitfield and Stupak.

Staff Present: Mark Paoletta, Chief Counsel for Oversight and Investigations; Dwight Cates, Professional Staff Member; Jonathan Pettibon, Legislative Clerk; and Edith Holleman, Minority Counsel.

MR. WHITFIELD. If I could have everyone's attention, please. I certainly want to thank all of you for being here this morning. As you know, this is the Subcommittee on Oversight and Investigations for the full Committee on Energy and Commerce, and today we're going to have a hearing on simply reviewing DOE's Paducah site operations.

Before we start, I certainly want to welcome Holly Healy, who is a district aide for Congressman John Shimkus of Illinois, who serves on the Energy and Commerce Committee.

And T.C. Freeman is here representing Senator Jim Bunning. We appreciate your being here, T.C.

I will tell you this is the first field hearing that the Subcommittee on Oversight and Investigation of the House Energy and Commerce Committee has convened since I was chosen Chairman, and I cannot think of a better forum than here in Paducah to review DOE's Paducah site operations.

I certainly want to welcome the Ranking Member on the Subcommittee, Mr. Bart Stupak of Michigan, for whom it was not easy to get to Paducah, because he was caught on the tarmac in Detroit for a number of hours yesterday. But I really appreciate the extra effort that he made to get here, and I've enjoyed serving with him on this Subcommittee.

And, of course, I want to welcome all of our distinguished witnesses and guests, and I will introduce the witnesses in just a moment. But we're here today to focus on several issues relating to the operation of the Paducah Gaseous Diffusion Plant, a plant that has been operational

for over 50 years and which today is the sole remaining domestic provider of enriched uranium which fuels our nation's 103 nuclear power plants.

Since my election to Congress over 11 years ago, I really cannot recall a time when my staff and I were not involved in some way on an issue relating to the plant and/or its workforce. As a matter of fact, one of my very first legislative endeavors was the enactment of two amendments in the USEC Privatization Bill to protect workers' pension, health benefits, and collective bargaining rights during the transition from USEC, the quasi government entity, to USEC, the private corporation.

Since that time, we've enacted legislation to restore the arming and arrest authority of the security guard force. We've examined foreign competition and the impact of the Russian HEU Deal on our on domestic uranium industry. And as a result of DOE's acknowledgement that workers on the plant were unknowingly exposed through the years to dangerous levels of radiation and other toxic substances, we've enacted two separate entitlement compensation programs to provide financial assistance and health care benefits to workers who became ill as a result of their exposure to radiation, beryllium, silica, and other toxic chemicals. And to date, I might mention that 2,599 workers here in the Paducah area from the Paducah plant have received compensation for health care in an amount totaling $277 million plus their medical benefits.

We've also enacted legislation to require the construction of two depleted uranium hexafluoride conversion facilities, one at Portsmouth and one in Paducah, to safely convert the contaminated material in over 37,000 cylinders. And this, of course, will create a lot of new jobs.

We secured the seed money for the former Paducah Area Community Reuse Organization to build, design, and construct an eight-county industrial park complex. And despite USEC's decision to build their next generation centrifuge plant at Portsmouth, we're happy to say that the Paducah plant is still in operation, and we hope that it will continue to be so for some time.

Of course, every year during the appropriation process we are challenged to continue the money to continue the cleanup of this plant. And together we are preparing for the ultimate closure of the plant and the economic impact that closure will have on McCracken County and the surrounding communities, and we want to be prepared for that if and when that time does come.

But today we're focused on four basic issues. First, I would like to discuss matters relating to the Department's interpretation of Section 633 of the Energy Policy Act of 2005. I helped draft this provision last year

along with Representative Ted Strickland of Ohio. We intended to protect and secure the pension and health care benefits for employees at the Portsmouth and the Paducah sites when DOE changes its contractors at those facilities or when hourly employees transfer from employment at USEC to employment with a DOE contractor.

Last week, the Department of Energy provided us with a lengthy interpretation of this provision -- and I would say we do not agree with it. I look forward to working out these differences with the Department, and we will seek further clarification through additional legislation if necessary. I would also say that there is a possibility there may be a lawsuit on this issue.

Second, we will examine the status of the transition to a new environmental remediation contractor at the Paducah site. Environmental remediation work at Paducah will continue to grow over the next several years as the Department focuses more attention on environmental cleanup, facility decontamination and decommissioning, and waste management.

Last year, the Department awarded the Paducah environmental remediation contract to North Wind Paducah Cleanup Company, but later retracted the award and reopened the bidding process in response to several protests that had been filed. Finally, on December 27th of last year, the Department awarded this contract to Paducah Remediation Services.

Third, we want to explore opportunities to sell the approximately 9,700 tons of nickel at the Paducah site. The inventories of nickel are significant, and it is a valuable commodity. Although the nickel is slightly contaminated with uranium, it would be a mistake in my view to simply treat this valuable asset as a waste to be shipped to a disposal facility.

I'm encouraged that the Department has included a requirement in the new environmental remediation contract to develop and evaluate alternate uses of the nickel ingots and acquire competitive bids for its reuse. It is my understanding that the contractor is required to present its evaluation of the options to reuse the nickel to DOE by July 30th, 2006.

I hope there is no significant delay in this effort, and I suggest that a portion of the net proceeds be allowed to go to the local community as it focuses on reindustrialization as a result of the anticipated closure of this plant.

And, finally, I want a full update today on DOE's efforts to investigate possible phosgene contamination in uranium hexafluoride cylinders at the site. Last year, the DOE Inspector General issued a memo regarding the status of potential phosgene contamination inside

cylinders of uranium hexafluoride stored at Paducah, Portsmouth, and East Tennessee Technology Park.

A concern was raised regarding several canisters that were acquired from the Army Chemical Warfare Service that were formerly used to store phosgene, a chemical warfare agent. DOE moved quickly to assess the 2,541 cylinders in question, and almost all of these canisters, it's my understanding, have been cleared of phosgene contamination based on documentation showing they were washed or evacuated before DOE obtained them.

At the Paducah site -- and I want to verify this -- all canisters have been cleared of phosgene contamination except for 14. That is my understanding. DOE does not believe these last few canisters have any phosgene, but they may have been unable to locate documents to prove it.

DOE has a plan to sample these last remaining cylinders within the next several weeks, and I must say that I have been impressed with the Department's quick response to this issue. And in this instance, I think DOE has clearly prioritized the health and safety of the Paducah community.

I'm specifically pleased that DOE Assistant Secretary for Environmental Management, James Rispoli, is here today to provide testimony on these and other issues, and I certainly look forward to hearing from him. On the second panel, we have several distinguished witnesses that are each interested in Paducah issues, as all of us here are.

So I thank each of you for joining us today. I hope this will be a productive hearing that will provide some important answers for us.

[The prepared statement of Mr. Whitfield follows:]

PREPARED STATEMENT OF THE HON. ED WHITFIELD, CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

This is the first field hearing the Subcommittee on Oversight and Investigations of the House Energy and Commerce Committee has convened since I was chosen Chairman, and I will admit that I may have used my own prerogative as Chairman to hold the first field hearing in my District!

I want to welcome the ranking member on the Subcommittee, Mr. Bart Stupak of Michigan, to the 1st District of Kentucky and I want to welcome our distinguished witnesses and guests.

We are here today to focus on several key issues relating to the operation of the Paducah Gaseous Diffusion Plant–a Plant that has been operational for over fifty years and which today is the sole remaining domestic provider of enriched uranium which fuels our nation's 103 nuclear power plants.

Since my election to Congress over 11 years ago, I can hardly recall a moment when my staff and I were not working on some issue directly related to the Plant and/or its workforce. As a matter of fact, one of my first legislative endeavors was the enactment of two amendments in the USEC privatization bill to protect workers' pensions, health

benefits, and collective bargaining rights during the transition from USEC the quasi-governmental entity to USEC, the private corporation.

Many of you here today have worked side by side with me on a myriad of issues affecting the Plant and the surrounding community.

Together, we have lived through privatization.

Together, we have enacted legislation to restore the arming and arrest authority of the security guard force.

Together, we have fought foreign competition and the impact of the Russian HEU deal on our own domestic uranium enrichment industry.

Together, we have lived through the revelation and DOE's acknowledgment that workers at the plant were unknowingly exposed to dangerous levels of radiation and other toxic substances.

Together, we have enacted two separate entitlement compensation programs to provide financial assistance and health care benefits to workers who became ill as a result of their exposure to radiation, beryllium, silica or other toxic chemicals. To date, 2,599 workers from the Paducah Plant have received compensation totaling $277 million, plus medical benefits.

Together, we have enacted legislation to require the construction of two depleted uranium hexaflouride conversion facilities–one in Portsmouth and one in Paducah–to safely convert the contaminated material in our 37,000 cylinders, while creating new jobs.

Together, we secured the seed money for the former Paducah Area Community Reuse Organization to build, design and construct an 8-county industrial park complex.

Together, we have survived USEC's decision to build their next generation centrifuge plant in Portsmouth, rather than Paducah.

Together, we fight the good fight during the annual appropriations process for more clean-up money, funds to finance the conversion project, and funds to continue the state-of-the art medical monitoring program we have in place at Paducah today.

And together, we are preparing for the ultimate closure of the Plant and the economic impact that closure will have on McCracken County and the surrounding communities.

The issues surrounding the Plant are as complex and far-reaching today, as they were the first time I ever toured the facility. Today, we are focused on four such issues.

First, I would like to discuss matters relating to the Department's interpretation of Section 633 of the Energy Policy Act of 2005. I helped draft this provision last year along with Representative Ted Strickland. We intended to protect and secure the pension and health care benefits for employees at the Portsmouth and Paducah sites when DOE changes its contractors at these facilities, or when hourly employees transfer from employment at USEC to employment with a DOE contractor. Last week the Department provided us with a lengthy interpretation of this provision that we do not agree with. I look forward to ironing out our differences with the Department on this matter, and I may seek further clarification through additional legislation, if necessary.

Second, I would like to discuss the status of the transition to a new environmental remediation contractor at the Paducah site. Environmental remediation work at Paducah will continue to grow over the next several years as the Department focuses more attention on environmental cleanup, facility decontamination and decommissioning, and waste management. Last year, the Department awarded the Paducah environmental remediation contract to North Wind Paducah Cleanup Company, but later retracted that award and re-opened the bidding process in response to several protests filed by losing bidders. Finally, on December 27th of last year, the Department awarded this contract to Paducah Remediation Services. I am pleased that the Department is moving forward on environmental cleanup work, but I want to make sure the transition from Bechtel Jacobs to Paducah Remediation Services runs smoothly.

Third, I would like to discuss opportunities to finally sell the approximately 9,700 tons of nickel at the Paducah site. This has been an issue of great interest to me for several years. The inventories of nickel are significant, and it is a valuable commodity. Although the nickel is slightly contaminated with uranium, it would be a mistake to simply treat this valuable asset as a waste to be shipped to a disposal facility. I am encouraged that the Department has included a requirement in the new environmental remediation contract to "develop and evaluate alternate uses of the Nickel ingots and acquire competitive bids for its reuse." It is my understanding that the contractor is required to present its evaluation of the options to reuse the nickel to DOE by July 30, 2006. I hope there is no significant delay in this effort, and I suggest that a portion of the net proceeds from any sale should be returned to the Paducah and McCracken County communities for enhanced cleanup efforts and to promote economic development and create new jobs to mitigate the impact of the anticipated closure of the gaseous diffusion plant. Also, I call on the Department to make whatever changes may be necessary to the moratorium on metals recycling established by former Secretary Richardson.

Lastly, I want a full update on DOE's efforts to investigate possible phosgene contamination in uranium hexafluoride cylinders at the site. Last year, the DOE Inspector General issued a memo regarding the status of potential phosgene contamination inside cylinders of uranium hexafluoride (UF6) stored at Paducah, Portsmouth, and the East Tennessee Technology Park. A concern was raised regarding several canisters that were acquired from the Army Chemical Warfare Service that were formally used to store Phosgene, a chemical warfare agent. DOE moved quickly to assess the 2,541 cylinders in question, and almost all of these canisters have been cleared of phosgene contamination based on documentation showing they were washed or evacuated before DOE obtained them. At the Paducah site, all canisters have been cleared of phosgene contamination except for 14 canisters. DOE does not believe these last few canisters have any phosgene, but they have been unable to locate documents to prove it. DOE has a plan to sample these last remaining cylinders within the next several weeks. I am impressed with the Department's quick response to this issue. In this instance, I think DOE has clearly prioritized the health and safety of the Paducah community.

I am pleased that DOE Assistant Secretary for Environmental Management James Rispoli is here today to provide testimony on these and other issues, and I look forward to hearing from him. On the second panel we have several distinguished witnesses that are each as interested in Paducah issues as I am. I thank each of you for joining us today, and I look forward to your input.

MR. WHITFIELD. And, Mr. Stupak, I'll recognize you.

MR. STUPAK. Thank you, Mr. Chairman.

The Energy and Commerce Committee and this subcommittee has a long history of holding hearings concerning the problems of workers and the communities that have for so many years been the home of America's nuclear weapons production facilities. Many of them were located in small isolated communities, and as these facilities are being shut down, difficult problems of environmental cleanup and redevelopment must be addressed.

I know that you, Mr. Chairman, Mr. Shimkus from Illinois and our colleague Mr. Strickland from Ohio have been particularly successful in dealing with some of these issues for your constituents. I applaud your leadership on this issue.

I look forward to hearing today's witnesses. I am, as I'm sure you are, very interested in learning why the Department of Energy wants to take the pension and medical benefits away from a handful of former USEC workers who might go to work for the new cleanup contractor despite legislation we passed in the Energy Committee.

In the Energy Bill that was passed this last summer -- and I was a conferee on that committee -- I thought Congress made it very clear that these workers, their pension and medical benefits shall and must be preserved.

I also want to hear more from the Department about its plans for selling tons of uranium-contaminated nickel stored here in Paducah. Members of this committee were very active in stopping the previous plan to do so, to sell this nickel, at Oak Ridge because the Department could not enforce its promise to restrict the future of this nickel once it was sold.

As a result, the Department issued a memorandum -- excuse me. The Department issued a moratorium, which is still in effect, on recycling. I'm very curious to see if today's plan is just recycling the same old proposal or if there is actually a new one.

Mr. Whitfield, I appreciate your hospitality. When I landed here yesterday in Nashville, there was snow. It made me feel at home. And I really appreciate the sunshine today. So I'll be back.

But, seriously, I appreciate the opportunity to be in your community and to meet your community leaders and the workers who have given so much of their life to our great country. I stand with you in support of these workers and hopefully in the future redevelopment of Paducah. So I look forward to hearing our witnesses today.

And thank you again, Mr. Chairman.

MR. WHITFIELD. Well, thank you, Bart. And I might add we took him to Patti's last night, so he enjoyed that.

You know, when you watch the national news media today, you do get the impression that in Washington everything is totally partisan, but as you know, Bart Stupak is a Democrat from Michigan. I think that our subcommittee has been particularly effective at trying to remain bipartisan. We don't agree on everything, obviously, but we do focus on the issues and respectfully disagree -- but frequently we also agree, and I think that's a positive thing.

I would say to you that the Oversight and Investigations Subcommittee -- this is an investigative hearing, obviously -- we've always had the practice of taking testimony under oath. Our witnesses today, first of all, on Panel I is Mr. James Rispoli, who is the Assistant Secretary for Environmental Management for the United States Department of Energy.

Mr. Rispoli, we welcome you here today, and as you heard, this is an investigatory hearing, and I'm assuming that you do not have any objection to testifying under oath. I would also advise you that under the Rules of the House and the Rules of the Committee, you are entitled to be advised by legal counsel.

And do you desire to be advised by legal counsel today?

MR. RISPOLI. No.

MR. WHITFIELD. Okay. Well, in that case, if you would please rise and raise your right hand, I'd like to swear you in.

[Witness sworn.]

MR. WHITFIELD. Thank you. Well, Mr. Rispoli, you're now under oath. You are recognized you five minutes for your statement.

TESTIMONY OF JAMES RISPOLI, ASSISTANT SECRETARY FOR ENVIRONMENTAL MANAGEMENT, U.S. DEPARTMENT OF ENERGY

MR. RISPOLI. Thank you, Mr. Chairman.

Good morning, Mr. Chairman, Congressman Stupak and staff members who are here today. I'm pleased to be here to answer your questions on the status of the Department of Energy's Environmental Management Program at the Paducah Gaseous Diffusion Plant. I again thank you and your subcommittee for the ongoing support that you have provided for the Paducah cleanup project.

This is my second visit to Paducah in the five months since I was sworn in as Assistant Secretary in August. I've had the opportunity to become familiar with the site, with the cleanup accomplishments and the cleanup challenges that remain here at Paducah, as well as other issues that face the Department, site employees and the committee.

During my brief tenure, I've been impressed with the dedication of the employees and appreciate the progress they have made in cleaning up the environmental legacy of the Cold War.

The last two years have been a time of change and transition for the Paducah site, not only through contractor transitions, but also through alterations in the familiar site landscape. Even as buildings are being removed and waste disposed, new construction is transforming what was an empty field into a state-of-the-art plant to convert and stabilize depleted uranium.

To place our upcoming efforts in perspective, here are some recent Paducah program highlights. Our most recent news, as you mentioned, is that the Department awarded a $191.6 million remediation services contract on December the 27th to Paducah Remediation Services. This is

a joint venture of Portage Environmental, a Native American-owned small business, and Shaw Environmental Services.

We anticipate a smooth transition from the outgoing contractor, Bechtel Jacobs, to PRS. The process of awarding this contract has taken longer than expected due in part to protests that were filed following the Department's initial selection of a winning bidder a year or so prior. Bechtel Jacobs, its employees and subcontractors have continued to make progress in the cleanup program during procurement of the new contract, and the overall cleanup project is on track to meet the 2019 cleanup completion date.

A new infrastructure services contractor, Swift & Staley, successfully transitioned following the contract award in March 2005 and assumed full responsibility for its work scope in June 2005.

The Depleted Uranium Hexafluoride Conversion Project construction is well underway through a contract with Uranium Disposition Services, LLC. Under the approved project baseline schedule, conversion operations are expected to start by June 2008. In the next few months, the construction workforce will increase to between 150 to 200 employees. When conversion operations begin in 2008, the workforce will be stabilized at about 150 employees.

Some of the key highlights here at Paducah include: We emptied the last of 17 outside material storage areas, which completed removal of a number of potential sources of contamination. Overall, 75 percent of an estimated 865,000 cubic feet of DOE material storage area materials have been characterized and 30 percent of the material disposed. We are scheduled to complete disposal of all these materials by 2010.

We've completed approximately 30 percent of about 44,000 tons of overall scrap metal removal work. We anticipate sending the last shipment of classified scrap metal to the Nevada Test Site by the end of March 2006, just a couple of months from now. We expect to complete the entire scrap metal removal by the third quarter of 2007.

Other major milestones we've met in 2005 and so far in 2006 include: We've disposed of 4,000 tons of scrap metal, including 1,400 tons of scrap metal from D-Yard. The D-Yard work is 95 percent complete. And we've disposed of over 60,000 cubic feet of legacy waste in 2005.

This brings me to one of the key success stories I'd like to mention that increases our confidence that we can reach our cleanup commitments here at Paducah, and that is the Department's relationship with the Commonwealth of Kentucky and the United States Environmental Protection Agency.

In 2003, the Department signed a Letter of Intent and Regulatory Agreement with the Commonwealth of Kentucky and subsequently modified our Site Management Plan consistent with the terms of both of

these agreements. This has established a foundation upon which significant progress has been achieved.

A major event that is tangible evidence of this progress is the issuance in August 2005 of a Record of Decision to remove trichloroethylene, or TCE, that is located in the area of the C-400 cleaning building, which is the main source of contaminants in the northwest groundwater plume. This action will significantly reduce a primary source of off-site contamination. We plan to begin field operations in 2007 with completion by 2010.

The Department and the regulators are at varying stages on other response actions to address hazards and mitigate risks here at the Paducah site.

Mr. Chairman, let me turn to a recent issue that you asked us to address, and that is the possible presence, though unlikely, of residual phosgene in 2,541 depleted uranium cylinders stored at the Paducah site and at Portsmouth, Ohio; and Oak Ridge, Tennessee.

After the Management Alert that you mentioned was issued by the Inspector General on September 30th, 2005, we took immediate action to ensure no imminent safety and health concerns existed for plant workers or the community. A rigorous review was performed to determine whether past operational practices eliminated any possible residual phosgene in the cylinders in question.

This review process eliminated any question of residual phosgene in all but 25 cylinders total. Of the 25 cylinders, 14 are here at Paducah, 10 are at Portsmouth, and 1 is at Oak Ridge.

A detailed plan to safely and properly characterize and disposition these cylinders was developed and implemented. Workers' safety and health requirements are in place to protect workers dispositioning these cylinders. And, in fact, just a few days ago, we completed the field sampling of the 10 cylinders at Portsmouth, and none of them had any evidence of phosgene.

All cylinders containing uranium hexafluoride or depleted uranium hexafluoride have been subjected to and will continue to undergo a prescriptive and rigorous monitoring and surveillance program. At no time will cylinders of concern be introduced into the depleted uranium hexafluoride conversion plant process that would put either the workers or the public at risk.

Paramount to our success at all these areas is safety. It's our top priority. Safety affects all involved; the federal employees, the contractor employees, the subcontractor employees, the site and the community.

Here at Paducah, the Bechtel Jacobs company and its subcontractor workforce can take great pride in reaching a major safety milestone here,

and that is more than 3 million safe work hours without a case of a lost workday away from the job.

