

TOM DAVIS, VIRGINIA
CHAIRMAN

ONE HUNDRED EIGHTH CONGRESS

HENRY A. WAXMAN, CALIFORNIA
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (202) 225-5074
Minority (202) 225-5051

January 29, 2003

The Honorable Spencer Abraham
Secretary
U. S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Dear Mr. Secretary:

On August 9, 2002, I wrote to urge you to recommend federal intervention in an action against a government contractor, Lockheed Martin, for alleged illegal activities at the Paducah Gaseous Diffusion Plant. Over the past five months, the case has remained on hold while the Department of Energy (DOE) has continued to delay its decision on this issue. I ask you to attend immediately to this matter, as further delay jeopardizes human health, environmental cleanup, and fair allocation of the enormous costs at Paducah.

As numerous news stories,¹ congressional hearings,² and government investigations³ have detailed, a catastrophe has occurred at Paducah. Workers have lost their health and in some cases their lives through unknowing exposure to radioactive and hazardous chemicals. Releases from the plant have caused widespread contamination of land and groundwater in the area. And

¹See e.g., *In Harms's Way, and in the Dark; Workers Exposed to Plutonium at U.S. Plant*, Washington Post (Aug. 8, 1999); *Richardson Orders Probe of Uranium Plant in Ky.*, Washington Post (Aug. 9, 1999); *A Deathly Postscript Comes Back to Life; After Being Rejected, Warnings of Paducah Atomic Worker Now Hailed as Heroism*, Washington Post (Aug. 11, 1999); *Radioactive Gold: Did It Go to Market?; Metal Recycled From Warheads Wasn't Screened, Nuclear Workers Charge*, Washington Post (Aug. 14, 1999); *Paducah's Silent Witness; Excessive Uranium Level Found in Worker's Bones*, Washington Post (Aug. 22, 1999); *Radioactive Ooze Found in Paducah; Seepage Outside Plant May Denote Illegal Waste*, Washington Post (Aug. 29, 1999); *Radiation Risks Long Concealed; Paducah Plant Memos Show Fear of Public Outcry*, Washington Post (Sept. 21, 1999); *Plant Hid Risk from Workers; Paducah Bosses Knew Some Had High Radiation Levels*, Washington Post (Dec. 23, 1999).

²See House Committee on Commerce, Subcommittee on Oversight and Investigations, *Hearing on the Paducah Gaseous Diffusion Plant: An Assessment of Worker Safety and Environmental Contamination*, 106th Cong. (Sept. 22, 1999) (H. Rept. 106-87); Senate Committee on Energy and Natural Resources, Subcommittee on Energy Research, Development, Production and Regulation, *Hearing to Review the Department of Energy's Findings at the Gaseous Diffusion Plant in Paducah, Kentucky and to Receive Testimony Regarding the Department of Energy's Plans for Cleanup at the Site* (Mar. 31, 2000); Senate Committee on Energy and Natural Resources, Subcommittee on Energy Research, Development, Production and Regulation, *Hearing to Receive Testimony on the April 2000 GAO Report Entitled "Nuclear Waste Cleanup — DOE's Cleanup Plan for the Paducah, Kentucky Site Faces Uncertainties and Excludes Costly Activities,"* (June 27, 2000).

³See e.g., DOE Office of Oversight, Environment, Safety and Health, *Phase I Independent Investigation of the Paducah Gaseous Diffusion Plant, Environment, Safety, and Health Issues* (October 1999); DOE Office of Oversight, Environment, Safety and Health, *Phase II Independent Investigation of the Paducah Gaseous Diffusion Plant, Environment, Safety, and Health Practices 1952-1990* (February 2000); DOE (submitted by University of Utah, Center for Advanced Medical Technologies, Center of Excellence in Nuclear Technology, Engineering and Research; and Paper, Allied Industrial, Chemical and Energy Workers (PACE) International Union), *Exposure Assessment Project at the Paducah Gaseous Diffusion Plant* (December 2000); DOE, Oak Ridge Operations, *Report on the Paducah Gaseous Diffusion Plant Metals Recovery Program* (December 2000) (DOE/ORO-2105).

The Honorable Spencer Abraham
January 29, 2003
Page 3

U.S. taxpayers will likely have to pay billions of dollars to contain and mitigate the environmental damage.⁴

Throughout much of the time this damage was occurring, Lockheed Martin ran the Paducah plant and received tens of millions of dollars in payment from the federal government. Several current and former workers at the plant blew the whistle in 1999, bringing a *qui tam* lawsuit against Lockheed Martin under the False Claims Act. This law allows whistleblowers to represent the federal government in an action to recover damages for misconduct from a federal contractor. The Department of Justice (DOJ) has carefully investigated this case to evaluate whether the federal government should intervene in the case on the side of the *qui tam* plaintiffs. On July 23, 2002, after extensive investigations by both DOE and DOJ, DOJ formally requested DOE's recommendation on whether the government should join the case.⁵

At that time, the government had already received 12 extensions of the deadline for intervention over a three-year period. In August, Senator Grassley and I independently wrote to you expressing our concerns about DOE's delay in this matter.⁶ We both urged you immediately to help DOJ make a final decision on intervention.