The message I continually stress to our field staff and our contractors is that no schedule, no milestone is worth any injury to our workforce. Every worker deserves to go home as healthy as she or he was when they arrived for work each day on the job.

It's my goal to lead the Environmental Management Organization as a results-driven high performance organization. We're instilling a project management mind-set that will be ingrained in all we do. We've taken major strides in integrating safety. Now we must do the same with project management. The management tools we're using to both manage and provide oversight must be integral. Our success will depend on the ability to build up this rigor.

We're using industry standards as well as DOE guidance in all of our project and business practices, and I am now personally conducting quarterly reviews of all of our environmental and management projects and have directed my senior staff to carry out monthly reviews. I believe this new focus will be the key to our success with strong and effective project management.

I'm committed to work with all interested parties to resolve issues and will work with this committee and the Congress to address any of your concerns or interests. DOE, our regulators, the communities and our contractors are partners in this effort. Our success relies on this partnership. We all will succeed, or we all fail together.

Your continued support is vital to maintaining the positive momentum here at Paducah. I look forward to a continuing dialogue with you and your staff, and I will be pleased to answer any questions the subcommittee may have.

Thank you.

[The prepared statement of James Rispoli follows:]

PREPARED STATEMENT OF JAMES A. RISPOLI, ASSISTANT SECRETARY FOR ENVIRONMENTAL MANAGEMENT, U.S. DEPARTMENT OF ENERGY

Good Morning, Congressman Whitfield and members of the Subcommittee. I am pleased to be here today to answer your questions on the status of the Department of Energy's Environmental Management program at the Paducah Gaseous Diffusion Plant. I would like to thank you and your Subcommittee for the ongoing support of the Paducah cleanup project.

This is my second visit to Paducah in the five months since I was sworn in as Assistant Secretary in August. I have had the opportunity to become familiar with the site—the cleanup accomplishments and the cleanup challenges that remain, as well as other issues that face the Department, site employees and the community. During my brief tenure, I have been impressed with the dedication of the employees, and appreciate the progress they have made in cleaning up the environmental legacy of the Cold War.

The last two years have been a time of change and transition for the Paducah site, not only through contractor transitions, but also through alterations in the familiar site landscape. Even as buildings are being removed and waste disposed, new construction is transforming what was an empty field into a state-of-the-art plant to convert and stabilize depleted uranium.

To place our upcoming efforts in perspective, here are some recent Paducah program highlights:

- Our most recent news is that the Department awarded a $191.6 million remediation services contract on December 27, 2005, to Paducah Remediation Services LLC ("PRS"). This is a joint venture of Portage Environmental, a Native-American-owned small business, and Shaw Environmental Services. We anticipate a smooth transition from the out-going contractor, Bechtel Jacobs Company, to PRS. The Department intends that the new contractor maintain a productive and flexible workforce, minimize the cost and impacts of the transition, and promote practices that result in stable collective bargaining relationships. To that end, the new contract provides graded preferences for current employees and former employees in hiring for vacancies for non-managerial positions during the first six months after the effective date of the contract. The process of awarding this contract has taken longer than expected, due in part to protests that were filed following the Department's initial selection of a winning bidder.
- Bechtel Jacobs, its employees, and subcontractors have continued to make progress in the cleanup program during the procurement process, and the overall cleanup project is on track to meet the 2019 cleanup completion date.
- A new Infrastructure Services contractor, Swift & Staley, successfully transitioned following a contract award in March 2005, and assumed full responsibility for its work scope in June 2005.
- The Depleted Uranium Hexafluoride (DUF_6) Conversion Project construction is well under way through a contract with Uranium Disposition Services, LCC. Under the approved Project Baseline schedule, conversion operations are expected to start by June 2008. This schedule was revised in 2005 to incorporate the effect of increased safety features for seismic protection and containment of hazardous chemicals. Schedule contingency was also added to increase confidence that the Project's major milestones will be met. In the next few months, the construction workforce will increase to between 150-200 employees. When conversion operations begin in 2008, the workforce will be sustained at about 150 employees.

Some of the key highlights on the Paducah project include:

- We emptied the last of 17 outside DOE Material Storage Areas, which completed removal of a number of potential sources of contamination. Overall, 75% of an estimated 865,000 cubic feet of DOE Material Storage Area materials has been characterized and 30 percent of the materials disposed. We are scheduled to complete disposal of all these materials by 2010.
- Although we have experienced delays in shipping waste for disposal, we are aggressively pursuing our goals. We have completed approximately 30 percent of about 44,000 tons of the overall scrap metal removal work. DOE recently approved a change in subcontractor to expedite scrap metal shipping, reducing the projected time and costs for the remainder of the activity. We anticipate sending the last shipment of classified scrap metal to the Nevada Test Site by the end of March 2006. We expect to complete the entire scrap metal removal by the third quarter of FY2007.
- In FY 2005, we were able to accelerate several Paducah cleanup activities:

- Completed demolition of the C-603 Nitrogen Facility, 5 years ahead of schedule
- Disposed of 3 million pounds of uranium tetrafluoride (UF4), 2 years ahead of schedule
- Removed the C-410 Hydrogen Holder Tank, 8 years ahead of schedule
- Accelerated by about three years disposal of nearly 700 cubic meters of legacy waste stored outdoors
- Expedited work on three additional inactive facility removal activities, which will accelerate completion on these activities by one to four years.

Other major milestones we met in FY2005 and have met so far in FY2006 include:

- Disposed of about 4,025 tons of scrap metal, including approximately 1,428 tons of classified scrap metal from D-Yard. The D-Yard work is now 95 percent complete.
- Signed the C-400 Groundwater Record of Decision
- Completed Southwest Plume field work and issued the Draft Site Investigation Report to the regulators
- Issued the Remedial Action Completion Report for the North-South Diversion Ditch
- Completed the C-746-S&T Landfill investigation and submitted final report to regulators
- Disposed of 60,563 cubic feet of legacy waste in FY 2005
- Submitted Remedial Design Work Plan for C-400 Remedial Action.

This brings me to one of the key success stories in the past two years that increases our confidence that we can reach our cleanup commitments—and that is the Department's relationship with the Commonwealth of Kentucky and the U.S. Environmental Protection Agency. For several years, cleanup progress was hindered by disputes over milestones, regulatory compliance, and cleanup approaches. In 2003, the Department signed a Letter of Intent and a regulatory agreement—called the "Agreed Order"—with the Commonwealth of Kentucky, and subsequently modified our Site Management Plan consistent with the terms of both of these agreements. This has established a foundation upon which significant progress has been achieved.

A major event that is tangible evidence of progress is the issuance in August 2005 of a Record of Decision to remove trichloroethylene, or TCE, that is located in the area of the C-400 Cleaning Building, the main source of the contaminants to the Northwest Groundwater Plume. This action will significantly reduce a primary source of off-site contamination. DOE plans to begin field operations in 2007, with completion of treatment by 2010. The Department and our regulators are at various stages on other response actions to address hazards and mitigate risks at the Paducah site.

Mr. Chairman, let me turn to a recent issue that you have asked me to address: the possible presence, though unlikely, of residual phosgene in 2,541 depleted uranium cylinders stored at the Paducah site, and at Portsmouth, Ohio, and Oak Ridge, Tennessee. After the Department received a September 30, 2005, Inspector General Management Alert, we took immediate action to ensure no imminent safety and health concerns existed for plant workers or the community. A rigorous safety review process was employed to determine whether past operational practices eliminated any possible residual phosgene in the cylinders in question. This review process eliminated any question of residual phosgene in all but 25 cylinders. Of the 25 cylinders, 14 are stored at Paducah, 10 are stored at Portsmouth, and 1 is stored at Oak Ridge. A detailed plan to safely and properly characterize and disposition these cylinders has been developed and is being implemented. Worker safety and health requirements are sufficient to protect workers dispositioning these cylinders. All cylinders containing Uranium Hexafluoride or Depleted Uranium Hexafluoride have been subject to, and will continue to undergo, a

prescriptive and rigorous monitoring and surveillance program. At no time will cylinders of concern be introduced into the Depleted Uranium Hexafluoride Conversion Plant that would put either facility workers or the public at risk.

Paramount to our success in all areas of our project is safety—it is our top priority. Safety affects all involved—federal employees, contractor and subcontractor employees, the site, and the community. Here at Paducah, the Bechtel Jacobs Company and its subcontractor workforce can take pride in reaching a major safety milestone—more than 3 million safe work hours without a case of a lost workday away from the job. Also, the Depleted Uranium Hexafluoride Conversion Project construction crews logged nearly 250,000 safe work hours. All employees contributed to these records by taking seriously their personal responsibility to work safely. We will continue to maintain and demand the highest safety performance in all that we do. The message I have stressed to my field staff and to our contractors is that no schedule, no milestone, is worth any injury to our workforce. Every worker deserves to go home as healthy as she or he was when arriving each day on the job.

It is my goal to lead EM as a results-driven high performance organization. We are instilling a rigorous project management mindset that will be ingrained in all projects. We have taken major strides in integrating safety; now we must do the same with project management. The management tools used to manage cost and schedules must be used to manage and provide oversight integrally. Our success will depend on our ability to build in this rigor. We will target the shortcomings in our project management by using both DOE and industry standard project management and business management processes. I am personally conducting Quarterly Reviews of all EM projects, and have directed that my senior staff carry out monthly project reviews. This includes fully implementing our management systems, following through on corrective actions, and better applying risk management principles—that is identifying project uncertainties, developing mitigation measures and contingency, and holding action officers accountable for their resolution. I believe that this approach will be the key to our success with strong and effective project management.

Complementing these refinements, we must ensure that our projects are managed by highly skilled, competent and dedicated leaders and staff workers, both Federal and contractor, who have the responsibility and the authority to meet the EM program's objectives. In 2003, the Department formed the Portsmouth/Paducah Project Office, reporting directly to my office, to provide greater management focus and accountability. I believe this office has contributed to the Department's ability to recognize and address issues more rapidly. We will continue to streamline the relationship between the field and headquarters to enable the whole EM program to be more effective in its oversight role. I believe that if you have the right people in the right job with the right skills, they should be empowered to execute their responsibilities and be accountable for their decisions and outcomes.

I believe that by taking these steps we will be in a position to address the challenges that lay before us. I am committed to work with all interested parties to resolve issues and will work with this committee and the Congress to address any of your concerns or interests. DOE, our regulators, the communities and our contractors are partners in this effort. This partnership goes far beyond the limits of a contract or an agreement. Our success relies on this partnership. We are in this together—we all succeed or we all fail together. Your continued support is crucial to maintain the momentum that has so painstakingly been achieved.

I look forward to a continuing dialog with you and your staff. I will be pleased to answer any questions the subcommittee may have on this subject.

MR. WHITFIELD. Well, thank you, Secretary Rispoli, and I do appreciate your mentioning phosgene in your opening statement. I see Jim Malone is here today, and he wrote a story on October 25th, 2005, in "The Courier Journal" about this issue. And the story, my understanding, stemmed from an internal memo dated September 30th, 2005, by Alfred Walter, a DOE Assistant Inspector General for Inspections and Special Inquiries.

And, in fact, I'd like to introduce this memo, this internal memo, for the record.

Do you have a copy of it?

What I'd like to know, when did DOE first learn of the possible presence of phosgene in some of the cylinders at Paducah, Portsmouth and Oak Ridge?

MR. RISPOLI. Mr. Chairman, indeed, it was -- I remember the day when that memo was delivered to us. And as you point out, it was September the 30th. It's called a Management Alert, the IG, where they have an issue that arises that is of, you know, special-type interest, such as this one. They have a protocol for issuing such a Management Alert. And so I learned of it on September the 30th.

As I indicated in my opening remark, using our chain of command, we initiated the process to review the potential to see whether there was any truth to the allegation that there might be phosgene or residual phosgene here, at Portsmouth and at Oak Ridge.

MR. WHITFIELD. Did DOE begin its analysis of those cylinders at the time you first learned of the possibility of phosgene, or was action taken only when the internal memo was obtained by the press and the story made public?

Were you all taking action before that story?

MR. RISPOLI. Mr. Chairman, yes, we were. As I say, my management style is that every day I have a wrap-up, a short meeting with the chief operating officer. All of our site managers work for her. And as soon as we heard of this allegation, we directed that a review process be put in place.

And, in fact, I understand by talking with her -- her name is Dr. Ines Triay -- that she was getting very regular and periodic updates from the site managers at both here -- Mr. Bill Murphie, who's here today -- as well as the site manager at Oak Ridge on the status of the actions to go through that process.

MR. WHITFIELD. Now, in that internal memo, it indicates that one of the most catastrophic safety consequences might occur when phosgene is introduced into the uranium hexafluoride conversion process. And as you know, we're in the process of building these two depleted uranium conversion facilities right now, one at Paducah and one at Portsmouth.

When was the contractor on those projects -- in other words, UDS -- when were they notified of this possible problem?

MR. RISPOLI. I cannot answer that question, Mr. Chairman. I don't know. But given that UDS is not yet in the process of that conversion, there was obviously no imminent hazard. I think the concern to us was to conclusively determine whether or not there were any trace amounts of phosgene.

I might also mention -- I'm not a chemist, but my understanding is that the report of catastrophic consequences would be if a cylinder that was filled with phosgene went into a conversion process that was not designed for that. And so we are basically looking for either at zero or for trace amounts of phosgene.

And as I indicated, just in the past couple of days, we finished the work at the Portsmouth site and found no evidence either of residual phosgene.

MR. WHITFIELD. Well, you know, we all know that phosgene was a chemical used by the Germans in World War II and can be quite lethal.

And as the Assistant Secretary responsible for this type of issue, based on your investigation thus far, is there any health and safety risk to the workers at the plant or the surrounding community? Is there any existing threat to them right now?

MR. RISPOLI. I believe the correct answer is not to the best of our knowledge. And if I may just go on a bit to put it into context, we within the next few days will begin the sampling process for the 14 cylinders here in Paducah. I will tell you that, again, we found no evidence of even residual phosgene in the 10 cylinders at Portsmouth, and we have no reason to believe that we will find any residual phosgene here in the cylinders at Paducah, either.

This is, again, the very end stages of a very rigorous review to ensure that there is, indeed, no hazard to the workers or to the public from the possibility of any residual phosgene in these cylinders.

MR. WHITFIELD. Okay. Now, I would like to focus a little bit on this nickel issue. I know that Secretary Richardson and the Clinton administration issued the moratorium against a free release.

I wrote a letter to Secretary Bodman on July 15th, 2005, about this issue, and I asked him two basic questions. Number one, I said, "Is the Department of Energy planning to lift the current ban and, if so, when?" And then I asked, "Are there any export restrictions on the sale of the contaminated nickel and, if so, what are they?"

Now, I know that you can convey or sell this nickel. There are options other than just free release. So there are other options available to dispose of it without lifting the moratorium.

But I will have to tell you, Mr. Secretary, that I was disappointed. I wrote that letter in July. I received a response in September, but it basically was a nonresponse, because when I read the response, I didn't know any more than I did before I wrote the letter. Surely you all do have an internal legal memorandum on whether or not there are any restrictions on the exporting of this material, because I know there are many foreign companies interested in buying it.

Would you comment on those two questions?

MR. RISPOLI. The issue at hand is that the nickel is known to be what is called volumetrically contaminated with radioactive material, and basically that means it's not on the surface, but it's throughout the ingots.

As you correctly pointed out, the moratorium was placed by Secretary Richardson because of concerns from the public about the possible end use of the nickel should it be sold, and that moratorium is still in place.

The plan that we have to determine a path forward is to have our new contractor, as you mentioned earlier, evaluate for us the current market conditions, the current potential uses and present to the Department the options that would provide for a safe use of the nickel while providing some sort of a return. It's not a waste material, obviously, but provide some sort of return to the taxpayer for the product.

We expect, as you pointed out, to have the results of that evaluation of alternatives shortly, and we would be happy when we get that evaluation to share that with you. And I believe that will answer -- at that point, we will be able to answer the types of questions that you're asking.

MR. WHITFIELD. Well, I know that the Nuclear Regulatory Commission has failed to set any international standards for processing this, but is there any current legal restriction against your exporting this material?

MR. RISPOLI. I am not aware of any regulatory constraints, and I will tell you that the amount of contamination, to the best of our knowledge, falls within DOE's own internal guidelines for useful disposition of the material. So, again, what we're doing is by asking the contractor to do this, doing a more current evaluation -- market conditions change, potential uses change -- to see what the options might be for a safe and acceptable use for the material.

MR. WHITFIELD. Well, it just seems like from a common sense approach that, I mean, this material is quite valuable. It's valued in the millions of dollars. In fact, it's been estimated in the neighborhood of $3 million dollars.

Rather than see it just go to waste with the condition of our country today financially, and the deficits that we have and the need for local communities to have assistance in economic development, that I would

urge you all to use every possibility to explore and hopefully be able to use this material in a restricted way. I'm not talking about a free release, but a restricted way.

MR. RISPOLI. Yes, sir.

MR. WHITFIELD. When Secretary Bodman was in Paducah not too long ago, he made the statement that the Department of Energy was not in the economic development business. Of course, if this plant closes, a lot of jobs are going to be lost. And so the Secretary of Energy and the Department may not be in the economic development business, but this community is in the business of economic development and will try to do everything they can to try and bring industry in and so forth.

But the reason I mentioned his statement -- and I have a great deal of respect for the Secretary, but I know that at the Oak Ridge plant, DOE has, I understand, seven employees that are involved in reindustrialization issues at Oak Ridge. And as a matter of fact, it is my understanding that there was $150,000 in the FY 2005 budget for Oak Ridge for reindustrialization issues.

I would ask you, and I would like to work with you to consider placing in the Department's budget some money for reindustrialization processes here at this plant. I understand that the Member of Congress in that area is on the Appropriations Committee, and realistically we know what that means. But I would say even if you're not on the Appropriations Committee, all of us represent taxpayers.

If there's going to be people involved in reindustrialization at that site, I do not see any reason why there shouldn't be some people involved in the reindustrialization at this site. So I just wanted to point that out to you, and I would like to follow up and explore that in a better way if we can.

Just a couple other questions, and then I'll certainly turn it over to Mr. Stupak. But I do want to touch on this pension issue. I guess technically we refer to it as Section 633 of the Energy Policy Act. But, Ted Strickland, others and I had urged, pleaded with, and asked the Department of Energy in its RFP to provide protections for the portability of these pensions.

We're talking about the same site. We're talking about basically the same people who, because of the change of contractors on a rather frequent basis -- there's no reason that individuals doing the same work at the same site because the government changes the contract and the contractors change that they lose their pension benefits.

I also understand that the Department of Energy wants to move to more 401(k)s and away from defined benefit plans, but I also know that we have a limited number of employees affected by what's going on in Paducah. So it's not an unlimited number, and I know that the economic

impact, if a decision is made to protect these pensions, it's not going to be huge.

But when we were not able to be successful in our negotiations with the Department of Energy, we specifically put the language in the Energy Policy Act to protect those workers, and we made it very clear what our intent was and what we wanted to do.

I'm assuming that the Department of Energy felt like the language we had was effective, because representatives of the Department of Energy lobbied extensively in the conference and before to defeat this provision, and knock this provision out. We were successful at keeping it in. President Bush signed the Energy Policy Act with that language in there.

Then I can tell you we were really shocked when we found out that the Department had made a decision that, in spite of this language, because -- the position I think you've taken is because the remediation -- the new remediation company was not a signatory to the agreement of 2005 that these employees will not be covered. I just find that hard to understand when the language is quite explicit.

The Department knew what we were trying to do and tried to defeat it, so you must have felt like that the language was effective in accomplishing what we wanted to accomplish. Then after it's adopted, you basically say, "Well, we're not going to cover them."

What would be your response to that?

MR. RISPOLI. Well, Mr. Chairman, I've been following the correspondence between the staff and the attorney who's the Deputy General Counsel at the Department having to do with this. He's the same gentleman who sent the letter to you, and we actually have copies of that letter here today, and we would be happy to submit that for the record, as well, and have copies for anyone else here who would like them.

Obviously, pensions are an issue that affect the entire Department, not just the Environmental Management Program. And, thus, the pension issues are considered to be not only very important, but are clearly -- if you read the correspondence in this case, they're very intricate.

I'm not an attorney. I have not been personally a party to the development of the Department's evaluation of the language, but I can tell you that DOE's attorneys performed a thorough examination of Section 633 to arrive at their understanding of the legal effect of the statute. Again, that letter was provided -- it's dated January 12th, was provided to you on the 13th, and we have copies here today.

In sum, just so that those present know what the Departmental General Counsel analysis concluded, it was that under Section 633, USEC employees that were eligible on April 1st, 2005, to transfer from

USEC into Bechtel Jacobs' MEPP pension plan remained so eligible. USEC is not an MEPP pension plan, but, again, employees who were eligible -- USEC employees who were eligible on April 1st, 2005, remain so eligible.

That transfer eligibility is defined in the MEPP itself, the documents, that define what is meant by a grandfathered employee. Under the MEP Plan documents, the only remaining category of USEC employees that meet the definition of grandfathered employees are those covered by a Bargaining Unit Transition Agreement, called the BUTA, without a terminal date for employment by Bechtel Jacobs or one of their first or second tier subcontractors that's also a signatory.

I point out that one of the incoming prime contractors, Swift & Staley Mechanical, previously was an MEPP sponsor and a party to the BUTA. So the USEC hourly employees that were hired by that contractor were eligible, indeed, as of April 1st, 2005, to transfer into this MEPP.

But to your point, the General Counsel's interpretation is that USEC employees hired by a different contractor are not guaranteed a right to transfer into the MEPP per their interpretation of the statute.

If you do have further questions, again, as I mentioned, I'm not an attorney. The pensions policy implementation is not something I'm personally involved with, but I would be happy to take your questions for the record and provide them to DOE's General Counsel for their action.

MR. WHITFIELD. Well, you know, we know how lawyers are. I mean, I think you're a lawyer. I'm not a lawyer.

[Laughter.]

MR. WHITFIELD. And they can frequently interpret things any way they want to fit their needs.

But we know that USEC has their pension plan. Even UDS has a Single Employee Pension Plan. Bechtel Jacobs is the Multiple Employer Pension Plan administrator. Even Swift & Staley employees have their pensions protected. Paducah Remediation, I'm assuming, was not even in existence at that time, so they could not have been signatories.

But I think our intent was quite clear, and we do intend to take some action. There's either going to be a lawsuit or there's going to be additional legislative solution, or hopefully DOE and its lawyers will revisit the issue and come to the common sense conclusion that it makes sense that these people have their pensions protected.

So, Mr. Stupak, you're recognized for whatever time you need.

MR. STUPAK. Thank you, Mr. Chairman.

Mr. Secretary, thanks for being here. Going back to the pension issue, if the Department awards a contract of almost $200 million in December '05 and this contract language or, I should say, the conference report was, I believe, signed on August of 2005 and this language was

actually drafted even before that, why wasn't this language then incorporated into that new contract that was given so these people would be protected?

MR. RISPOLI. I don't honestly have an answer to that question. I do not know why. I'd be happy to take that question for the record, but I don't know why.

MR. STUPAK. I think we should get the General Counsel in here.

MR. WHITFIELD. Yeah.

MR. STUPAK. I mean, how long have you been at DOE?

MR. RISPOLI. Since August 10th.

MR. STUPAK. Of this year, past year.

MR. RISPOLI. Past year, yes, sir.

MR. STUPAK. And you're on a defined benefit plan, right?

MR. RISPOLI. I'm in the -- no, sir. I'm not in a defined benefit plan. The government transitioned in the 1980's from the old CSR defined benefit plan to a plan that's now a defined contribution plan where the government contributes some money into a fund, I contribute into a fund, and when I retire, it's kind of like a 401(k) type of a deal.

But, no, sir, I'm not in a defined benefit plan as a civil servant.

MR. STUPAK. Hmm, all right. I'll disagree with you on that, but what you've just described is another part of the pension system. But anyways, all right.

But this is a problem I think we have to get resolved one way or the other sooner. And if there's different language we need, then your General Counsel has to let us know, because the intent of Congress was very, very clear these workers be taken care of. We know there would be transitions and new contractors and things like that. We want to make sure the workers are taken care of. And in the request for any kind of proposal to do a contract, I would hope you would include that in those requests.

Getting to the new contract, why was there a change in contractor? According to your testimony, it looked like things were going well with Bechtel and all this. Why would we change contractors?

MR. RISPOLI. Congressman, the Department, as you know, is working its Small Business Program to take into consideration not only legal requirements, but, also, typically, each administration has its own small business agenda and objectives. And Environmental Management, even before I joined as the Assistant Secretary, was very actively looking for opportunities to find ways to have more small business prime contractors.

You may -- you probably do know that M&O subcontractors do not count against the small business goal by the way that the statutes are written. So Environmental Management several years ago began looking

at ways to make these contracts more attractive and more accessible by small business.

The decision to do that had absolutely nothing to do with the performance of the incumbent contractor. In fact, the incumbent contractor here has been very helpful in working with us on the transition planning, for example, and has been very much on board with that process.

MR. STUPAK. But Shaw really isn't a small business.

MR. RISPOLI. They're a sub, but Portage is, in fact, owned by a Native American. And the way that the laws, again, are written, it's sort of like a mentor/protege-type arrangement. In other words, when you bring in a small business, it is not uncommon to have the support of others who are more expert in those fields.

MR. STUPAK. Right. But we've seen this so many times with departments. They say it's a small business, and what they do is get the contract and subcontract out to a big corporation. So -- well, it's done.

But I guess going back to the pensions, it seems like you're strictly following the law here on these small businesses, but yet when it comes to the pension, we choose not to follow the law put forth by Congress in the Energy Policy Act of 2005. You can't pick and choose which ones you want to follow. If you're going to follow them, follow all of them, not part of them.

Let me ask you this, this memorandum that the Chairman brought up, the memorandum of September 30th, are you familiar with it at all, this memorandum?

MR. RISPOLI. The one from the Assistant General Counsel.

MR. STUPAK. Yes.

MR. RISPOLI. Yes, sir.

MR. STUPAK. No, no. This is the one from the Office of Inspector General, the Management Alert on --

MR. RISPOLI. Oh, yes, sir, I am. Yes, sir. I have it here.

MR. STUPAK. Okay. You're familiar with it then.

MR. RISPOLI. Yes, sir, I am.

MR. STUPAK. The last paragraph on the first page, "Summary of Preliminary Findings," says that in October 2000 was the first report of this phosgene.

What happened between October of 2000 and September 30th of 2005, the date of this memo? What happened on the phosgene for five years? Did it just sit there?

I'm sure you must have gone back and looked to see what the history of this was?

MR. RISPOLI. I have no idea. Again, I was not in the organization at that time. The first that I learned of the issue was when this was actually

hand-carried to my office the day that it was signed. So I don't have any personal knowledge.

MR. STUPAK. You didn't ask anyone in your office to go back and see what happened?

I mean, I'd be concerned that if they knew about it since October of 2000 by Department of Energy's Office of Environmental, Safety and Health informed DOE and the contract officials of this possibility of this phosgene. I would have thought someone would at least go back and see what happened between October of 2000 and now.

How do you address the issue?

MR. RISPOLI. I understand your question, and I don't even believe Mr. Bill Murphie, who's our site manager, would know, because you weren't back here in those days, either. So, again, I would take that question, if you permit me, for the record, because I don't know the answer to that question.

MR. STUPAK. Okay. Let me ask you this question, another issue the Chairman brought up, the letter to Secretary Bodman, and you talked a little bit about it, about redevelopment of this area much like we've done in Oak Ridge, DOE.

Do you have any idea when you're going to have some kind of answer as to if this moratorium is lifted or when we can expect some kind of decision?

That's what the Chairman asked you -- or, sorry, asked the Secretary in the first paragraph. "Is DOE planning to lift the current ban and, if so, when?" You said you were reviewing it and you have a contract review it. Do you anticipate a date when we might know when a decision will be made?

MR. RISPOLI. Yes, sir. We expect by midsummer we will have the alternatives as presented by the contractor with possible uses for the nickel. As you know, the moratorium issued was broader than this nickel alone.

MR. STUPAK. Correct.

MR. RISPOLI. But the issue I'm discussing in particular is this particular nickel and whether or not it can be put into a constructive use that can yield some benefit back to --

MR. STUPAK. So by midsummer, we should have some decision.

MR. RISPOLI. Yes, sir. And as I indicated, we would be happy to come up and brief you on that when we have those alternatives known to us.

MR. STUPAK. Do you know now if the uses of this nickel or this contaminated nickel, has the uses in the marketplace changed since Secretary Richardson put the moratorium in?

MR. RISPOLI. I would think so.

MR. STUPAK. I'd think so, too.

MR. RISPOLI. Yes, sir. It's been over five years now since he put the moratorium in place, and I think this is the first, you might say, serious formal effort to re-evaluate the market conditions to see what can be done with this nickel.

MR. STUPAK. Okay. If the ban is lifted and this nickel is sold, do you have any objections to a portion of the net proceeds returned to Paducah and McCracken County for cleanup efforts or for economic development.

MR. RISPOLI. I would have to wait until I see what those alternatives are. I can tell you that as of this minute, the answer is I don't have any blanket objection to any alternative or provisions. But I think when we see what the alternatives are, we'll evaluate those at that time and see which way we can go.

MR. STUPAK. Well, in the seven employees DOE employs now at Oak Ridge which is involved in this reindustrialization process, that's economic development of the Oak Ridge site, isn't it?

MR. RISPOLI. I was not aware until that statement was made that we had that number of people. As you know, the Oak Ridge site is actually a science site with Environmental Management and NSA activity at it, and so that statement to me was new. I was not aware of that. I really don't know.

MR. STUPAK. Well, reindustrialization process, that's really economic development, though, right?

MR. RISPOLI. Yes, sir.

MR. STUPAK. Okay. So if we just put the words "reindustrialized process" and put some money into the DOE budget, you have no problem of it coming to Paducah. Instead of calling it economic development, we'll just rename it, right?

MR. RISPOLI. What I can say is that I have visited now 15 of our offices and sites. I've met with many of those communities that are involved in economic development. I believe that generally speaking we're working very well with them to try to find ways to provide benefits to the community because of the excess property, whether it be real property or personal property.

So in a broad sense, Congressman Stupak, I believe that we are at all of our sites aggressively looking at ways to do those types of things when we find that we have both real and personal property that can be helpful to the community.

MR. STUPAK. And I know you have been to a number of these sites, as you said, and I'm sure every site appreciated the workers there. And even in your testimony on page six, you talk about the partnership that has to be formed, and so I hope you'll continue to work in that

partnership with local communities and help them move forward with their site.

Once, you know, an asset, a part of it is cleaned off and cleaned up and everything's approved, cleanup, how long does it take usually to transfer that asset, a building or land, for local reuse, redevelopment?

MR. RISPOLI. I believe, generally speaking, that when the regulators are satisfied and the gaining organization is satisfied, that process goes, you know, for the government relatively quickly. I would say within a year or so. It involves certain processes that have been followed in the disposition of property.

But, again, we've been very supportive of helping effect those transfers in a timely way once the property is found suitable for that type of use. And I would imagine this committee knows of examples throughout the complex, as well, where that has happened.

MR. STUPAK. In this process where you're working with the local -- keep going back to this issue. Does it allow you, then, to return money back to the local community on any sale of an asset?

MR. RISPOLI. Let me take the example of real property. When a reuse organization has a potential use for a building, real property type, the Department does have authority to transfer that asset at less than fair market value if it will contribute to the economic development of a facility that's basically going to both be closed and where there will be an economic impact to the community. We have several statutory authorities with which we use those options.

MR. STUPAK. Sure. That's real property, but I was asking more about the nickel. That's not real property.

That's more personal property, correct?

MR. RISPOLI. I believe that the statute, at least one of them, that covers real property also covers personal property, nonreal property.

MR. STUPAK. Okay. So returning part of those proceeds back to this community for either cleanup or redevelopment or reindustrialization, it would not be a problem, then, under the current DOE law?

MR. RISPOLI. I would have to -- in all honesty, I would have to review the law myself. All of the examples, Congressman, that I'm personally familiar with have been real property. I'm not familiar with any so far that has been personal property. So I would have to review the language of those several statutes that permit us this authority.

MR. STUPAK. Nothing further, Mr. Chairman. Thank you.

MR. WHITFIELD. Thank you, Mr. Stupak.

I do want to reiterate we do want to be careful what we say. So I had them check, and there are seven employees at the Oak Ridge facility that are involved in reindustrialization issues. And like I said, we just don't

want Paducah discriminated because we don't have someone on the Appropriations Committee and they do.

MR. RISPOLI. Yes, sir.

MR. WHITFIELD. You would agree that the moratorium would not have to be lifted for a restricted use of the nickel? You would agree with that? The moratorium, it's my understanding, was for a free release, and a restricted release could be done even with this moratorium in effect.

MR. RISPOLI. I think the process that we have, this issue still has very high level attention at the Department, and I think that our path going forward would be to see what the viable options are, evaluate those options. Again, I would be happy to present those to you at the appropriate time.

But, also, since the moratorium was placed by the Secretary, clearly, I would have to go back to that office with the options for the reuse of this nickel, as well. I don't believe that I have that authority since the moratorium was signed at the Secretary's level.

MR. WHITFIELD. Well, I mean, we understand that there are a lot of vested interests that do not want this nickel used under any circumstances for any reason, but I think most of the people in this area -- and we're the ones really affected by it -- we have very strong views on it, too.

MR. RISPOLI. Yes, sir.

MR. WHITFIELD. In conclusion, I would like to point out I do have the report language on the Energy Policy Act of 2005. And on the section about employee benefits, this is what's in the report language: "This section provides that when DOE changes its contractors at the facilities or when hourly employees transfer from USEC to a DOE contractor or other contractor, the employees do not lose their accrued service credit or rights to transfer into the DOE contractor's Multiple Employer Pension Plan or the Multiple Employer Welfare Arrangement retiree health care plan."

I mean, I think this report language is very clear.

So do you have anything else?

MR. STUPAK. No, sir.

MR. WHITFIELD. Well, Secretary Rispoli, I want to thank you for being here today. I hope that you will take some of these concerns back and discuss them with the Secretary and others. And we would like to follow up with you on some of these as we go along, because these are all particularly important issues, and we'll continue to follow them closely.

MR. RISPOLI. Thank you.

MR. WHITFIELD. So thank you very much.

MR. RISPOLI. Thank you.

MR. WHITFIELD. At this time, I would like to call up the second panel of witnesses.

On the second panel we have the Honorable William Paxton, the Mayor of Paducah, Kentucky; we have Mr. Daniel Orazine, who is the County Judge Executive of McCracken County; we have Mr. Michael Hughes, who's the President of Bechtel Jacobs; and we have Mr. Rob Ervin, who is the President of the United Steel Workers Local 5-550. And he, I understand, is accompanied by Mr. Richard Miller, who's the senior policy analyst for the Government Accountability Project.

So if you all would come forward. I want to thank you all so much for taking time from your busy schedules and joining us today. We genuinely appreciate your being here, Mayor and Judge and Mr. Ervin and Mr. Hughes.

As you heard me on the first panel, I mentioned that this was an Oversight and Investigations hearing. It's our policy to take testimony under oath. And do any of you have any difficulty in testifying under oath? You all look pretty honorable to me.

You are entitled to legal counsel if you want it. I'm assuming you do not need legal counsel.

Now, Mr. Miller, are you going to be testifying, or are you serving as an advisor?

MR. MILLER. I believe, Mr. Whitfield, that I've been asked to accompany Mr. Ervin here today by the committee.

MR. WHITFIELD. Well, what we'll do is we'll ask all of you to be sworn in. That way we'll know we trust what you're saying.

So if you would, stand and raise your right hand.

[Witnesses sworn.]

MR. WHITFIELD. Thank you.

Okay. All of you have been sworn in, and we appreciate that. And at this time, I'll recognize Mayor William Paxton of Paducah for his opening statement.

TESTIMONY OF WILLIAM F. PAXTON, MAYOR, PADUCAH, KENTUCKY; DANIEL ORAZINE, COUNTY JUDGE EXECUTIVE, PADUCAH, KENTUCKY; MICHAEL HUGHES, PRESIDENT, BECHTEL JACOBS, LLC, OAK RIDGE, TENNESSEE; AND ROB ERVIN, PRESIDENT, UNITED STEEL WORKERS LOCAL 5-550, PADUCAH, KENTUCKY, ACCOMPANIED BY RICHARD D. MILLER, SENIOR POLICY ANALYST, GOVERNMENT ACCOUNTABILITY PROJECT, WASHINGTON, D.C.

MR. PAXTON. Good morning. I am Bill Paxton, Mayor of the City of Paducah.

I want to start out by saying that I think you're asking exactly the right questions. These are questions that we have been asking for several years, and it's refreshing to have those questions asked.

I want to also say that this community is on the move. We're doing things right. We have a community where the County Judge and the City Mayor work together on a daily basis. We have a Chamber of Commerce that is aggressive and very competent, and we have a Greater Paducah Economic Development Council that has Wayne Sterling as its director, who was very instrumental in bringing BMW to South Carolina. So we're doing things right, and we're going to continue to do things right.

Having said that, I will say that my role this morning is to co-represent our local governments before this committee. You will hear this morning from Judge Executive Danny Orazine and myself. I assure you that Judge Orazine and I are of one mind on the various issues we wish to address with the committee today.

I should also mention that the McCracken County Fiscal Court, as well as the Paducah City Board of Commissioners, has previewed my remarks and Judge Orazine's remarks. Commissioner Robert Coleman is here this morning with us listening to the hearing.

I would like to say thank you to Congressman Stupak for his travels all the way from Michigan to Paducah, along with Congressman Whitfield. I'm pleased to see Assistant Secretary James Rispoli here today, and I appreciate his time in coming to Paducah.

It's one thing for Congress to discuss these matters with the Department in Washington, D.C. It is quite another to visit these sites and the communities in which they reside. By doing so, I think you are better able to see and hear directly from the people that are most affected by your decisions.

I would especially like to thank Congressman Whitfield for your leadership and ongoing efforts regarding the various concerns facing the Paducah Gaseous Diffusion Plant. This plant has helped drive the economy in Western Kentucky, as you said earlier, for over 50 years. Two generations of Paducah workers have gained their livelihood at the plant. Some have sacrificed a great deal more than just their time.

Congressman Whitfield, I wish to thank you personally for your efforts in securing funding of over $200 million for the sick workers and their families.

We are proud of the work that is being done at the plant. We're proud that the dedicated workers of the plant have contributed to the national interest by making the United States safe and prosperous.

My remarks to the committee will not have anything to do with the pension plan or the phosgene issues we heard about earlier. However, Congressman Whitfield, I deeply appreciate your hard work in protecting the benefits and retirement levels for our local workers. I applaud your interest regarding the phosgene cylinders and the public safety concerns they represent.

I realize the pressing demands on the committee's time, and we do not have an unlimited amount of time today. So it is time to get to the point.

All of the community's issues that the Judge will discuss with you today are done with an eye towards the future. While many positive things have happened at the plant, there are really only two options for Paducah. This community can either continue to wring its hands about the host of problems facing the site, or we can create a new partnership and vision with DOE for Paducah. And that is the route I prefer.

To accomplish this, we need the leadership of this Congress. If and when our plant is finally decommissioned, the blow to the local economy will be enormous. It must be softened. The leadership in Paducah-McCracken County has been working diligently for years to diversify and expand the local economy.

Over the last ten years, the City of Paducah and McCracken County have invested over $20 million in developing new industrial parks, spec buildings, and marketing. Our local Greater Paducah Economic Development Council has embarked on an ambitious campaign to raise $6 million in the next four years to market and showcase this community to prospective communities. All of those dollars will be raised locally.

It is only logical that we must look at the plant site for new opportunities to provide investment in employment for the next generation of Paducah's families.

Given the time constraints, there are several other details and issues important to this community that we will submit to the committee in the form of written comments. I would like now to thank you for my time and turn it over to my good friend Judge Orazine for the details on the pressing matters that are facing us.

Thank you.

MR. WHITFIELD. Thank you, Mayor.

[The prepared statement of William F. Paxton follows:]

PREPARED STATEMENT OF THE HONORABLE WILLIAM F. PAXTON, MAYOR, PADUCAH , KENTUCKY

Good morning. My name is Bill Paxton and I am the Mayor of Paducah. My role this morning is to co-represent our local governments before this committee. You will hear this morning from Judge-Executive Danny Orazine and myself. I assure you, Judge Orazine and I are of one mind on the various issues we wish to address with the

committee today. I should also mention that the McCracken County Fiscal court as well as the Paducah City Board of Commissioners has previewed my remarks and Judge Orazine's remarks.

I would like to thank Congressman Stupak for traveling to Paducah today with Congressman Whitfield. I am pleased to see Assistant Secretary James Rispoli here today. It is one thing for Congress to discuss these matters with the department in Washington, D.C., it is quite another to visit these sites and the communities in which they reside. By doing so, I think you are better able to see and hear directly from the people that are most affected by your decisions. I would especially like to thank Congressman Ed Whitfield for your leadership and ongoing efforts regarding the various concerns facing the Paducah Gaseous Diffusion Plant. The plant has helped drive the economy in Western Kentucky for over fifty years. Two generations of Paducah's workers have gained their livelihoods at the plant. Some have sacrificed a great deal more than just their time. Congressman Whitfield, I wish to thank you personally for your efforts in securing funding of over $200 million for the sick workers and their families. We are proud of the work that is done at the plant. We are proud that the dedicated workers of the plant have contributed to the national interest by making the United States safe, prosperous, and energy independent. My remarks to the committee will not have anything to do with the pension plan or phosgene issues we heard about earlier. However, Congressman Whitfield, I deeply appreciate your hard work in protecting the benefit and retirement levels for our local workers. I applaud your interest regarding the phosgene cylinders and the public safety concerns they represent.

I realize the pressing demands on the committee's time and that we do not have an unlimited amount of time today. So it is time to get to the point. All of the community issues that the Judge will discuss with you today are done with an eye toward the future. While many positive things have happened at the plant, there are really only two options for Paducah. This community can either continue to wring its hands about the host of problems facing the site; or we can create a new partnership and vision with DOE for Paducah. I think you know which choice I prefer. To accomplish this, we need leadership of this Congress. If and when our plant is finally decommissioned, the blow to the local economy will be enormous. It must be softened. The leadership in Paducah and McCracken County has been working diligently for years to diversify and expand the local economy. Over the last ten years, the city of Paducah and McCracken County have invested over $20 million dollars in developing new industrial parks, industrial spec buildings, and marketing. Our local Greater Paducah Economic Development Council has embarked on an ambitious campaign to raise $6 million dollars in the next four years just to market and showcase this community to prospective companies. All of those dollars will be raised locally. It is only logical that we must look at the plant site for new opportunities to provide investment and employment for the next generation of Paducah's families.

Given the time constraints, there are several other details and issues important to the community that we will submit to the committee in the form of written comments. I will turn now to Judge Orazine for the details on the pressing matters facing us. Thank you.