Nevertheless, your department still has made no recommendation on whether the federal government should intervene in the litigation. You have also provided no indication of when, if ever, you plan to make such a recommendation. In response to my letter, the DOE General Counsel Lee Liberman Otis stated that you are "in the process of formulating [DOE's] response" to DOJ.⁷ That was four months ago.

While DOE has delayed its decision, DOJ has sought and received two additional intervention deadline extensions, bringing the total to 14 to date. Yet another extension is likely as the current deadline is January 31, 2003. In the meantime, certain witnesses and beneficiaries

⁴See U.S. General Accounting Office, *Nuclear Waste Cleanup: DOE's Paducah Plan Faces Uncertainties and Excludes Costly Cleanup Activities* (April 2000) (GAO/RCED-00-96).

⁵Letter from Lee Liberman Otis, General Counsel, DOE, to Senator Charles E. Grassley, 1 (Sept. 18, 2002).

⁶Letter from Senator Charles E. Grassley to Spencer Abraham, Secretary of Energy (Aug. 9, 2002); Letter from Congressman Henry A. Waxman to Spencer Abraham, Secretary of Energy (Aug. 9, 2002).

⁷Letter from Lee Liberman Otis, General Counsel, DOE, to Congressman Henry A. Waxman (Sept. 18, 2002).

are growing older and suffering increasing health problems.⁸ The lawsuit will be seriously undermined as key participants move away or die. Delay in this case is very likely to result in justice denied.

Furthermore, evidence of misconduct continues to mount. In November 2002, former Lockheed Martin employees were subpoenaed to appear before a federal grand jury, which has been empaneled apparently to investigate potential criminal misconduct at the plant.⁹

Under these circumstances, it is difficult to understand what legitimate rationale would explain the Department's inaction. Insufficient resources sometimes force agencies to delay action on lower-priority matters. But in this case, Paducah workers are dying, the previous Secretary of Energy apologized in person for the harm caused, and Congress responded to the revelations from Paducah by passing legislation to compensate injured nuclear workers. There have been multiple front page stories in the *Washington Post*, congressional hearings, multiple investigations by DOE and the General Accounting Office, and most recently, a bipartisan congressional call for your immediate attention and action. The Department faces billions of dollars in cleanup costs, which could at least in part be recovered through this lawsuit. Your inaction on this matter cannot be explained as a casualty of insufficient agency resources and attention.

Last September, Senator Grassley expressed his concern that "there may be a subtle effort underway at the Energy Department to slow, or even sideline the DOJ's long march toward an intervention decision due to pressure from the contractor in question."¹⁰ If successful, this lawsuit may cost Lockheed Martin billions of dollars in damages and cleanup costs. As I explained in my previous letter, intervention by the government substantially increases the likelihood that the suit will in fact be successful.¹¹ Certainly Lockheed Martin has every incentive to deter government intervention.

Given this situation, I remain concerned about the extent of pressure that Lockheed Martin may bring to bear on DOE's decision making. I noted previously that Lockheed Martin has tremendous political influence with the federal government, based on both its huge campaign

⁸See *Justice Dept. Given Extension in DOE Sick Workers Case*, Inside Energy (Nov. 11, 2002); *DOE Suit: Allegations Affirmed*, Paducah Sun (Nov. 1, 2002).

⁹*Grand Jury to Probe Plant*, Paducah Sun (Nov. 2, 2002).

¹⁰Letter from Senator Charles E. Grassley to Spencer Abraham, *supra* note 6.

¹¹Letter from Congressman Henry A. Waxman to Spencer Abraham, *supra* note 6.

The Honorable Spencer Abraham
January 29, 2003
Page 5

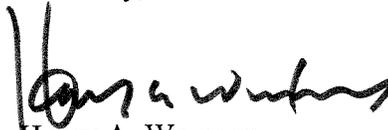
contributions and its multiple personal connections with the Bush Administration.¹² We now know that in the 2002 election cycle, Lockheed Martin contributed over \$1 million to Republican candidates, more than any other defense company.¹³ Lockheed Martin also remains a highly favored federal contractor. Just last month, you announced that you intended to give Lockheed Martin a five-year extension, estimated to be worth \$8 billion, on its contract to run the Sandia National Laboratory.¹⁴

In the case of Paducah, DOE's continuing failure to act is jeopardizing an important legal case and potentially risking the loss of several billion dollars in taxpayer money, as well as discouraging future whistleblowers from revealing fraud by federal contractors. I therefore ask that you respond to the following questions by February 12, 2003.

- By what date will DOE respond to DOJ's request for a recommendation on whether the federal government should intervene in the Paducah *qui tam* litigation?
- What, if any, further steps are necessary for DOE to formulate its response?
- Have you or any other DOE employee communicated regarding the Paducah litigation with any political appointee or career staff of any other federal agency or the White House, in addition to DOJ? If so, please detail the persons involved in those communications and provide copies of any documents generated in the course of the communications.

Thank you for your immediate attention to this important matter.

Sincerely,



Henry A. Waxman
Ranking Minority Member

¹²*Id.*

¹³Center for Responsive Politics (online at <http://www.opensecrets.org/industries/index.asp>).

¹⁴DOE, *Secretary of Energy Spencer Abraham Announces 5-Year Contract Extension for Sandia National Labs* (Dec. 13, 2002) (press release).