MR. WHITFIELD. And, Judge, go ahead.

JUDGE ORAZINE. All right. Thank you, Mayor.

Chairman Whitfield, Congressman Stupak, and Assistant Secretary Rispoli, we thank you very much for holding this hearing here. This is very important to us, and the issues you've raised that we're going to talk about this morning are very important to our community.

I am speaking for the entire county government. I do have my judge pro tempore here, Ronnie Brinkman, as well as the Mayor and I are together on this and both Commissions because this is so important to our entire community. But we do want to thank you for conducting the hearing here this morning.

On behalf of the Paducah-McCracken County community, there are only three areas that I wish to discuss with the committee this morning, and they are: Reindustrialization of the plant site, and I've heard some of your questions and comments already on that; metal recovery, especially nickel; and payment in lieu of taxes.

In this post-privatization period, it was not likely that the plant would enrich uranium indefinitely. USEC has announced their next generation centrifuge plant will be in Ohio. We are not, as a community, going to sit and wait for whatever's going to happen with the USEC plant. We want to be proactive and utilize that infrastructure and those assets out there to the best of our community's future.

The Department of Energy uses a formal process called "end state" to help determine the environmental cleanup process for our site. The level to which a site will be cleaned determines how it can be used in the future. As the entities most affected by the future of these sites, we're asking, what is the proper role for local governments in the "end state" decision-making process? And rightly or wrongly, our community feels disconnected with the so-called "end state" process.

An important decision for the local government involved in DOE cleanup, a Federal district court in the Eastern District of Washington has recently ruled that pursuant to CERCLA, local governments have legal standing to be able to participate in the planning and selection of a remedy at a CERCLA cleanup site. Pursuant to that decision, local governments must be allowed to participate in the planning and selection of a remedy.

And we're asking, how does the community help determine cleanup priorities? How can communities balance public health and environmental concerns with its potential reindustrialization of the site?

Regrettably, Paducah continues to suffer from our reputation for being a 50-year host of this plant. I have here a copy of "The Washington Post" article that was printed in 1999. Also, we have a "National Geographic" story. You're always seeking publicity for your community, but not this kind.

This is very hurtful and detrimental to our community, even though we have taken pride in being a host of the USEC plant for the 50 years it's been here. I'm sure that you can imagine that this does not help us in the recruitment of industry and also any other things that we look at as beneficial to our community.

Our local government is charged with specific legal mandates under state and Federal laws to serve as steward of all land resources and infrastructure assets. It is our local government that is responsible for land use planning and control and, as said, should represent its citizens to DOE on site decisions.

Currently, the City of Paducah and McCracken County are jointly engaged in a process of formulating a new comprehensive plan. Paducah and McCracken County have both had comprehensive plans for many years, but this is the first time that we've done one together. And we're doing a very comprehensive study, especially of the plant site.

The basic intent of the plan is to devise a land use policy that protects all of the land resources, determining the most logical pattern of development. We must go through a process of asset utilization that helps secure our economic future. This community and DOE must work together to have safe, secure, and compatible land uses surrounding the site.

To achieve this, it is our recommendation to create a different formal mechanism for working with local government, and I think you all touched on that in some of your questions.

But we -- in a letter to you, Congressman Whitfield, and to the rest of your Congressional Delegation dated December 14, 2005 -- requested that a DOE position be formed in the Paducah office to work exclusively on economic development and reindustrialization issues at the site. Now, Mr. Bill Murphie does do a good job with the cleanup.

When some of our delegation went to Oak Ridge, we saw how well that works there, and we're not just asking for that because they have someone. We think that would be very beneficial for our community. So we repeat this and ask for your assistance today. We do not believe this type of arrangement is unprecedented for DOE. And as I said, it's because we visited the Oak Ridge site, we learned that sometimes DOE does get involved in economic development.

Your colleague Senator McConnell was instrumental in securing statutory language to study the water policy at the site. It is our request that DOE take an expansive view of the current proof study for the existing site in addition to potential uses of land that may be voluntarily acquired. There are at least 4,000 acres of land in and around the plant site that should be in the master plan.

The master plan should evaluate the reindustrialization opportunities of the gaseous diffusion site and the vicinity. It is imperative that local government and the community be closely involved in this process. It all ties together; environmental remediation is linked to our reindustrialization.

Now I want to speak to the nickel on the site, and you all have already asked some good questions about that. We were glad to hear those questions and comments regarding the nickel. But we look at that as an asset for Paducah. After 50 years of solid support for DOE, and I truly mean that. We've worked with DOE as well as we could. We've looked at them as a partner in the community and still look at it that way.

The Paducah community and region should receive equitable treatment compared to other sites, such as Hanford; Pinellas County, Florida; and most recently Oak Ridge, Tennessee. They have experienced success through the transfer of assets through the Hall Amendment to bring back value to the community.

I don't know how much I'm allowed to deviate from this, but I heard Secretary Rispoli talk about maybe they would study alternatives to the nickel, as well as one of the alternatives maybe keeping that here. So I would ask the Secretary, if I wouldn't be impolite, not to study any alternatives, but designate that as a Paducah site and let us study it together and how we can utilize that for our area.

Recently, DOE included metal recycling in the scope of the new plant cleanup contract just awarded. It is our hope that it is logical for DOE to lift the moratorium on metal recycling. And I heard you ask questions on that.

It is our recommendation to immediately work to re-establish the position of our community, that the value of certain assets be reserved for the economic benefit of the community. Our position regarding the disposition of assets, especially the nickel, has been made known to DOE for several years. That process was initiated in 1998, again reinforced in the year 2000, again in 2003 and 2004, and to the Congressional Delegation in 2005.

It is not our intention to use the funds for general government. We don't want the nickel assets to be just put in our general fund to be soaked up and see no benefit to it.

Rather, the community would use a portion of those funds for additional cleanup and reindustrialization of select parts of the site. By that, we realize the whole 4,000 acres probably will never be beneficial for an industrial site, but we need what part of it we can get, or provide incentives and infrastructure for the Graves County Regional Park.

If we secure funds from the sale or transfer of assets, it is our goal to reduce the constant request for congressional appropriations for the region as they relate to mitigating the obvious negative impacts that come with the plant being downsized or closed.

The last item and one of the also very important ones to us is the payment in lieu of taxes. Less than two weeks ago, we had a large wildfire that was started near the plant site. Our local fire fighting

agency which covers the USEC territory responded to it to control the blaze that was potentially threatening to the site.

While DOE real estate holdings encumber thousands of acres in McCracken County, real estate property taxes are not made to any local units of government, including the county, the fire department, or the local school district. I just used the fire department as one example of a service that we do provide from the county for the USEC plant, as well as many other services. These local units of government bring services of value to the plant site.

In 2006, McCracken County will formally request DOE for payments in lieu of taxes. The purpose of the payments would be to offset the loss of property tax revenue associated with the acquisition of the properties by the United States. Property tax revenues pay for essential local services. By way of comparison, the Tennessee Valley Authority site located adjacent to the Gaseous Diffusion Plant pays McCracken County nearly $800,000 annually in lieu of property taxes.

Here again, we will be only seeking equitable treatment by DOE. We understand that there are about 20 other communities in our nation that have a DOE presence that already receive these payments in lieu of taxes.

In conclusion, Honorable Chairman and Congressman Stupak and staff, this concludes my prepared statement. If you have any questions or concerns, I can address them now, or, of course, you may contact my office or the Mayor's office at your convenience.

We do sincerely appreciate -- I'm not going to read this because I really mean this -- we really appreciate you all holding this hearing here. I was glad to meet Congressman Stupak this morning and some of the other staffers. And, Congressman Whitfield, we appreciate everything you've done in the past and especially holding this hearing here.

[The prepared statement of Daniel Orazine follows:]

PREPARED STATEMENT OF DANIEL ORAZINE, COUNTY JUDGE EXECUTIVE, MCCRACKEN COUNTY, KENTUCKY

Honorable Chairman Whitfield. Honorable Congressman Stupak. Good morning. My name is Danny Orazine. I am the McCracken County Judge-Executive. Thank you for conducting this hearing in Paducah. Congressman Whitfield, I too share the Mayor's gratitude for all of your assistance in representing our workers.

On behalf of the Paducah-McCracken County community, there are three areas of concern I wish to address with the committee today. They are:

1. Re-industrialization of the plant site,
2. Metal Recovery, especially nickel, as decommissioning occurs; and
3. Payments in Lieu of Taxes.

FIRST: RE-INDUSTRIALIZATION

In this post privatization period, it is not likely that this plant will enrich uranium indefinitely. USEC has announced that their next generation centrifuge plant will be in Ohio. We simply cannot just sit still and wait for that to happen. We must be working now to develop strategies to successfully benefit from the infrastructure and land assets that will be left behind.

The Department of Energy uses a formal process called "End States" to help determine the environmental cleanup process for a site. The level to which a site will be cleaned determines how it can be used in the future. As the entities most affected by the future of these sites, what is the proper role for local governments in the end state decision-making process? Rightly or wrongly we feel disconnected from the so-called "End States" process. In an important decision for local government involvement in DOE cleanup, a Federal District Court in the Eastern District of Washington has recently ruled that pursuant to CERCLA, local governments have legal standing to be able to participate in the planning and selection of a remedy at a CERCLA cleanup site. Pursuant to that decision, local governments must be allowed to participate in the planning and selection of a remedy. How does the community help determine cleanup priorities? How can communities balance public health and environmental concerns with potential reindustrialization opportunities? Regrettably, Paducah continues to suffer from its national reputation as being a "dirty" site. National publications like *National Geographic* and the *Washington Times* spotlighted Paducah with feature articles regarding contamination and threats to public health. I am sure you can imagine that this does not help in the recruitment of new industries in to the region.

Our local government is charged with specific legal mandates under state and federal laws to serve as stewards of all land resources and infrastructure assets. It is our local government that is responsible for land use planning and control and as such should represent its citizens to DOE on site decisions. Currently, the city of Paducah and McCracken County are engaged in the process of formulating a new comprehensive plan. The basic tenant of the plan is to devise a land use policy that protects all of the land resources by determining the most logical pattern of development. We must go through a process of asset utilization that helps secure our economic future. This community and DOE must work together to have safe, secure, and compatible land uses surrounding the sites. To achieve this, it is our recommendation to create a different formal mechanism for working with local governments.

In a letter to you, Congressman Whitfield, and the rest of our congressional delegation dated December 14, 2005, we requested that a DOE position be formed in the Paducah office to work exclusively on economic development and reindustrialization issues at the Paducah site. We repeat this and ask for your assistance today. We do not believe this type of arrangement is unprecedented for DOE. We have visited with local officials and DOE officials at the K-25 facility in Oak Ridge. We think DOE's economic development efforts at K-25 are a model for Paducah. Resources must be made available to support the local government's need to have a substantive role in land use planning on DOE facilities, especially in Paducah where DOE and USEC have stated they are downsizing the facility.

Your colleague, Senator McConnell was instrumental in securing statutory language to study the "water policy box" at the site. It is our request that DOE take an expansive view of the current approved study for the existing site in addition to potential uses of land that may be voluntarily acquired. At least 4,000 acres of land in and around the plant site should be "Master Planned". The Master Plan should evaluate the reindustrialization opportunities of the gaseous diffusion site and vicinity. It is imperative that local government and the community be closely involved in this process. It all ties together. Environmental remediation is linked to re-industrialization.

SECOND: Nickel, Metals, AND OTHER ASSET Recovery on Site

After 50 years of solid support for DOE and doing our part for national security, the Paducah community and region should receive equitable treatment compared to other sites such as Hanford, WA, Pinellas County, FL, and most recently Oak Ridge, TN that have experienced success through the transfer of assets through the "Hall Amendment" to bring back value to the community.

The urgency of establishing a position for the community in the disposition or sale of the nickel, other metals, and other assets on site appears to be building. Recently DOE included metal recycling in the scope of the new plant cleanup contract just awarded. It is our hope that it is logical for DOE to lift the moratorium on metal recycling soon.

It is our recommendation to immediately work to reestablish the position of the community, that the value of certain assets be reserved for the economic benefit of the community. Our position regarding the disposition of assets, especially the nickel, has been made known to DOE. That process was initiated in 1998, was reinforced in 2000, again in 2003, 2004, and again was supported again by Kentucky's congressional delegation in 2005.

It is not our intention to use any funds for "general government" purposes. Rather, the community could use a portion of those funds for additional cleanup; re-industrialization of select parts of the site; or provide incentives and infrastructure for the Graves County Regional Park. If we secure funds from the sale or transfer of assets, it is our goal to reduce the constant request for Congressional appropriations for the region as they relate to mitigating the obvious negative impacts that come with the plant being downsized or closed.

Payments In Lieu of Taxes

Less than two weeks ago, a large wild fire was started near the plant site. Local firefighters from McCracken County responded to and controlled the blaze that was potentially threatening to the plant site. While DOE real estate holdings encumber thousands of acres in McCracken County, real estate property taxes are not paid to any local units of government including the county, the fire protection district, or the school district. These local units of government bring services and value to the plant site. In 2006 McCracken County will formally request DOE for payments in lieu of taxes. The purpose of the payments would be to offset the loss of property tax revenue associated with the acquisition of the properties by the United States. Property tax revenues pay for essential local services. By way of comparison, the Tennessee Valley Authority site located adjacent to the gaseous diffusion plant pays McCracken County nearly $800,000 annually in lieu of property taxes. Here again, we will only be seeking equitable treatment by DOE. At least 20 communities across the nation that have had a DOE presence have received payments in lieu of taxes.

CONCLUSION

Honorable Chairman, Congressman Stupak, and staff, this concludes my prepared statement. If you have any questions or concerns, I can address them now, or of course you may contact my office at your convenience. I sincerely appreciate you coming to Paducah. It makes a real difference to the Fiscal Court, the Mayor, the City Board of Commissioners, and the community we are so fortunate to serve, when you take such a keen interest. Keep up the good work. The Mayor and I look forward to working with you and DOE as we move this community forward. We know you are sincere in your desire to help us help ourselves. As we are fond of saying around here, Paducah's best days are still ahead us. Thank you.

Respectfully Submitted this 19th Day of January 2005

MR. WHITFIELD. Well, thank you all for your testimony. It is quite in-depth with some great suggestions.

And at this time, Mr. Hughes, we'll recognize you for your opening statement.

MR. HUGHES. Thank you, Chairman Whitfield and Representative Stupak. I'd like to go ahead and share with you what we put down for the committee.

Good morning. I'm Mike Hughes, President and General Manager of Bechtel Jacobs, which is an LLC, and we're the Environmental Management contractor for the Department of Energy at Oak Ridge, Tennessee, and Paducah, Kentucky, and formerly at Portsmouth, Ohio. And I do appreciate the opportunity to testify today.

Our primary mission at Paducah is to execute the Department's cleanup mission here and the program at the site with the support of numerous subcontracts. Our current contract expires April 23rd, 2006.

I'd like to say a few words about our recent environmental accomplishments, our preparations for transition of the new remediation contractor, and our continuing role as administrator of the Multi-Employer Pension Program and the Multi-Employer Welfare Agreement.

First, I'd like to say a few things about safety. Safety is always our first priority. So adherence to the integrated safety management system approach and the dedication and commitment of our workforce has resulted in excellent safety performance at Paducah.

In September, we completed 3 million hours of work without a lost time accident. This is the second time we've been able to achieve this and reach the 3-million-hour mark at the Paducah project, and we are on track to reach 3.5 million hours before the end of our contract this coming April.

Second only to the safety of our workforce and the public is the protection of the environment. We have enjoyed excellent relationships with our subcontractors, union representatives, and the local community; and together we have had notable successes in environmental remediation over the past year.

I'd like to share some of those over the past year versus going all the way back to 1998. These include the cleanup of ground and surface water contamination, scrap metal removal, the decontamination and decommissioning of inactive facilities, waste treatment and disposal of contaminated cleanup, and more.

Specifically, we are proud of the following accomplishments: We accelerated the pace of the legacy waste disposition, removing more than 3 million pounds of uranium tetrafluoride and a variety of other wastes. By March of this year, we expect to have completed disposal of half of

the total legacy waste volume at the site. We disposed of 5,000 tons of scrap metal last year.

We emptied the last of 17 outdoor DOE material storage areas in October and have begun to empty indoor storage areas now. We completed the accelerated decontamination and decommission of the plant nitrogen generating facility, issued initial documents for the removal of three more inactive facilities, and continue to make progress in the 250,000 square-foot feed plant complex.

We've also completed an investigation of two old landfills and the southwest groundwater plume and issued the initial work plan for investigation of the site burial group.

With regard to the worker transition, shifting the transition, we will continue to diligently work with our Paducah employees, DOE, and the new remediation contractor to assure the safe, efficient, and effective transition of the remainder of our Paducah scope of work. To date, we've completed five of the six necessary transitions of scope to other DOE prime contractors at Paducah and Portsmouth, Ohio, and to the best of our knowledge, these transitions have been fully satisfactory to the Department of Energy and to the contractors.

We will continue to provide focused senior management leadership, subject matter experts, and a project management approach to assist all parties in a safe, efficient and effective transition of the remaining remediation work scope at Paducah.

BJC has a separate arrangement with the Department of Energy to provide services for the administration of a Multi-Employer Pension Plan, which we've been referring to as MEPP, and the Multi-Employer Welfare Agreement, MEWA, for the eligible covered employees of the four DOE prime contractors for remediation and infrastructure at Paducah and Portsmouth, Ohio.

Bechtel Jacobs has been successful in providing benefits administration support for transitioned workforces over the past eight years from our Oak Ridge office. Presently, this includes benefit administrations for 2,124 eligible active employees of Bechtel Jacobs Company, our 27 workforce transition subcontractors, and the remediation and infrastructure contractors and subcontractors in both Paducah and Portsmouth. BJC Benefits Administration also provides benefit administration for approximately 400 retirees.

On June 27th, 2005, Bechtel Jacobs Company was successful in the transition of 135 remediation and infrastructure eligible covered employees in Portsmouth and Paducah. This included coordination with three prime contractors and seven subcontractors. During this transition, none of the covered employees incurred any suspension or loss of benefits.

To ensure a smooth transition for eligible employees, BJC Benefits Administration will work in conjunction with the BJC transition manager and remediation contractor and subcontractors to complete the following: Identify the responsible members of the Paducah remediation contractor and its subcontractors. We will provide training facilitated by the Bechtel Jacobs Company Benefits administrative staff to familiarize the Paducah remediation contractor with the MEPP and MEWA.

We'll conduct formal presentations made by the plan administrator and the benefits manager on the Paducah remediation contractor's participation on the benefits and investment committee to help them understand their fiduciary responsibilities.

We'll ensure the Benefits Administration works closely with the contractor and subcontractors on the actual employee eligibility and administration; for example, enrollments for the various benefit providers. And we will continue to provide quality benefit administration for the Paducah remediation eligible covered employees.

Within the community, Bechtel Jacobs continues to work closely with the Paducah Gaseous Diffusion Plant Citizens Advisory Board when implementing DOE's Environmental Management decisions. We appreciate their support and the recommendations. This positive relationship with the CAB and the community is vital to the success of the cleanup program.

I'd like to commend Paducah's elected officials, their business leaders and civic organizations for their support in the environmental cleanup program. Bechtel Jacobs Company has always strived to be a good corporate citizen, and we have made many lasting friendships in this community.

Let me also thank you, Chairman Whitfield, and fellow members of the Kentucky Delegation, particularly Senators Bunning and McConnell, for your continued support for the funding to continue this cleanup and extremely important environmental cleanup projects that have been ongoing.

In conclusion, let me say that significant progress has been made in the environmental cleanup of the Paducah Gaseous Diffusion Plant during the tenure of Bechtel Jacobs Company. We are very proud of our safety record, and we're also very proud of the accomplishments we've made here.

We're committed to continuing our high level of professional support to the employees, the retirees, the community, Department of Energy, and the new contractor during this final phase of transition, and we will also continue to take seriously the responsibility to administer the pension and benefits beyond transition.

I'd just like to say we are, in conclusion, extremely proud of what we've been able to do here. We've been very thankful to have the opportunity to serve the Department of Energy as the prime contractor here, and in the transition, we will continue to take care of people and that process and work with the community and the new contractors to make sure that that's seamless.

Thank you very much.

MR. WHITFIELD. Thank you, Mr. Hughes.

[The prepared statement of Michael Hughes follows:]

PREPARED STATEMENT OF MICHAEL HUGHES, PRESIDENT, BECHTEL JACOBS, LLC

SUMMARY

Bechtel Jacobs Company LLC (BJC) is the Department of Energy's (DOE) Remediation contractor at the Paducah Gaseous Diffusion Plant in Paducah, Kentucky. Our primary mission is to effectively execute DOE's environmental cleanup program at the site. We assumed responsibility for the Paducah work on April 1, 1998. The Infrastructure and Cylinder Management scopes of work were transitioned to other DOE prime contractors in June 2005, and we are scheduled to transition the remaining Remediation scope to another DOE prime contractor prior to our current contract expiration date of April 23, 2006. Under a separate arrangement with DOE, BJC will continue pension and benefit administration for eligible covered employees of the new DOE prime contractors.

Safety of our workforce and the public is always our first priority. In September, we completed three million hours of work without a lost-time accident. We have had notable environmental remediation successes during the past year in the cleanup of groundwater and surface water contamination, removal of scrap metal, decontamination and decommissioning of inactive facilities, and treatment and disposal of contaminated waste. We are proud of our safety record and accomplishments.

We commend Paducah's elected officials, business leaders, and civic organizations for their support to the environmental cleanup program. Let me also thank you, Representative Whitfield, and the fellow members of the Kentucky delegation, particularly Senators Bunning and McConnell, for your continued support for the funding of this extremely important work.

INTRODUCTION

Good morning. I am Mike Hughes, President and General Manager of Bechtel Jacobs Company LLC (BJC), the Department of Energy's (DOE) environmental management contractor for Oak Ridge, Tennessee; Paducah, Kentucky; and formerly at Portsmouth, Ohio. Our primary mission is to effectively execute DOE's environmental cleanup program at the site and support an effective workforce transition program. We assumed responsibility for the Paducah work on April 1, 1998. The Infrastructure and Cylinder Management scopes of work were transitioned to other DOE prime contractors in June 2005, and we are scheduled to transition the remaining Remediation scope to another DOE prime contractor prior to our current contract expiration date of April 23, 2006. Under a separate arrangement with DOE, BJC will continue pension and benefit administration for eligible covered employees of the new DOE prime contractors.

ENVIRONMENTAL MANAGEMENT

BJC has achieved notable successes in environmental management on the Paducah Project. We have made significant progress in legacy waste disposition, decontamination and decommissioning (D&D), scrap metal removal, and the characterization and disposition of materials in storage sites across the plant. We have advanced the groundwater program and completed several studies needed for future cleanup decisions.

By the anticipated end of our contract at the Paducah Gaseous Diffusion Plant, we will have completed disposal of more than half of the legacy waste inventory at the Paducah site. Since the start of Fiscal Year 2005, we have disposed of more than 72,000 cubic feet of legacy waste. This included a special effort to examine and dispose of nearly three million pounds of uranium tetrafluoride two years ahead of schedule, and we accelerated disposition of legacy wastes that have been stored outdoors for many years.

Our scrap metal removal project has disposed of approximately 5,000 tons of scrap metal over the last year. We have disposed of more than 12,000 tons of scrap metal to date, and a recent restructuring of our principal subcontract for scrap metal disposition is allowing us to increase the pace of disposal, while reducing shipping vulnerabilities. A special effort to dispose of more than 250 tons of metal turnings in 2005 was highly successful.

Under DOE's 2003 Agreed Order with the Commonwealth of Kentucky, we have completed characterization of 75 percent of the estimated 855,000 cubic feet of material in 160 DOE Material Storage Areas (DMSAs) located throughout the Paducah Gaseous Diffusion Plant site. In October 2005, we emptied the last of 17 outdoor DMSAs and have now turned our focus to the indoor locations. Some of the areas have been returned to DOE or USEC use, and we have 20 formal Resource Conservation and Recovery Act Closure Plans where the work has been completed and we are awaiting regulatory review and approval.

We have accelerated the D&D of several inactive Paducah facilities and completed the removal of the Nitrogen Generating Facility in October 2005, five years ahead of schedule. Essential evaluations and cost analyses have been completed for the D&D of three other inactive facilities, and we continue to make progress in the D&D of the 250,000 square foot Feed Plant complex.

The August 9, 2005, signing of the Record of Decision on the C-400 Groundwater Action has allowed us to proceed with the planning document for the remediation of the major groundwater contamination source at the site. Direct Heating Technology, shown to remove 98 percent of the volatile organic contamination in the target area during our earlier Six-Phase Heating Treatability Study, can now be applied with confidence to the dominant source of risk at the site. In the interim, we have continued to treat the most contaminated portions of the groundwater plumes, bringing the total volume of groundwater treated to 1.8 billion gallons. We have also continued to protect residents north of the plant through administration of DOE's Water Policy Box lease agreements.

These and other environmental efforts – including extensive ongoing environmental monitoring, completion of the Final Remedial Action Report on the North-South Diversion Ditch, and key studies of the Southwest groundwater plume, the former S and T Landfills, and site-wide surface water – have reduced risk to the public and site workers from actual and potential environmental contamination. As we close out our work with DOE at the Paducah plant, we can transition DOE's environmental management work to the incoming contractor with strong momentum and on sound footing.

CONTRACT TRANSITION

DOE divided the Management and Integration contracts at Paducah and Portsmouth into distinct work scope elements at each site. These work scope elements are Infrastructure, Cylinder Management, and Remediation at both sites, and Citizens

Advisory Board support at Paducah. Only one work scope element, Remediation at Paducah, remains to be transitioned to a new contractor. BJC is committed to fully supporting the DOE's transition of the remaining remediation work scope.

During the past year, our company has completed the safe, efficient, and effective transition of the Cylinder Management program and the Infrastructure scope of work at Paducah. The success of our transition program can be attributed to a three-tiered management approach that includes: focused senior management leadership, a subject matter expert transition team, and a proven project management approach.

The General Manager of the Paducah Project has overall responsibility, the Operations Manager ensures that ongoing activities continue unimpeded during transition, and the Transition Manager is responsible for the specific transition activities. The focused management team has delivered very successful transitions to date and will do so for the remaining work scope.

We have identified 40 distinct work scope areas for remediation that have subject matter expert leads in Paducah supported by Oak Ridge counterparts. This arrangement allows us to utilize the company's full expertise to assist the Remediation contractor in identifying, coordinating, and closing out key activities and issues of concern. Through our project management approach, a comprehensive schedule containing 400 action items was developed and tracked to completion during the Infrastructure transition. The current Remediation transition project schedule also contains approximately 400 action items, more than 100 of which have already been completed.

ADMINISTRATION OF BENEFITS

BJC will continue to provide services for benefit and pension administration of the Multiple Employer Pension Plan (MEPP) and the Multiple Employer Welfare Agreement (MEWA) for the eligible covered employees of four DOE prime contractors for Remediation and Infrastructure at Paducah and Portsmouth. On April 25, 2005, DOE directed execution of service agreements with the Infrastructure and Remediation contractors. BJC serves as the plan administrator and executes the plan as set forth by DOE in our contract.

BJC has been successful in providing benefits administration and support for transitioned workforces over the past eight years. Beginning with the transition of Lockheed Martin incumbent employees to BJC and its first- and second-tier subcontractors, BJC has provided benefits administration and support from our Oak Ridge office. Presently this includes benefits administration for 2,124 eligible active employees of BJC, our 27 workforce transition subcontractors, and the Remediation and Infrastructure contractors/subcontractors in Paducah and Portsmouth. BJC Benefits Administration also provides benefit administration for approximately 400 retirees.

On June 27, 2005, BJC was successful in the transition of 135 Remediation and Infrastructure covered employees in Portsmouth and Paducah. This included coordination with the three prime contractors and seven subcontractors. During this transition none of the covered employees incurred any suspension or loss of benefits.

To ensure a smooth transition for the Paducah Remediation eligible covered employees, BJC Benefits Administration is working with the BJC Transition Manager and Remediation contractor/subcontractors to:

- identify the responsible members of the Paducah Remediation contractor and its subcontractors,
- provide training, facilitated by BJC Benefits Administration, to familiarize the Paducah Remediation contractor with the MEPP and MEWA,
- conduct formal presentations, made by the Plan Administrator and the Benefits Manager, on the Paducah Remediation contractor's participation on the Benefits and Investment Committee to help them understand their fiduciary responsibilities,

- work closely with the Paducah Remediation contractor/subcontractors on the actual employee eligibility and administration (e.g., enrollments for the various benefits providers), and
- continue to provide quality benefit administration for the Paducah Remediation eligible covered employees.

The new Remediation contractor and subcontractors will sign a *Benefits Accounting and Administration Services Agreement* and an *Adoption Agreement* to allow continued participation for eligible transitioned employees. BJC will ensure a successful transition and continued benefits administration for the Paducah Remediation contractor's eligible covered employees.

CLOSING

Significant progress has been made in the environmental cleanup of the Paducah Gaseous Diffusion Plant during the tenure of BJC. We are proud of our safety record and accomplishments. We are committed to continue our high level of professional support to our employees, retirees, the community, DOE, and the new contractor during this final phase of transition, and we will continue to take seriously the responsibility to administer the pension and benefits beyond transition.

We commend Paducah's elected officials, business leaders, and civic organizations for their support to the environmental cleanup program. Let me also thank you, Representative Whitfield, and the fellow members of the Kentucky delegation, particularly Senators Bunning and McConnell, for your continued support for the funding of this extremely important work.

Thank you.

MR. WHITFIELD. And at this time, we'll recognize Mr. Rob Ervin for his opening statement.

MR. ERVIN. Good morning. I want to thank the Chairman and ranking member for holding this hearing today in Paducah and inviting me to testify.

My name is Rob Ervin, and I have worked at the Paducah Gaseous Diffusion Plant for 17 years. I am currently employed by USEC as an instrumentation and controls technician. In addition, I serve as the President of USW Local 550, which represents over 700 hourly workers employed by USEC and Department of Energy Environmental Management Program contractors and subcontractors at the Paducah plant, including Bechtel Jacobs, Swift & Staley, Weskem, and Uranium Disposition Services.

At the outset, I would like to recognize the leadership provided by Congressman Ed Whitfield over the many years he has represented our plant. His work covers pension protections in the USEC Privatization Act of 1996, holding oversight hearings on the problems created by privatization, negotiating a memorandum of agreement to guarantee operations of the Paducah enrichment plant through the year 2010, and expanding the Former Worker Medical Screening Program.

He helped enact legislation to dispose of the 50-year legacy of depleted uranium hexafluoride at Paducah and serve as a lead House

sponsor of the Energy Employees Occupational Illness Compensation Program Act. He used his perch on Energy and Commerce to track DOE's failures in implementing its part of the compensation program and then worked to transfer the DOE's program over to the Department of Labor in 2004.

Most recently, he joined on a bipartisan basis with Representative Ted Strickland in enacting legislation to protect the pensions and retiree health care benefits of USEC and Bechtel workers.

This list seems long because there has been a lot accomplished. Our membership thanks him and his staff for these and many other efforts.

I would be remiss if I did not mention how much the workers at Paducah plant have appreciated the tireless efforts of Karen Long. We will miss her.

Today, my testimony will focus on two areas, ensuring portability of the pension and retiree health care benefits for USEC hourly workers who transfer to the DOE cleanup contractors and continuing the DOE Former Worker Medical Screening Program at Paducah.

Today, workers employed at Paducah have the right to carry pension service credits and retiree medical benefits from USEC to cleanup contractors. Unfortunately, DOE is bringing this practice to an abrupt halt.

Regardless of the changes to employment arrangements, such as USEC privatization, the shift to an integrating contractor with multiple subcontractors or the replacement of the management and operations contractor, pension portability has been the rule at the Paducah plant throughout its 50-year history.

In 1998, DOE directed Bechtel Jacobs to establish the Multiple Employer Pension Plan, or the MEPP, a defined benefit plan which welcomed displaced USEC workers and facilitated pension portability between DOE prime contractors and their subcontractors.

When DOE issued requests for proposals for remediation and infrastructure contractors in November 2003 to replace Bechtel Jacobs, it severely narrowed the definition of which workers will be grandfathered and, therefore, eligible to participate or transfer into the MEPP. USEC workers and Bechtel Jacobs workers above first tier supervision were excluded.

Two key documents govern benefit portability at Portsmouth and Paducah, the Bechtel Jacobs Multiple Employer Pension Plan and the Bargaining Unit Transition Agreement.

In response to concerns about DOE's request for proposals, Mr. Whitfield sent then Secretary of Energy Abraham a December 18th, 2003 letter expressing concerns about the loss of pension continuity.

Senators McConnell and Bunning followed with a December 19th, 2003 letter.

DOE has questioned whether permitting USEC employees to transfer into the MEPP with their full service credits but without corresponding proportionate transfer of pension plan assets might result in fiscal impairment of the plan. DOE received a briefing showing this concern is misplaced.

Benefits are paid under the MEPP on a pro rata basis proportional to years of employment if employees are also participating in the USEC plan. USEC is separately obligated to make pension payments from its pension plan on a pro rata basis. Employees simply receive two pension checks. DOE's concerns about pension transfers are a red herring.

When DOE announced the award of new contracts in Portsmouth and Paducah in the spring of 2005, the pension portability issues were not resolved. Representatives Whitfield and Strickland then attached Section 633 to the Energy Policy Act of 2005. Section 633 codifies the benefit continuity arrangements at Portsmouth and Paducah that were in effect on April 1st of 2005.

DOE vigorously lobbied against this pension provision during the House/Senate conference during July 2005. Following its legislative loss, DOE issued a September 13th, 2005 implementation plan which excludes USEC hourly workers. On October 3rd, Representatives Whitfield and Strickland challenged the interpretation by pointing out that Section 633 specifically includes USEC workers.

On January 12th, 2006, DOE responded that USEC workers will not have a right to transfer their pension benefits with them when employed by new DOE contractors if the DOE contractors they go to work for were not previously parties to a Bargaining Unit Transition Agreement on April 1st, 2005.

Nowhere does Section 633 require that new DOE contractors had to already have been signatories to a Bargaining Unit Transition Agreement back on April 1st, 2005. The law is unambiguous. DOE has a forward-looking obligation to continue pension continuity for all employees who had these rights on the benchmark date of April 1st, 2005.

As an immediate matter, DOE's position is that USEC hourly employees cannot bring their pension service credit with them to Paducah Remediation Services, the new Paducah remediation contractor who was awarded a DOE contract on December 27th, 2005, because Paducah Remediation Services was not a signatory to the Bargaining Unit Transition Agreement back on the April 1st benchmark date.

DOE wants to reduce the number of workers in its contractors' defined pension plan as a part of a national pension agenda. While

cutting off employees from defined benefit plans is an unfortunate trend in the private sector, it is not the DOE's job to second-guess a Congressional directive which continues such benefits. DOE has fixed its legal position around its policy to reduce their legacy pension costs by taking it out of the pockets of the workers.

As much as we all want the Paducah plant to remain operational, we are mindful of the economic challenges presented by rising electricity costs and the development of lower cost centrifuge technology.

In the future, as USEC workers seek to fill available openings with the cleanup contractors, the loss of pension continuity is a concern. The possibility of further downsizing coupled with the potential for further DOE decommissioning jobs makes pension continuity at Paducah an imperative for a much larger number of workers and a precedent that should not be tampered with.

In sum, DOE should be asked whether they intend to comply with the letter and intent of Section 633. We hope that DOE will not make it a routine practice to require two acts of Congress to implement a given Congressional directive as it did with the DUF6 Project. Without pension portability assured for USEC hourly workers, we believe it will be difficult to ensure a seamless transition to the new remediation contractor.

The DOE's Former Worker Medical Screening Program has screened 2,597 workers who were exposed to radioactive or toxic substances at Paducah between May 1st, 1999, and December 31st, 2005. The basic screening program was expanded in November 2000 to include an early lung cancer screening program and to allow current workers to participate.

Using a low dose CT spiral scanner on a mobile unit traveling between Portsmouth and Paducah and Oak Ridge, 1,620 individuals have received lung scans in Paducah and 5,829 at the three gaseous diffusion plants. Forty-four lung cancers were identified at Stage I, when treatment has a very high probability of saving a life. The low dose CT spiral scan is four times more likely than a chest x-ray to detect cancer at an early stage.

DOE's Former Worker Medical Screening Program is going to be operating with a smaller footprint for the next two years beginning this spring. Appropriations legislation has secured funding for screening at the gaseous diffusion plants in past years, and a provision may be required for fiscal year 2007.

Thank you for your consideration.

MR. WHITFIELD. Mr. Ervin, thank you.

[The prepared statement of Rob Ervin follows:]

PREPARED STATEMENT OF ROB ERVIN, PRESIDENT, UNITED STEEL WORKERS LOCAL 5-550

My name is Rob Ervin and I have worked at the Paducah Gaseous Diffusion Plant for 17 years. I am currently employed by USEC as an Instrumentation and Controls Technician. In addition to my craft responsibilities, I serve as the President of USW Local 550, which represents over 700 hourly workers involved in production for USEC and Environmental Management program activities for Department of Energy ("DOE") contractors and subcontractors at the Paducah plant, including Bechtel Jacobs, Swift and Staley, Weskem, and Uranium Disposition Services (the DUF6 disposition project). My home address is 398 Country Club Estates, La Center, KY 42056. Please contact me at 270-442-3668.

At the outset, I would like to recognize the leadership provided by Congressman Ed Whitfield over the many years he has represented our plant. His work covers pension protections in the USEC Privatization Act of 1996, holding oversight hearings on the problems created by privatization, negotiating a Memorandum of Agreement to guarantee operations of the Paducah enrichment plant through the year 2010, and expanding the former worker medical screening program. He helped enact legislation to dispose of a 50-year legacy of depleted uranium hexaflouride ("DUF6") at Paducah, and served as a lead House sponsor of the Energy Employees Occupational Illness Compensation Program Act ("EEOICPA"). He used his perch on Energy and Commerce to track DOE's failures in implementing its part of EEOICPA, and then worked with the House Armed Services Committee to transfer the DOE's program over to the Department of Labor in 2004. Most recently he joined on a bipartisan basis with Representative Ted Strickland in enacting legislation to protect the pensions and retiree health care benefits of USEC and Bechtel workers. This list seems long, because there has been a lot accomplished. Our membership thanks him and his staff for these and many other efforts.

Today my testimony will focus on:

1) Ensuring that the pension and retiree health care benefit continuity continue undisturbed at the Paducah site for USEC workers who transfer to the DOE's cleanup contractors, and the transition to the new remediation contractor is seamless; and
2) Continuing the DOE former worker medical screening program at Paducah.

1. <u>Pension continuity: DOE is not complying with Section 633 of the Energy Policy Act of 2005</u>

Today, workers employed at Paducah have the right to carry pension service credits and vesting in retiree medical benefits from USEC to the cleanup contractors at Paducah and Portsmouth. But DOE wants that to end. No matter the changes to employment arrangements—such as USEC privatization, the shift to an integrating contractor with multiple subcontractors, or the replacement of the Management and Operation contractor--pension and retiree benefit portability has been the rule at the Paducah Gaseous Diffusion Plant ("PGDP") throughout its 50+ year history.

In 1998, Bechtel Jacobs established the Multiple Employer Pension Plan ("MEPP"), a defined benefit plan, to continue the practice of assuring pension portability at a time when employment relationships were changing frequently. The MEPP welcomed USEC employees who transitioned to DOE contractors after losing their jobs from the downsizing or closure of a uranium enrichment plant. The MEPP also enhanced employee mobility by allowing workers to move between Bechtel Jacobs and its various tiers of subcontractors performing work for the Environmental Management Program while assuring seamless pension portability.

When DOE issued Requests for Proposals ("RFPs") for remediation and infrastructure contractors in November 2003 to replace Bechtel-Jacobs ("BJC") at

Portsmouth and Paducah, it narrowed the definition of which workers will be "grandfathered" and therefore eligible to participate or transfer into the MEPP.[1] USEC workers and those BJC workers above first tier supervision were excluded. These DOE changes undermined the enlightened social policy embodied in the MEPP: to promote and ensure pension/retiree medical portability.

Two documents govern benefit portability at Portsmouth and Paducah:

1) **The Bechtel Jacobs Multiple Employer Pension Plan ("MEPP").** This plan sets forth the definition of "Grandfathered" employees covered under the plan. Grandfathered employees include hourly USEC workers who were covered by a "bargaining unit transition agreement" ("BUTA"). The DOE's new Infrastructure and Remediation Contractors are required to become participants in the MEPP within 90 days of starting work.
2) **The Bargaining Unit Transition Agreement ("BUTA").** This allows hourly workers to transition from USEC or from DOE's former contractor, Lockheed Martin Energy Systems over to Bechtel Jacobs and its subcontractors. This agreement, which was approved in February 2000 and is in effect at Paducah today, authorizes "grandfathered" hourly employees to retain their USEC pension service credit and vesting in the retiree medical benefits plan.[2]

The Bargaining Unit Transition Agreement (Section 8(c)) states:

"For clarification purposes, any employee who transfers from USEC to Bechtel Jacobs or its first or second tier subcontractors, who was employed on the date that this addendum is ratified [February 22, 2000] and formally concluded shall be classified as a "Grandfathered Employee" without regard to the date that he or she transfers from USEC to Bechtel Jacobs or its subcontractors."

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[1] By way of history, both USEC and many of the DOE cleanup workers were once in the same pension plan: the Lockheed Martin Energy Systems plan. The MEPP and the USEC pension plan were spun out of the Lockheed Martin Plan in the 1998 and 1999, respectively. The MEPP allows USEC workers to rejoin a pension plan which they had previously been part of prior to privatization.

[2] The term grandfathered employee means: *"(A) The individual was either: (1) an employee of Lockheed Martin Energy Systems, Lockheed Martin Utility Services, or Lockheed Martin Energy Research (collectively, LM) on March 31, 1998; or (2) a bargaining unit member of the Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL-CIO (PACE) (at the East Tennessee Technology Park) who was on the LM recall list on March 31, 1998; or (3) a bargaining unit member of the Atomic Trades and Labor Council (ATLC) (at the Oak Ridge National Laboratory or Y-12 Plant), or PACE (at the Portsmouth Gaseous Diffusion Plant or Paducah Gaseous Diffusion Plant) who was either an LM employee, a United States Enrichment Corporation (USEC) employee, or on the LM or USEC recall list on the date of the applicable Bargaining Unit Transition Agreement; and (B) The individual was either: (1) subsequently employed by the Contractor or its first-tier or second-tier subcontractors for work under the Contract prior to April 1, 2000; or (2) a USEC employee (at the Portsmouth Gaseous Diffusion Plant or Paducah Gaseous Diffusion Plant) who transitions directly to the Contractor or its first-tier or second-tier subcontractors for work under this Contract after March 31, 2000; or (3) a former USEC employee (at the Portsmouth Gaseous Diffusion Plant or Paducah Gaseous Diffusion Plant) who received an involuntary reduction-in-force after March 31, 2000, and is subsequently hired by the Contractor or its first-tier or second-tier subcontractors for work under the Contract before January 1, 2001; or (4) covered by an applicable Bargaining Unit Transition Agreement for which no employment deadline is specified*." (emphasis added)

In addition there is a chart in the BUTA which spells out the categories of USEC workers who will be allowed to transfer pension and retiree health care service credit when they move from USEC to Bechtel Jacobs and/or its subcontractors, including:

1) Employees whose jobs were transitioned from USEC to Bechtel;
2) Employees who voluntarily quit USEC and are employed by Bechtel; and
3) Employees who are laid off and receive severance from USEC.

The BUTA states that it is intended to be binding on successor contractors at Paducah. DOE does not dispute that pension portability has been and is in effect today. However, DOE has put in place the mechanics to eliminate this arrangement on a going forward basis with new contractors, such as Paducah Remediation Services. It has indicated to cleanup and infrastructure contractors that the government will only reimburse a contractor's pension plan contributions for a narrow group of employees: those non-managerial employees of Bechtel Jacobs or its subcontractors who are vested participants in the MEPP at the time of contract transition. Specifically excluded are pension and retiree benefits continuity for USEC hourly workers.

In response to concerns about the DOE's Request for Proposals, Representatives Whitfield, Strickland and Portman, as well as Senators Bunning, McConnell, DeWine and Voinovich asked DOE to ensure that USEC workers could keep their pension transfer rights as DOE changed contractors. Mr. Whitfield sent then-Secretary of Energy Abraham a December 18, 2003 letter expressing concerns about the loss of pension continuity. Senators McConnell and Bunning followed with a December 19, 2003 letter. These concerns were raised in a field hearing before the Senate Energy Committee held here in Paducah on December 8, 2003.

After the RFPs were issued, meetings ensued with senior DOE officials, questions were asked at Congressional hearings, and letters were written without a satisfactory response. DOE received a detailed briefing showing there would be a negligible economic impact to the government from permitting USEC workers to retain pension continuity when they transfer into the MEPP. A so-called "carve out" provision in the pension plan provides that the DOE contractors are only responsible for a *pro rata* allocation of liability based on an employee's years of service with the cleanup contractors. USEC is liable for the balance. This means workers will receive 2 pension checks instead of one. However, since earned benefits are effectively back loaded in later years as workers' earnings increase, it is important to keep pension service credit intact between contractors.

In the Spring of 2005, DOE had already announced the award of new contracts in Portsmouth and Paducah, but the pension portability issues were not resolved. Representatives Whitfield and Strickland attached an amendment during markup to the Energy Policy Act of 2005 (H.R. 6). This provision codifies the benefit continuity arrangements at Portsmouth and Paducah that were in effect on April 1, 2005 (the date coincides with the committee's deliberations) and ensures that USEC workers will be eligible to participate in or transfer into the MEPP and its related retiree medical benefit plan.

As signed by the President on August 8, 2005, Section 633 of the Energy Policy Act of 2005 (P.L.109-58) states:

> *To the extent appropriations are provided in advance for this purpose or are otherwise available, not later than 30 days after the date of enactment of this paragraph, the Secretary shall take such actions as are necessary to ensure that any employee who--*
>
> *(A) is involved in providing infrastructure or environmental remediation services at the Portsmouth, Ohio, or the Paducah, Kentucky, Gaseous Diffusion Plant;*
>
> *(B) has been an employee of the Department of Energy's predecessor management and integrating contractor (or its first or second tier*

> *subcontractors), or of the Corporation*[3]*, at the Portsmouth, Ohio, or the Paducah, Kentucky, facility; and*
> *(C) was eligible as of April 1, 2005, to participate in or transfer into the Multiple Employer Pension Plan or the associated multiple employer retiree health care benefit plans, as defined in those plans, shall continue to be eligible to participate in or transfer into such pension or health care benefit plans.* (emphasis added)

This legislation obligates the Secretary of Energy to ensure that pension and retiree benefits rights that were in place on April 1, 2005 for USEC and DOE contractor workers will continue to be in place for workers at Portsmouth and Paducah who will be performing DOE cleanup work.

DOE vigorously lobbied against this pension provision during the House-Senate conference during July, 2005. Having lost the legislative fight, DOE rewrote the legislation through a September 13, 2005 implementation plan which excludes USEC workers (*see:* Attachment "A").

DOE's plan states that employees eligible to participate in the MEPP are only those "who were participating in the MEPP (both vested and non-vested) on April 1, 2005." This implementation plan means that universe of employees who will be able to participate in the MEPP and the related health insurance plan is much narrower than Congress had specified in Section 633. It reads coverage for USEC workers right out of the law.

Representatives Whitfield and Strickland challenged that interpretation in an October 3, 2005 letter to DOE. A January 12, 2006, DOE response contends that USEC workers at Portsmouth and Paducah will not have a right to transfer their pension benefits with them when employed by new DOE contractors, if the DOE contractors they go to work for were not previously parties to a BUTA on April 1, 2005.

This analysis ignores the purpose of the law, which was to ensure pension continuity for the new contractors being hired by the DOE, who, by definition, could never have been signatories to the Bargaining Unit Transition Agreements before they were hired. DOE has chosen to overlook the language which confers a clear cut obligation by the Secretary of Energy to continue benefit eligibility. Section 633 states:

> **"the Secretary shall implement such actions as are necessary to ensure that any employee who …** [was eligible to participate or transfer into the MEPP and related retiree plans on April 1, 2005] ... **shall continue to be eligible to participate in or transfer into such pension or health care benefit plans."**

This language is clear: DOE has a forward looking obligation to continue pension continuity for all employees who had certain rights on April 1, 2005. This could be accomplished by DOE allowing its new contractors to become signatories to the BUTA and ensuring that employer contributions to the benefit plans will be deemed an allowable cost. Nowhere does Section 633 require that new contractors had to already have been signatories to a BUTA back on April 1, 2005. Even if a strained reading of the law could be construed this way, Congress never intended such an illogical result, because it knew that new contractors would begin work at Portsmouth and Paducah sometime after June 2005 and could not have been signatories at a site where they had never worked before.

Using this erroneous reading of the law, DOE recently advised that USEC workers who transfer to the Paducah "infrastructure" contractor, Swift and Staley, will be able to

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[3] The term "or of the Corporation" specifically refers to USEC (post privatization) in the USEC Privatization Act of 1996.

bring their pension service credit with them, because Swift and Staley (coincidentally) was a signatory to the bargaining unit transition agreement on April 1, 2005--as a former subcontractor to Bechtel Jacobs. Swift and Staley was unable to confirm this change in DOE's position. DOE has, heretofore, barred the transfer of pension service credit to Swift and Staley for USEC workers.

DOE's position is that USEC employees cannot bring their service credit with them to Paducah Remediation Services, the new Paducah "remediation" contractor, because Paducah Remediation Services was not a signatory to the BUTA. This disparate treatment arises out of DOE's misplaced reading of the law, wherein they link pension continuity to whether a given DOE contractor participated in the BUTA on April 1, 2005, rather than to the plain language in 633 which links pension continuity to the universe of employees who had the eligibility to participate in or transfer into these multi employer benefit plans on April 1, 2005.

DOE wants to reduce the number of workers in its contractors' defined benefits plans as part of a national pension agenda. While cutting off employees from defined benefit plans is an unfortunate trend in the private sector, it is not the government's job to second guess Congressional directives to continue such benefits. Using a groundless legal position which overlooks the Secretary's legal obligation in Section 633, DOE is determined to reduce their legacy pension costs by taking it out of the pocket of workers.

As much as we all want the Paducah plant to remain competitive in the enrichment business, we are mindful of the economic challenges presented by rising electricity costs and the development of lower cost centrifuge technology. In the short term, as USEC workers seek to fill available openings with the cleanup contractors, the loss in pension continuity is a concern—though the number of workers impacted will not be large. However, the possibility of further downsizing, coupled with the potential for future DOE decommissioning jobs, makes pension continuity at Paducah an imperative for a much larger number of workers and a precedent that should not be tampered with.

If DOE is not prepared to comply with Section 633, Congress may need to take further steps to enforce compliance. Without pension continuity assured for USEC workers, we believe it will be difficult to ensure a seamless transition to the new remediation contractor.

2. DOE Former Worker Medical Screening Program at Paducah

The DOE's former worker medical screening program, which is run by a Queens College-USW consortium, has screened 2,597 workers at Paducah between May 1, 1999 and December 31, 2005. The "basic" screening program was expanded in November 2000-- after the discovery of unmonitored worker exposures to transuranics at the gaseous diffusion plants-- to include an Early Lung Cancer Screening Program and allowed current workers to participate. Using a low-dose CT spiral scanner on a mobile unit traveling between Portsmouth, Paducah and Oak Ridge, 1,620 individuals have received early lung scans in Paducah and 5,829 at the three gaseous diffusion plants. Follow up scans have been provided where suspicious lung nodules are found.

The low dose CT Spiral Scan is 4 times more likely than a chest X-ray to detect cancer at an early stage, and has been very popular with workers. So far, the program has identified 44 cancers using the CT scan. Eighty-one percent (81%) of these cancers were detected at Stage I, when the cancers are most operable and the chances of saving a life is the greatest. Preliminary results published by Cornell indicate that if lung cancers are detected at Stage I, there is a curability rate of more than 90%. This compares with a survival rate of 5%-15% for those whose lung cancers are detected at Stage III. The results from the Queens-USW medical screening program are being shared with the International Early Lung Cancer Program (www.IELCAP.org).

As participation has started to wane at the GDPs, DOE has asked that the early lung cancer screening program ramp down in February 2006. For most individuals, early lung

cancer screening will not be available after June 1, 2006. Current and former gaseous diffusion plant workers are being sent notices advising them that this their last chance for free early lung cancer screening. However, beginning June 1, DOE has budgeted resources for outreach and the continuation of the basic medical screening program for approximately 125 participants/year for the next two years (as compared with 321 in 2005.)

Historically, the Energy and Water Appropriations Act has contained language for the medical screening program as part of the budget for DOE's Office of Environment, Safety and Health (Defense), and a provision may be required in FY 07 to continue this program.

Conclusion

The Department of Energy is in violation of Section 633 of the Energy Policy Act of 2005 with respect to assuring pension and retiree health care benefit continuity for USEC hourly workers. If DOE is not going to comply with Section 633, then Congress may need to take further steps to ensure compliance. We hope that DOE has not made it a routine practice to require two acts of Congress to implement a given Congressional direction, as it did with the DUF6 project. Absent a resolution of this issue, it will be difficult to manage a seamless transition from Bechtel Jacobs to the new contractor at Paducah.

DOE's former worker medical screening program is going to be operating with a smaller footprint for the next two years beginning June 1, 2006. Historically, appropriations legislation has secured funding for screening at the gaseous diffusion plants, and a provision may be required for FY 07.

Attachment "A"
(September 13, 2005 Implementation Plan)

DOE Implementation of Section 633
of the Energy Policy Act of 2005

- Bechtel Jacobs Company (BJC) will continue to administer the Multiple Employer Pension Plan (MEPP) and the Multiple Employer Retiree Health Care Benefit Plan (MEWA) (the "Plans") for employees of the new infrastructure and environmental remediation contractors at the Portsmouth, Ohio, and the Paducah, Kentucky, Gaseous Diffusion Plant sites who are eligible to participate in the Plans as of April 1, 2005.

- Employees of either BJC or its first-tier and second-tier subcontractors who were participating in the MEPP (both vested and non-vested) on April 1, 2005, will continue to be eligible to participate in the MEPP, provided that they: (1) are employed by one of the new infrastructure or environmental remediation contractors; and (2) continue to meet the criteria for the definition of a "Grandfathered Employee" in the MEPP.

- Employees of either BJC or its first-tier and second-tier subcontractors who were participating in the MEWA on April 1, 2005, will continue to be eligible to participate in the MEWA provided that they: (1) are employed by one of the new infrastructure or environmental remediation contractors, and (2) continue to meet the criteria for the definition of a "Grandfathered Employee" in the MEWA.

- BJC has submitted draft language to amend the MEPP and MEWA to the Contracting Officers for the new contracts for approval of the language and the costs

associated with amending the Plans. The proposed amendments provide for the new contractors' participation as Plan sponsors. DOE is reviewing the language of the proposed amendments to ensure that employees eligible to participate in the Plans as of April 1, 2005, retain their eligibility. DOE anticipates approval of the draft language in the near future.

MR. WHITFIELD. I tell you what, I would love to get that speech from you.

We should have asked Mr. Ervin to come up and ask some questions to Mr. Rispoli.

[Laughter.]

MR. WHITFIELD. I thank all of you for your testimony. It was very good, and there are so many important issues. We genuinely appreciate that.

Mr. Ervin, let me ask you this question, we're hopeful that DOE will reverse their position on this issue, and if not, then maybe we will be required to pursue some additional legislation. But I was curious, have you all considered a lawsuit on this issue?

I do know we live in a litigious society, and I don't like to recommend lawsuits, but I was just curious if you all have discussed it.

MR. ERVIN. There has been some discussions both with myself and the president of the local at the Portsmouth plant.

MR. WHITFIELD. And I know that Mr. Miller here is an attorney himself. Are you, Mr. Miller?

MR. MILLER. No, sir, I'm not.

MR. WHITFIELD. Well, I've talked to you so many times that when I leave you, my head's usually spinning, so I assumed you were.

[Laughter.]

MR. WHITFIELD. But from your knowledge of this language in this Energy Policy Act, there's not anything vague about that language is there?

MR. MILLER. Sir, I think both the legislation which makes it very clear that there is a forward-looking obligation and particularly -- just not to restate what the law is -- because the law is what it is. Presumably, you'll put a copy of this in the record so that anyone who looks at it can see it.

But it makes it very clear that the Secretary shall implement such actions as are necessary to ensure that employees who were eligible shall continue to be eligible to participate or transfer into such pension plan or health care benefit plan. I don't know what's ambiguous about this.

Now, whether the Secretary, as Mr. Ervin pointed out, is simply just deciding to fix his legal position around a national preordained pension agenda or not, I don't know, but Mr. Rispoli certainly led us to believe, well, we have to consider our legal position in the context of our national

pension policy plan. Well, I don't know that he has that liberty to do that. I thought Congress enacted the laws and that the Administration was supposed to follow them.

So I think it's pretty clear. The report language is pretty clear. I think the real sticking point is that the people who lost the legislative fight aren't prepared to say, "Okay. We're ready to move on and comply with the Congressional directive." And I think it's pretty clear.

MR. WHITFIELD. Well, it has been totally baffling to us, because it is very clear, the report language was very clear.

And, Mr. Ervin, thank you again for your testimony.

MR. ERVIN. Thank you.

MR. MILLER. Mr. Whitfield, if I could just follow up on one other point, that maybe if DOE could be considered just rethinking this issue one more time, as you suggested, there might be one thing they've overlooked, and that is that the Bargaining Unit Transition Agreement that is in place on April 1st had a clause in it which said it is intended to be binding on successors, upon future contractors that come to the site.

And maybe their lawyers overlooked that and could reconsider that in their re-evaluation so we wouldn't have to go down this road any further.

MR. WHITFIELD. Well, we've had a number of meetings with them, and we're going to be having more. So thank you for that suggestion.

Mr. Hughes, your contract, you've testified, expires on April 23rd of 2006. When do you actually leave, and when does Paducah Remediation Services actually take over?

MR. HUGHES. We will leave on that day. And in the case of Portsmouth, actually we left sometime after that, because there was some things that the subcontractors or the new, I should say, the new prime contractors needed some additional help with. And working with the Department of Energy, we agreed to continue to provide that help with them until they could fully get up and operate on their own.

So the intent is to be completed in April and be off, but -- if it takes a little longer -- we'll continue to help them. I should say that in the transition itself, I believe why these have been so successful is the transition is starting immediately, and the transition, as I mentioned in my testimony there, we treat it like we treat a project.

There's a detailed schedule for that transition. There's over 400 elements associated with the transition. We have a full-time project transition manager assigned to manage just that, while we also have a full-time project manager that will continue to focus on the operations piece so that we don't get distracted.

So the turnover, those 400 elements, some of those will get turned over and completed quicker with the intent to complete them all by that date so that we can move on. So far it's worked very well, I believe, in

the previous transitions, and that's our commitment, to make sure it works well on this one, too, so that they don't miss a beat in the process.

MR. WHITFIELD. Now, Bechtel Jacobs has a contract, separate contract, with the government to implement or administer the Multiple Employer Pension Plan program.

When does that contract expire?

MR. HUGHES. That's true, Mr. Chairman. That contract is part of our overall contract where we're operating down at Oak Ridge as the accelerated cleanup contract. It currently expires, that is supposed to be up in September of 2008. And under that contract, that's the mechanism by which we will continue to manage both the pension and benefits at Portsmouth and Paducah.

MR. WHITFIELD. Have you or your attorneys at Bechtel Jacobs looked at Section 633 and come to any conclusions, or do you feel like you can't talk about that?

[Laughter.]

MR. HUGHES. What I heard you say, Mr. Chairman, and also, Assistant Secretary Rispoli, is that there has been a letter response from the Department. You are going to look at that in more detail. The Department's looking at that currently. And as part of that, we need to have the opportunity to also look at that. We have not taken a look at the legislation and tried to do our own analysis. I don't think that's appropriate to do right now.

But we certainly will help or support or review that as part of trying to sort this out, if needed. I haven't had a chance to do any of that yet.

MR. WHITFIELD. Judge Orazine, you mentioned this payment in lieu of taxes, and it was my understanding that in the agreement that USEC had in leasing this property from the government that they had agreed to pay taxes.

Is that your understanding?

JUDGE ORAZINE. Looking at copies of the Privatization Act now, it looks like they're directed to pay property taxes or in lieu of taxes. But as you say, we may have to get some lawyers to determine that. But we do not receive anything from USEC or DOE.

MR. WHITFIELD. You haven't received any checks at all.

JUDGE ORAZINE. Not for property or in lieu of property taxes.

MR. WHITFIELD. But I think it is set out in there, I thought. I don't want to leave this hearing and everybody filing lawsuits against everybody.

[Laughter.]

JUDGE ORAZINE. Mr. Chairman, I did have one other comment that I neglected to make. It wasn't in my written statements.

But I heard Congressman Stupak ask Mr. Rispoli talk about the contract with Bechtel Jacobs, and we worked well with them. But the length of the new contract, I think, is three or three and a half years, and we would much rather see a longer contract, because he talked about 400 issues in the transition. There's just an awful lot of work and time lost in the changing of these companies and the new contracts. It's been kind of regrettable.

MR. WHITFIELD. You and Mayor Paxton both placed a great deal of emphasis on economic development. You both talked about reindustrialization, and we all talked about the fact that Oak Ridge has DOE employees there for that explicit purpose. And you referred to this letter of December 14th that you all wrote to me in which you were asking that we try to obtain an appropriation for 2007 of $150,000 --

JUDGE ORAZINE. Correct.

MR. WHITFIELD. -- for a person at this location for that purpose. And as I said, I mean, if Oak Ridge, if they're going to have people paid for at government expense for this, then we most certainly should.

Now, as you know, for the last five, six, seven years, we've had the CRO here that has helped in that. They have been involved in a number of efforts, including some spec buildings, including all sorts of things, and I want to commend Mr. Anderson and others who have been involved in that.

As you know, in 2006, there was not any appropriation for the CRO. And that doesn't reflect about what's going on in Paducah, that is nationwide, and basically they just shut down the funding for that.

But if we are successful in getting $150,000 or so to get some government employees under the Department of Energy working on this issue, are you all still going to make an effort to obtain funding for the CRO, or do you feel like that, I mean, I'm not optimistic that we're going to be very successful in that, but it seems like you might be moving in two different directions here.

JUDGE ORAZINE. The Mayor and I talked about, you know, the loss of the CRO, especially the funding. I mean, we talked about setting up a task force, and we also talked about maybe hiring or putting some money together.

You want to relate to that?

MR. PAXTON. Well, we understand, Mr. Chairman, that CRO is no longer functioning. It's impossible for the Judge and I to stay on top of all the issues that are going on out at the plant. We realize that. So if the CRO is not going to be the vehicle, then maybe we need to set up some other vehicle.

And if you'll remember, we did set up a task force with the centrifuge plant. Mr. Ken Wheeler was the Chairman, and whether it is you,

whether it is Senator McConnell, or Senator Bunning, or the Governor or whoever had a question about the centrifuge plant in Paducah, Kentucky, they knew to call Mr. Wheeler and he would address it.

So maybe we need to bring new people that are well respected by our delegation, by our Governor, who we meet with on a regular basis that can give us ideas on how we can be more successful, because here's what we want. We want to continue the cleanup while the plant is open, like is going on now. We want the plant to stay open as long as we possibly can keep it open. Once it closes, we want to ratchet up the cleanup and, as soon as possible, make that area available for reindustrialization.

I was talking to Congressman Stupak today and told him there's 4,000 acres out there. Maybe half of that could be a nature preserve, and part of it could be an industrial park. Right next to our airport, it's a wonderful site.

So we're interested in getting this cleanup accomplished as soon as we possibly can. We don't want DOE constantly in here. Although we love the money that's coming in and it's very beneficial, we want it cleaned up. We want our property so we can create jobs and more opportunities.

MR. WHITFIELD. Thank you.

MR. STUPAK. I know I'm from up north, but what's CRO?

JUDGE ORAZINE. Community Reuse Organization.

MR. STUPAK. Is that just confined to Paducah then?

JUDGE ORAZINE. No. They were set up, I don't know how many years ago. We kind of got in on the tail end of it. It's been very beneficial for our community. They focused on cleanup issues, the assets out there. They had a pretty broad agenda, but they've been very useful. And the money that come through CRO we've used for economic development. I mean, they have funds that we've built spec buildings and other such things, industrial parks.

MR. PAXTON. It was very successful throughout the country for many, many years, but Congress decided no longer to fund it. And we got in, like the Judge said, on the tail end of this thing. It was successful for a few years, but now it's no longer successful. So we've got to look for new ways to make things happen.

MR. WHITFIELD. Well, Mr. Stupak, any questions you want.

MR. STUPAK. Thanks, Mr. Chairman.

Mr. Hughes, getting back to the pension, you're going to be administering it until September '08, correct?

MR. HUGHES. That's correct.

MR. STUPAK. So who determines if employees are eligible, then, to participate in that pension between now and September of '08? You or DOE?

MR. HUGHES. Well, we carry out the responsibility of looking at each potential eligible employee based on the guidelines that are established. So, you know, it would be our responsibility that if somebody were to be hired in, we'd look at our guidelines, look if they meet this qualification, such as grandfathered, and then we would review whether they would be eligible or not eligible under that.

MR. STUPAK. So you wouldn't have to get permission from DOE?

MR. HUGHES. We would go back to DOE under certain circumstances and ask them if there was a need to, like in this situation, we'd wait until they make a determination based on the contractor.

MR. STUPAK. How many years do you have to have before you're vested in this pension system?

MR. HUGHES. I don't know the answer to that.

MR. STUPAK. Okay.

MR. HUGHES. I'm sure we've got that.

MR. STUPAK. Mr. Miller.

MR. MILLER. Five years.

MR. STUPAK. Five years.

Are there any other -- besides five years, any other guidelines you could give us to determine whether or not an employee would be vested or be able to participate between now and September '08?

MR. HUGHES. There are specific guidelines, and instead of me just saying those, I can provide those to you. I'd like to provide those to you in writing instead of just saying what they are here off the top.

Would you like that to be done?

MR. STUPAK. Yes, please.

MR. HUGHES. Okay. I'll do that.

MR. STUPAK. You know, after we wrote the law in the Energy Conference Report, which I was part of, did we -- did you get any new guidance from DOE, then, based on Section 633 that we should do something different.

You've got your pension system has not received any new guidance or guidelines?

MR. HUGHES. I'm not aware that we received any guidelines, but we're waiting for the interpretation of that legislation.

MR. STUPAK. So they're coming probably.

Mr. Hughes, I mentioned earlier this memorandum of September 30th, and I asked the Assistant Secretary about this phosgene that was first noted in October of 2002. It indicated that -- on the second page -- that we spoke with management officials for the conversion facility who

agreed with potential safety concerns. The official advised us that the contractor operating the conversion facility had not been told by DOE to expect phosgene or fluorophosgene in the cylinders.

Was anyone from your company aware of phosgene from October of 2000 until recently? Do you know?

MR. HUGHES. Unfortunately, I wasn't here, either, at that point in time. So I don't know what knowledge there was, I'll say, specifically within Bechtel Jacobs for our responsibility of managing the cylinders themselves.

However, I will say once we were made aware of the situation from the alert, we immediately took action, as was noted earlier, to ensure that we based all the information that was provided by the IG, that we knew what the potential was, what to do, and we took action to make sure that we understood and communicated that to all parties.

MR. STUPAK. But the alert is dated September 30th, 2005.

MR. HUGHES. Correct.

MR. STUPAK. So from that point forward, I understand you have been very active in getting this resolved. Until then, you probably had no knowledge of the phosgene?

Because it says here not to tell DOE -- had not told by DOE.

MR. HUGHES. I can't go back to the 2000 and 2002.

MR. STUPAK. Sure.

MR. HUGHES. But we were actively working with the IG as they were doing their investigation.

MR. STUPAK. Do you know what time frame?

MR. HUGHES. It was -- I'll just say from September back -- I don't remember how long their investigation went on. But as they initiated this, we cooperated with them. We also, as part of that, were interested in pulling records, reviewing things. So we didn't wait until that alert came out to make folks at least knowledgeable of that within our own working group and that we were responsible for managing that. There's a potential there.

MR. STUPAK. Sure.

MR. HUGHES. I think once the alert came out, the IG felt they had enough information to at least issue that. We then more formally went into taking action on this.

MR. STUPAK. Mr. Ervin, would the union know anything about this, the phosgene?

MR. ERVIN. As I understand it, the only notice that we received was when we read "The Courier Journal" article.

MR. STUPAK. And that was recently?

MR. ERVIN. Yes.

MR. STUPAK. Would this discovery of phosgene being available as early as 2000, would that lead to more credence to have more testing?

You testified that your funding for testing -- the cancer testing/screening runs out in '06. Based upon this information, would that cause you concern on behalf of the health and safety of your workers that maybe we should continue testing, especially with the idea of phosgene being around?

MR. ERVIN. Absolutely. It's an additional hazardous element that's now been discovered in our work environment.

MR. STUPAK. Okay. Mr. Ervin, if I may, how many USEC employees do you think might transition over to the new cleanup contractor where these pension issues are?

MR. ERVIN. I don't have any employment figures right now. There are 159 workers currently employed by Bechtel and Weskem.

MR. STUPAK. Okay. So by that answer then, the 159, do you mean that's 159 former USEC employees?

MR. ERVIN. No, sir. There's 159 employees currently employed by Bechtel Jacobs and Weskem, their subcontractor.

MR. STUPAK. Okay.

MR. ERVIN. We've not had any contact as of yet with Paducah Remediation Services. We don't know what their employment target levels are or what might become available after they take over.

MR. STUPAK. Okay. Judge or Mayor either one, you have this CRO here, Community Reuse, but do you specifically, McCracken County or Paducah, do you have a local reuse authority specifically assigned to the Paducah Gaseous Diffusion Plant site?

JUDGE ORAZINE. Well, that's primarily what the CRO did. They worked on reuse of it. And the moneys that were appropriated to the CRO, they tried to utilize those for the entire community. It went outside of McCracken County, because it was based on --

MR. STUPAK. Sure.

JUDGE ORAZINE. They would loan money for, like, spec buildings based on how many employees you had there. We even went over into Southern Illinois. So it was a great benefit to us.

Does that answer your question?

MR. STUPAK. Reuse based -- I'm more familiar with military base reuse, and we had some in my district where we actually had the local units of government be the reuse authority. Move the Federal government out and move the state out, and once we had local people making local decisions as to what should occur on the property, it was much easier and much more successful.

And we had a base reuse fund, much like your CRO, that we could tap into for certain aspects. That has also expired. We've also

decommissioned a nuclear power plant in my district in which cleanup remediation has gone through. And, again, we've had local reuse people. The Mayor may be on there, a doctor may be on there, a teacher may be on there.

But we've just found that when you're trying to reuse an area that was controlled by a larger governmental unit -- in this case, the Federal government -- it always went better, because instead of having the Federal government or state people make the decision, the local people made the decision, and it was much more successful. That's why I asked that question, and that's why I want to know about the CRO. I figure it was along that line.

The Secretary said in his testimony in the questions I asked that he would be willing to work in a partnership. Has that been occurring?

You mentioned you had to go to Federal court to do that or something to get some kind of feedback into what's going on. Has there been a good working relationship with DOE on reuse of this property?

JUDGE ORAZINE. We've had a very good relationship with DOE, and we've tried to assist them when they've had issues with the EPA or the State on their permits, things like that. You know, if it took some kind of political muscle, if you want to call it, we would try to help them on issues, and we even had the task force to try to keep the local elected officials, you know, focused on this.

When the Mayor and I leave a meeting, you know, there are alligators that get a hold of us and our attention. So we've used our task force on cleanup issues. And that's why we --

MR. STUPAK. I didn't think you had alligators this far north.

[Laughter.]

JUDGE ORAZINE. Well, they're not very big, but there is a hell of a lot of them.

MR. STUPAK. On this 4,000 acres, Mayor, that you mentioned, have you approached DOE and said, "Look, you're not using X amount. Let us start using it now for an industrial park or reuse or conservancy or whatever."

MR. PAXTON. Well, the problem with that is that we don't know what part of that is clean and what part of it is not clean. So at this particular time, I don't believe that DOE is capable of allowing us to use part of that. If they're aware of an area that is available for economic development use out there, I'm not aware of it.

And, you know, we have a great relationship with Bill Murphie. Bill Murphie's located in Lexington and is doing a good job. But my understanding is that the whole area is going to have to be cleaned up. There's water contamination, underground contamination.

MR. STUPAK. Sure. But not all the 4,000 acres are being used, right?

MR. PAXTON. No.

MR. STUPAK. So why would DOE not want to hand over some of that if you want to start development of it?

You in your testimony here on page six said, "Pursuant to that decision, local governments must be allowed to participate in the planning and selection of a remedy. How does the community help determine cleanup priority?" I think you have to be at the table now as opposed to later --

MR. PAXTON. Absolutely.

MR. STUPAK. -- to get these things cleaned up.

MR. PAXTON. Absolutely.

JUDGE ORAZINE. Excuse me. Go ahead.

MR. STUPAK. Go ahead.

JUDGE ORAZINE. To personally answer your question about being involved with DOE maybe more as a community, had we got involved in the CRO several years ago and progressed, we probably would have gone that way.

MR. STUPAK. Well, when you speak of cleanup, if you don't know who the tenant of the property's going to be and what the use of that property's going to be, you don't know what degree it has to be cleaned up to.

JUDGE ORAZINE. True.

MR. STUPAK. You know, there's Brownfield moneys out there to take it. If it's going to be a school, it's probably going to have to be cleaned up extremely well. But if it's going to be a manufacturing site, maybe not.

But I know you mentioned something about putting an industrial park in. So until you know the use or potential use of that property, how do you determine the degree of cleanup? And that's where I think the local folks have to get involved.

MR. PAXTON. That's exactly right. And I'm not sure that anybody really knows that can articulate that to us. What is the degree that the cleanup is going to be? Is it going to be adequate for economic development, or is it not? We're having a hard time getting the answer to that.

MR. STUPAK. But under CERCLA, you should have those answers.

MR. PAXTON. Absolutely.

MR. STUPAK. There is a standard there, and I think it's been set in other areas. And I'm sure DOE's going to say, "Well, I want to clean it up to CERCLA standard, but if we did this with it, then we won't have to clean up that far."

MR. PAXTON. Right.

MR. STUPAK. What I'm saying, don't let DOE make that decision. Your communities have to make that decision.

MR. PAXTON. Absolutely.

MR. STUPAK. And you mentioned something about hand wringing in your opening statement. In my short time in this community, there's not been any hand wringing by any local officials or your Congressmen. You've done a great job here. This is a great booming community.

MR. PAXTON. Thank you.

MR. STUPAK. And you've got a real potential redevelopment site, and I just urge you to do everything you can to get that decision-making away from DOE and put it in the local hands.

MR. PAXTON. I think that is why we're so interested in the contract for the cleanup. We've had an excellent relationship with Bechtel Jacobs. We thought that North Wind was going to get the new contract. There was a challenge. And so we're excited, and what we want is the new contractor to hit the ground running and start working.

We want the contract to be long enough to where they can accomplish something, and let's get this place cleaned up. We know that only a limited amount can be done until the plant closes. But then after the plant closes, they can shift into high gear, and we'll get that cleaned up and we can move forward.

MR. STUPAK. No doubt. Go ahead, Judge.

JUDGE ORAZINE. I hate to keep interrupting. That's one of the reasons why we're so focused on the nickel assets. With the CRO funding now gone, they still have some moneys that they can loan out on spec buildings and things, but it's going to phase out.

But if we had the nickel assets, we wouldn't put that in the general budget. Now, we would the payment in lieu of taxes, because that's for county services. But the nickel assets, if we could realize some dollars off of that, we could use that for people like we're talking about, reindustrialization.

We'd be glad to, I mean, but we don't have the funds of that magnitude to hire a staff just from the city and the county to work on those issues. We just don't have it.

MR. STUPAK. Well, you've got a Congressman here who does pretty good finding you funds, so I wouldn't worry too much about that.

JUDGE ORAZINE. Amen to that.

MR. STUPAK. Mr. Hughes, I just want to say thanks. It looks like Bechtel has done really a pretty good job as far as to not have that in the contract. And a three-and-a-half-year contract, this all would have took -- 18 months or so of goofing around with contracts just trying to get a bid has probably slowed down the process. And if it's only a

three-and-a-half-year contract that the new people have, I think it's just going to continue to slow us down.

MR. HUGHES. I appreciate that. And we're going to do everything to make sure that this new contractor coming in, just like we did at Portsmouth, fully hits the ground running and they don't miss any beats. And with the Department of Energy, we've been, you know, working for them, we've been very proud to be part of this.

And even during this time of uncertainty here, I think you heard the Undersecretary, or Assistant Secretary say and I think the rest would say we kept things moving at a good pace so that for the moneys that were put in from Congress that there were results shown back. And we're pretty proud of that, actually very proud of that. We're going to make sure that this new prime subcontractor is, or contractor is, successful, and we'll help them get fully up to gear.

MR. STUPAK. Nothing further, Mr. Chairman. Thank you.

MR. WHITFIELD. Well, Congressman Stupak, I want to thank you once again for taking the time to be with us today. We value your input.

And, Edith, thank you for coming.

I want to thank all of the witnesses and for those who attended today's hearing.

Mayor, you and Judge Orazine have provided great leadership. And speaking on behalf of those in Washington, we may not always agree on all of these issues, obviously, but I do think we have a good working relationship, and we've been truthful with each other. I think if you can do that, you can make great progress.

Mr. Hughes, we genuinely appreciate the great job of Bechtel Jacobs, and I think you all have done a fantastic job and look forward to working with you.

Mr. Ervin, congratulations on being selected as the new President of the Local Steel Workers. I look forward to working with you.

Richard Miller, thank you once again, and I wanted to thank you for mentioning Karen Long. Karen Long, although she won't be 40 for, I guess, another month or two, has worked on Capitol Hill for 30 years, and she's been my Chief of Staff since the day I was elected to Congress. She was the first person I hired. She told me once that she knew nothing about the Paducah Gaseous Diffusion Plant, and she knows a lot more now than she ever wanted to. So we're going to miss her.

And, Karen, thank you for everything you did.

MS. LONG. Thank you. I appreciate it.

MR. WHITFIELD. And we have a lot of issues affecting this community and this plant. We're going to remain focused on it. We touched on many of them today.

And with that, we'll adjourn the hearing. Thank you.

[Whereupon, at 12:10 p.m., the subcommittee was adjourned.]
[Additional material submitted for the record follows:]

RESPONSES FOR THE RECORD SUBMITTED BY ROB ERVIN, PRESIDENT, UNITED STEEL WORKERS LOCAL 5-550

February 16, 2006

Questions from the Honorable Bart Stupak. Ranking Member of the Subcommittee on Oversight and Investigations.

Question 1. What is the basis for your conclusion that early lung cancer screening using a low dose CT scan will extend life expectancy of nuclear weapons plant workers?

Answer to Congressman Stupak:

According to medical studies, the low dose Spiral CT Scan is four times more likely than a chest X-ray to detect cancer at an early stage. Currently, the program has identified 44 cancers of which 81% were detected in the first stage. Results published by Cornell University indicate that if lung cancers are detected during Stage I, there is a curability rate of more than 90%. This compares to a survival rate of only 5% - 15% for those cancers detected at Stage III.

Question 2. How many USEC workers at the Paducah Plant have been affected by the lack of pension portability at the Paducah Plant? How many at the Portsmouth site?

Answer to Congressman Stupak:

There are currently 545 USEC Bargaining Unit employees at the Paducah Plant. Of those 545 employees, approximately 480 employees would be affected by the lack of pension portability if they were to transition to D.O.E. contractors performing Infrastructure and Remediation activities at Paducah. The remaining USEC employees do not qualify as "Grandfathered" employees and therefore are not eligible for, or affected by, pension portability.

There are approximately 600 USEC Bargaining Unit employees at the Portsmouth site. Approximately 130 are currently affected by the lack of pension portability, and 460 additional employees would be affected if they were to transition to D.O.E. contractors performing Infrastructure and Remediation activities at the Portsmouth site. The remaining employees do not qualify as "Grandfathered" employees and therefore are not eligible for, or affected by, pension portability.

Respectfully submitted,

Rob Ervin

RESPONSES FOR THE RECORD SUBMITTED BY MICHAEL C. HUGHES, PRESIDENT, BECHTEL JACOBS, LLC

DOE Contract No. DE-AC05-98OR22700
Job No. 23900
PRO-06-0112
February 21, 2006

The Honorable Bart Stupak
Ranking Member
Subcommittee on Oversight and Investigation
U. S. House of Representatives
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Congressman Stupak:

DOE Contract DE-AC05-98OR22700: Response to Members of the Committee on Energy and Commerce

Reference: Letter from Honorable Ed Whitfield to Michael Hughes, dated February 8, 2006

In response to your questions contained in the referenced letter, Bechtel Jacobs Company LLC offers the following:

1) **Please provide copies of any legal analyses that have been developed by Bechtel Jacobs or the trustees of the Multi-Employer Pension Plan (MEPP) or provided to Bechtel or the trustees by the Department of Energy (DOE) regarding Section 633 of the Energy Policy Act of 2005**

Neither Bechtel Jacobs Company LLC nor the trustees of the MEPP have developed or received copies of any legal analyses of Section 633 of the Energy Policy Act of 2005.

2) **How many persons have retired from Bechtel Jacobs at the Paducah and Portsmouth sites under the MEPP? How many of these retirees were paid benefits under the "carve out" or "offset" provisions in the MEPP, which allocates pension liability proportional to years of service with Bechtel and USEC, respectively?**

- The total number of people who retired from Bechtel Jacobs Company LLC at the Paducah and Portsmouth sites under the MEPP is 274.
- Of those 274 people, there were 21 eligible carve-outs for Paducah; 135 eligible carve -outs for Portsmouth.
- Of the 21 eligible carve-outs for Paducah, 17 are vested and waiting to draw their benefit
- Of the 135 eligible carve-outs for Portsmouth, 112 are vested and waiting to draw their benefit

Please contact me if you have further questions at (865) 241-1129.

Sincerely,

Michael C. Hughes
President and General Manager

MCH:SS:cv

c: S. H. McCracken, DOE-ORO
M. L. McKee
W. E. Murphie, DOE-PPPO
E. Whitfield, Chairman, Subcommittee on Oversight and Investigations
J. S. Wilson, DOE-ORO
S. C. Vogel, DOE-ORO
File-EMEF DMC-RC

RESPONSES FOR THE RECORD SUBMITTED BY JAMES A. RISPOLI, ASSISTANT SECRETARY FOR ENVIRONMENTAL MANAGEMENT, U.S. DEPARTMENT OF ENERGY

Department of Energy
Washington, DC 20585

March 20, 2006

The Honorable Edward Whitfield
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On January 19, 2006, James Rispoli, Assistant Secretary for Environmental Management testified regarding: A Review of Paducah Site Operations.

Enclosed are answers to 16 questions requested by Congressman Stupak to complete the hearing record.

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

Sincerely,

Jill L. Sigal
Assistant Secretary
Congressional and Intergovernmental Affairs

Enclosure

Printed with soy ink on recycled paper

QUESTION FROM CONGRESSMAN STUPAK

Q1. A year ago, the Department of Energy (DOE) awarded a $303 million clean-up contract for the Paducah site to a consortium headed by North Wind, a minority-owned business. A losing bidder protested that contract, and DOE re-bid the work. Eleven months later, DOE awarded a $191 million clean-up contract for the Paducah site to another minority consortium led by Portage Environmental Services. Please explain the difference in the size of these two contracts. Was the $112 million difference between the two contracts because of work completed by Bechtel, the previous clean-up contractor, during those eleven months, was the scope of the contract reduced, or was there another reason?

A1. The reason for the difference is three-fold: 1) the original contract period of performance was for approximately five years and the most recent contract period of performance is reduced to three and a half-years based on maintaining the original September 30, 2009, contract end date; 2) the scope or work changed based on progress and accomplishments on the Paducah project by Bechtel Jacobs while the competition was on-going; and 3) the Management of Uranium Cylinders scope was transitioned directly to the receiving contractor (Uranium Disposition Services). The original remediation contract included managing the cylinders on an interim basis.

QUESTION FROM CONGRESSMAN STUPAK

Q2. DOE has determined that Section 633 of the Energy Policy Act of 2005, which was designed to protect and maintain the full pension and medical benefits of eligible former USEC Inc. employees who were later employed by DOE contractors and the Paducah and Portsmouth sites, is a basis for denying them those benefits. What documents did DOE use in its attempt to ascertain Congressional intent behind Section 633 of the 2005 Act prior to drafting its letter of January 12, 2006?

A2. The document relied upon was the text of section 633 itself. That text clearly defined the transfer eligibility in question, and our analysis was governed by the statutory text enacted by Congress. In considering this matter, we carefully considered the analysis presented in the October 3, 2005, letter from Congressmen Whitfield and Strickland on this subject.

QUESTION FROM CONGRESSMAN STUPAK

Q3. DOE referenced the Bargaining Unit Transition Agreement (BUTA) in its January 12, 2006, letter to Chairman Whitfield and Representative Strickland and stated that employees of contractors not parties to the BUTA could not transfer into the Multi-Employer Pension Plan (MEPP) and retain their pension credits. The terms of the BUTA, however, which were approved by DOE prior to its signature by Bechtel Jacobs and the unions, include a provision that states that such BUTA "is meant to be binding upon any successor contractor at this facility." Has DOE required its successor contractors at Paducah and Portsmouth to honor this successorship provision? If DOE requires its contractors to honor this provision, how does this affect DOE's legal analysis of which workers are eligible for the MEPP?

A3. The quoted text from the Bargaining Unit Transition Agreement (BUTAs) reflects that a successor employer may decide to adopt its predecessor's Collective Bargaining Agreement (CBA). However, the Department of Energy (DOE) has the right to approve CBAs as appropriate. DOE has not chosen to require the Paducah and Portsmouth

successor contractors to adopt their predecessors' CBAs, which include the BUTAs. This circumstance does not affect the DOE's determination of what section 633 requires.

QUESTION FROM CONGRESSMAN STUPAK

Q4. You testified at the hearing that workers formerly employed by USEC have the right to transfer into the MEPP if Swift and Staley at Paducah subsequently employ them, as Swift and Staley was an eligible subcontractor on April 1, 2005. Your statement was similar to that in a January 12, 2006, letter to Chairman Whitfield and Representative Strickland from Eric Fygi, DOE's deputy counsel. However, according to the written testimony of Rob Ervin, President of the United Steelworkers Local 5-550, DOE has not advised Swift and Staley in writing of this decision so that the costs of the MEPP for those employees are deemed allowable costs.

Do you agree that former USEC employees who are hired by Swift and Staley are eligible to transfer into the MEPP if they meet all other eligibility requirements? Has DOE communicated this position to Swift and Staley so that pension costs for these employees are deemed allowable costs? Is so, please provide a copy of that communications. If not, please explain why this position has not been communicated

A4. The Department of Energy (DOE) agrees that United States Enrichment Corporation (USEC) workers who are members of the United Steelworkers of America and who are hired by Swift and Staley Mechanical Contractors, Inc., (S&S) will be eligible to transfer into the Multiple Employer Pension Plan (MEPP) if they meet all other Plan eligibility requirements. This is because S&S had been a subcontractor to the Bechtel Jacobs Company (BJC) prior to being awarded the contract to provide infrastructure services at Paducah and was a signatory to a Collective Bargaining Agreement (CBA) that allowed USEC employees who were hired by BJC or a first- or second-tier subcontractor to transfer into the MEPP. S&S and USW have signed a one-year extension to the CBA, although the CBA as extended no longer gives USEC employees the right to bump S&S employees and be hired by S&S. While the DOE has not provided written direction to S&S on this issue, S&S has confirmed to the Portsmouth Paducah Project Office that it understands that if S&S hires USEC employees who are covered by the CBA and otherwise meet MEPP eligibility requirements, the related costs would be allowable if consistent with the Federal acquisition regulations governing the allowability of costs.

QUESTION FROM CONGRESSMAN STUPAK

Q5. How many former USEC workers at the Portsmouth, Ohio, site are affected by DOE's decision to refuse to allow those workers to transfer to Theta Pro2 Serve Management Company (TPMC) and Los Alamos Technical Associates (LATA) (the infrastructure and remediation contractors) with their past pension service and medical benefits plan intact? What written guidance has DOE provided to those contractors about the right of former USEC to transfer their benefits? Please provide copies of all such communications and/or guidance documents.

A5. There is a total of 104 individuals who presently remain employed by the United States Enrichment Corporation (USEC), but who are currently made available to Theta Pro2Serve Management Company (TPMC) and LATA/Parallax Portsmouth, LLC (LPP): TPMC arrangements cover 41 USEC United Steelworkers (USW) employees and LPP covers 63 USEC USW employees. DOE has provided no written guidance about whether former USEC employees may transfer their USEC-accrued benefits to either TPMC or LPP. As was explained in the Department of Energy's (DOE) letter dated January 12,

2006, to Congressmen Whitfield and Strickland, section 633 of the Energy Policy Act of 2005 does not make any and all USEC workers eligible to participate in the Bechtel Jacobs Company Multiple Employer Pension Plan; instead section 633 specifies that those USEC employees who were not otherwise eligible to participate in that plan prior to April 1, 2005, are not accorded the unfunded transfer rights afforded by section 633. USEC employees who are hired by LPP and TPMC are eligible to participate in pension plans offered by LPP and TPMC and will receive credit for their current service with these employees. Those hired USEC employees remain participants in USEC's defined benefit pension plan and USEC remains obligated to pay any vested pension and medical benefits that those employees earned while at USEC.

DOE F 1325.8
(8-89)
EFG (07-90)

United States Government **Department of Energy**

memorandum

DATE: JUL 29 2005

REPLY TO ATTN OF: EM-42 (Mark Senderling, 202-586-7764)

SUBJECT: Guidance for Portsmouth/Paducah Project Office Approval of Economic Parameters for Negotiation of Collective Bargaining Agreements by the New Small Business Contractors at the Portsmouth Site Regarding Benefits for United States Enrichment Corporation Employees Hired by the Contractors

TO: William E. Murphie, Manager, Portsmouth/Paducah Project Office

This memorandum addresses your request for guidance from the Department of Energy Headquarters regarding approval of economic parameters for negotiation of Collective Bargaining Agreements (CBAs) by the new small business contractors at the Portsmouth Site regarding benefits for United States Enrichment Corporation (USEC) employees hired by the contractors.

After privatization of the USEC, DOE and its contractors transferred a total of approximately $650 million to USEC and the pension plan established by USEC to cover accrued liabilities for pensions and post-retirement medical benefits pursuant to section 3110(a)(2) of the USEC Privatization Act. Using these assets, USEC created pension and welfare plans for its employees.

To provide for the asset transfers for pension benefits, DOE's contractors entered into a series of pension asset transfer agreements with USEC. Consistent with the agreements to transfer assets, the Bechtel Jacobs Company LLC (BJC) Multiple Employer Pension Plan (MEPP) provided that employees eligible to participate in the MEPP would receive credit for all prior service at Oak Ridge, Portsmouth or Paducah. This meant that former DOE contractor employees who worked at these sites and went to work for USEC could return to the MEPP with all of their service credit. However, after the pension asset transfer agreement with USEC expired, DOE's contractors amended the eligibility provisions of the MEPP to prevent large numbers of USEC employees from joining in the MEPP and bringing their credit for prior service but without the assets that had been transferred previously to USEC. USEC employees working for BJC were not eligible to join the MEPP because they were leased from USEC and not hired by BJC and because USEC was not a party to an applicable bargaining unit transitions agreement (*i.e.*, a CBA) as referenced in the eligibility provisions.

Under the terms of the retiree medical plan administered by the Multiple Employer Welfare Association (MEWA), eligibility for retiree medical benefits mirrors the eligibility provisions of the MEPP. Therefore, USEC employees leased from USEC for work with BJC were not eligible to join the retiree medical benefit plan administered by the MEWA for the same reasons they were not eligible to participate in the MEPP.

If USEC employees not presently eligible under the MEPP and MEWA retiree medical benefit plan become participants in those plans without corresponding transfers of assets for service credited under those plans, the MEPP and MEWA will experience significant increases in plan liabilities without an offsetting influx of assets. DOE therefore will incur significant liabilities for pensions and accrued retiree medical benefits without receiving any return of the assets transferred to USEC to pay for those liabilities. The long term legacy costs of such a result would be unreasonable and discriminatory against the government within the meaning of FAR 31.205-6(b).

Accordingly, the economic parameters for collective bargaining by the new small business contractors at Portsmouth are to exclude any provision that would allow USEC employees hired by the new contractors to participate in either the MEPP or the retiree medical benefit plan administered by the MEWA unless they otherwise meet the eligibility requirements of those plans.

Pursuant to the new contracts, the economic parameters for collective bargaining should include provisions that allow USEC employees hired by the new contractors to participate in new market- based pension plans (e.g., defined contribution pension plans), and also allow participation in the active employee health and welfare plan administered by the MEWA, and in new market-based retiree medical and welfare benefit plans that are competitive for the industry.

If you have any further questions, please call me at (202) 586-7709 or Barbara D. Male, Deputy Assistant Secretary, Office of Performance Intelligence and Improvement, at (202) 586-1665.

Charles E. Anderson
Principal Deputy Assistant Secretary for
Environmental Management

QUESTION FROM CONGRESSMAN STUPAK

Q6. DOE's contracts with TPMC and LATA at the Portsmouth site call for hiring the incumbent workforce. However, DOE has authorized LATA and TPMC to violate their contract and lease such workers from USEC. Why is DOE directing its contractors to lease workers from USEC instead of hiring them?

A6. The new small business contractors, LATA/Parallax Portsmouth, LLC (LPP) and Theta Pro2Serve Management Company, LLC (TPMC), have not violated their contracts by leasing United States Enrichment Corporation (USEC) employees. Leasing USEC employees had been a long-standing practice at the Portsmouth site by the prior contractor at the site, Bechtel Jacobs Company.

QUESTION FROM CONGRESSMAN STUPAK

Q7. There was a substantial amount of Freon left at the Portsmouth site that has a value in the millions of dollars. What is the position of DOE on the ownership of this Freon? Has DOE transferred to USEC the Freon that is being removed from equipment

at Portsmouth? Are there discussions underway about such a transfer? Is there an existing memorandum of understanding concerning the ownership of and payment for the Freon? Is so, please provide it for the record.

A7. The Department of Energy (DOE) believes it is clear that the Freon at Portsmouth is owned by the Federal government, and, so far as we are aware, the United States Enrichment Corporation (USEC) has not seriously contended otherwise. The principal issue of disagreement between DOE and USEC has been whether the Freon at Portsmouth was or was not already under lease to USEC under the Gaseous Diffusion Plant (GDP) lease. On the one hand, there is no express provision in the lease (or its Exhibits setting forth the leased property) that specifically sets out Freon as leased personal property; however, the lease exhibits do identify as leased property certain Portsmouth GDP process facilities which contain Freon. These facilities have not been used by USEC to enrich uranium since that plant was shut down by USEC several years ago. That said, the GDP lease, which was required to be transferred to USEC when it privatized by the USEC Privatization Act, does contain a provision allowing for the lease of additional personal property at USEC's request upon DOE's consent which "shall not be unreasonably withheld."

In the past year, the DOE has deferred several USEC requests to move Freon from Portsmouth to replenish the inventory at the Paducah GDP until the parties' respective rights and future obligations were discussed and resolved to DOE's satisfaction. At this point, none of the excess Freon currently at Portsmouth has been transferred to USEC for its operations at the Paducah GDP. A December 16, 2005, letter from David Garman, Under Secretary for Energy, Science and Environment to USEC, proposed terms of an arrangement with USEC that would address the immediate operational concerns while the unresolved issues are addressed.

QUESTION FROM CONGRESSMAN STUPAK

Q8. How many pounds of smelted nickel ingot are stored at the Paducah Plant? What are the contaminants that were identified in the environmental assessment performed for the DOE in evaluating the sale of this nickel to Spain several years ago? Has anything changed in the nickel's content since that assessment was made?

A8. Approximately 9,700 tons (19.4 million pounds) of nickel ingots are stored at the Paducah site. In October 1995, the Department of Energy's (DOE) Oak Ridge Operations Office performed an "Environmental Assessment of the Proposed Sale of Radioactively Contaminated Nickel Ingots Located at the Paducah Gaseous Diffusion Plant" (EA). Radioactive contaminants identified in the nickel by the EA are technetium, uranium, neptunium, and plutonium. Technetium is the primary contaminant. There has been no change in the content of the nickel since the 1995 EA.

QUESTION FROM CONGRESSMAN STUPAK

Q9. The DOE contract with Portage requires Portage to "develop and evaluate alternate uses of the nickel ingots and acquire competitive bids for its reuse" within six months of signing the contract. But DOE has a moratorium on selling radioactively contaminated metals, and there is no national or international standard for the release of radioactively contaminated nickel. It may be difficult for Portage to obtain bids with this moratorium in place. Does DOE intend to lift the moratorium prior to the bidding process?

A9. This response assumes that the question's references to a Department of Energy (DOE) contract with Portage are references to the DOE Paducah remediation contract with Paducah Remediation Services, LLC, which has Portage as one of its parent companies. On January 12, 2000, former Secretary of Energy Richardson imposed a moratorium on the unrestricted release of volumetrically contaminated metal, including nickel, into commerce. DOE will fully review the contractor's proposed alternatives for use of the nickel before deciding on what, if any, action it will take.

QUESTION FROM CONGRESSMAN STUPAK

Q10. Has DOE consulted with the steel or other metal industry groups about its requirement that Portage develop a plan to sell the Paducah nickel? With whom has DOE consulted and on what dates?

A10. This response assumes that the question's references to a Department of Energy (DOE) contract with Portage are references to the DOE Paducah remediation contract with Paducah Remediation Services, LLC, which has Portage as one of its parent companies. While several companies have advised the DOE of their interest in the nickel, DOE has not formally consulted the metal industry during or since issuance of the contract.

QUESTION FROM CONGRESSMAN STUPAK

Q11. Has DOE completed its preliminary environmental impact statement (PEIS) on radioactively contaminated metals reuse? Please provide a status report and projected completion date on this PEIS.

A11. A Programmatic Environmental Impact Statement for the Disposition of Scrap Metal (SM PEIS) was proposed to evaluate policy alternatives for the disposition of Department of Energy (DOE) scrap metal potentially having residual radioactivity. The SM PEIS activity was put on hold pending a decision from the U.S. Nuclear Regulatory Commission (NRC) regarding its rulemaking on controlling the disposition of solid materials from NRC-licensed facilities. On June 1, 2005, the NRC decided to defer its rulemaking. The DOE is currently re-evaluating the path forward for the SM PEIS in light of the NRC's decision to defer the rulemaking.

QUESTION FROM CONGRESSMAN STUPAK

Q12. What is the current market price of clean nickel? What is the market price of contaminated nickel for "restricted" end use (as opposed to free release)?

A12. In January and February 2006, the market price of publicly traded nickel varied from $6.50 to $7 per pound. The commodities market for publicly traded nickel does not reflect a market price for "contaminated" nickel.

QUESTION FROM CONGRESSMAN STUPAK

Q13. As you know, officials from McCracken County and the City of Paducah are supporting the sale of this nickel and asking for some of the proceeds. However, the nickel is Federal property, and the contract with Portage states that all revenue in excess of costs would go to the Federal Government. What proposal has DOE made to share these proceeds with the local communities? How would that be accomplished?

A13. This response assumes that the question's references to a Department of Energy (DOE) contract with Portage are references to the DOE Paducah remediation contract with Paducah Remediation Services, LLC, which has Portage as one of its parent companies. It is premature to estimate the amount of revenue that may be generated from the potential sale and re-use of the nickel. Any proceeds from these efforts will be managed pursuant to applicable laws.

QUESTION FROM CONGRESSMAN STUPAK

Q14. We have been told that the privatization agreement between DOE and USEC requires USEC to make payment in lieu of taxes for the USEC facility in Paducah, which USEC leases from DOE. But it appears that USEC has never made those payments. Has DOE taken any steps to enforce that provision? Why or why not?

A14. Nothing in the privatization agreement between the Department of Energy (DOE) and the United States Enrichment Corporation (USEC) addresses payment-in-lieu of taxes (PILT). A statutory provision had been enacted in the Energy Policy Act of 1992 that would have required USEC to make payments-in-lieu of taxes upon privatization

(July 28, 1998); however, that statutory provision was repealed (April 26, 1996) prior to privatization. DOE was never responsible either under the privatization agreement or by statute to enforce such payments.

QUESTION FROM CONGRESSMAN STUPAK

Q15. Is there some reason why Paducah and McCracken County have not received payments in lieu of taxes for these Federal facilities?

A15. McCracken County has requested, and the Department of Energy (DOE) has made payments to the county in lieu of taxes over several years. The requests and DOE payments were made through the McCracken County School Board. From 1973 through tax year 1993 (paid in 1994), DOE paid more than $230,000. The requests for payments-in-lieu of taxes (PILT) are required to be made by the taxing entity on an annual basis. The most recent request and payment found in DOE's records appears to have been made in 1995 for $18,348.

The United States Enrichment Corporation (USEC) is not subject to PILT. A statutory provision had been enacted in the Energy Policy Act of 1992 that would have required USEC to make PILT upon privatization (July 28, 1998); however, that statutory provision was repealed (April 26, 1996) prior to privatization. This statutory requirement was limited to real and personal property owned by USEC.

QUESTION FROM CONGRESSMAN STUPAK

Q16. DOE has issued several very large contracts to Native American-owned corporations that partner with large traditional clean-up corporations for contracts that are many times larger than their normal contracts. But there are no such contracts with African American firms. Please describe why this is and what your outreach has been to African American firms for these large clean-up contracts.

A16. Since November 2003, the Department of Energy (DOE) has set aside 11 significant environmental cleanup competitive procurements for award to small business firms. All of these contracts were awarded competitively in accordance with relevant provisions of the Federal Acquisition Regulation and applicable regulations of the U.S.

Small Business Administration. In each case, award was made consistent with the evaluation criteria of the respective Request for Proposals to the small business whose proposal represented the best value to the Federal government. The ethnicity of a particular small business or joint venture member played no part in the evaluation and award.

The DOE has an extensive program of outreach to all small and small disadvantaged business firms, including: DOE's annual Small Business Conference, featuring matchmaking sessions for subcontracting opportunities with DOE's large facility management contractors; one-on-one consultations between small and small disadvantaged firms and DOE technical experts, Federal and contractor small business program advocates and small business program officials; publication of a forecast of contracting and subcontracting opportunities; DOE's Mentor-Protégé program providing opportunities for small companies to be mentored by a large firm doing business with DOE; DOE site-sponsored local small business meetings; and pre-solicitation and pre-proposal conferences in which all firms interested in competing for the specific scope of work are invited to participate.

LETTER FOR THE RECORD SUBMITTED BY JAMES A. RISPOLI, ASSISTANT SECRETARY FOR ENVIRONMENTAL MANAGEMENT, U.S. DEPARTMENT OF ENERGY

Department of Energy
Washington, DC 20585

March 2, 2006

The Honorable Edward Whitfield
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515-6301

Dear Mr. Chairman:

In reviewing the transcript of my testimony at the January 19, 2006, hearing of the Oversight and Investigation Subcommittee of the Committee on Energy and Commerce, I noted two areas in my testimony for which I would like to offer clarification to the Subcommittee.

On page 33 of the transcript, line 743, I was asked by Congressman Stupak…how long have you been at DOE? I interpreted that question to imply in my present capacity, and responded with the date of August 10th (2005), the date I was sworn in as Assistant Secretary. On examining the transcript I now realize the question was not confined to tenure in my present position. In fact, I began my service at Department of Energy in October of 1999 as a member of the career civil service.

Additionally, on page 33, line 749, I responded to a follow-on question by Congressman Stupak whether I am covered by a "defined benefit plan" as a member of the civil service. I responded in the negative, indicating my understanding that our government had transitioned in the 1980s to a defined contribution plan. I now understand that the Federal Employee Retirement System, or FERS, actually has three components. They consist of Social Security, to which I contribute; the Thrift Savings Plan or TSP, whereby I contribute to a 401(k) – like plan and to which the government also makes a defined contribution; and a small defined benefit component that for me, as of this date, would amount to between six and seven percent of my "high-three" average pay.

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Thank you for the opportunity to review and comment on the transcript of the hearing. An edited copy is returned herewith.

Sincerely,

James A. Rispoli
Assistant Secretary for
Environmental Management

Enclosure

cc: The Honorable Bart Stupak
Ranking Member

RESPONSE FOR THE RECORD SUBMITTED ON BEHALF OF JAMES A. RISPOLI, ASSISTANT SECRETARY FOR ENVIRONMENTAL MANAGEMENT, U.S. DEPARTMENT OF ENERGY

Department of Energy
Washington, DC 20585

March 16, 2006

The Honorable Edward Whitfield
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On March 2, 2006, we sent you the edited transcript of the January 19, 2006, testimony given by James Rispoli, Assistant Secretary for Environmental Management, regarding: A review of Paducah Site Operations.

Enclosed are two inserts that were requested by Congressman Stupak for the hearing record.

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

Sincerely,

for Jill L. Sigal
Assistant Secretary
Congressional and Intergovernmental Affairs

Enclosures

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INSERT FOR THE RECORD

The conference report passage dealing with contractor employee benefits contained only the text of section 633 itself. To the extent section 633 imposed any legal obligations on a new Department of Energy (DOE) contractor, those obligations would have been recognized through the customary "laws, regulations and DOE directives" clause that requires the contractor to comply with all applicable law. To the extent section 633 imposed legal obligations on the Secretary, that subject would not have been appropriate for inclusion in the contract.

INSERT FOR THE RECORD

The Department did at that time take all necessary actions to address the safety of current workers from the possible presence of phosgene in the cylinders received from the Chemical Warfare Service (CWS).

The *Independent Investigation of the East Tennessee Technology Park, Volume I, Past Environment, Safety, and Health Practices* report noted workers from 1945 to 1947 were exposed to phosgene through a project to inspect CWS cylinders previously containing phosgene. The report also notes traces of welding-generated phosgene have occasionally been detected, a situation unrelated to the concern addressed by the Management Alert. Since the cylinder phosgene issue mentioned in the report described past situations no longer in effect, no specific corrective actions were developed for this issue. A review of cylinder handling procedures in effect during the period of concern verified the requirement for modification and testing of CWS cylinders prior to their being placed in uranium hexafluoride service, a process that would preclude the presence of residual phosgene. This practice was confirmed through interviews with past plant operations staff. On this basis, the potential for phosgene in cylinders was not deemed a credible hazard necessitating specific phosgene characterization.

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