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July 22, 1992

**TO :** House Subcommittee on Investigations and Oversight,  
Committee on Science, Space and Technology  
Attention: Edith Holleman

**FROM :** American Law Division

**SUBJECT :** Analysis of Investigative Jurisdiction of House Science, Space  
and Technology Committee with Respect to Rockwell  
International Corporation Plea Bargain

#### **BACKGROUND**

On March 26, 1992, the Department of Justice (DOJ) and Rockwell International Corporation (Rockwell), which from 1975 to 1989 managed and operated the United States Department of Energy (DOE) Rocky Flats Nuclear Energy Weapons Plant, announced an agreement that Rockwell would plead guilty to ten criminal violations of the Resource Conservation and Recovery Act and the Clean Water Act and would pay a fine of \$18.5 million, for actions taken during its operation of the facility. No liability was sought by the DOJ against any officer or employee of either Rockwell or DOE. The DOJ sentencing memorandum explained this decision as follows:

The crimes here were institutional crimes -- committed by one institution called ROCKWELL and fostered, in a significant sense, by another institution called DOE. They were not crime by a few "rogue" individuals, but rather were the result of a culture, substantially encouraged and nurtured by DOE, where environmental compliance was a much lower priority than the production or recovery of plutonium and the manufacture of nuclear "triggers." For these reasons, the UNITED STATES believes that it is more appropriate to charge ROCKWELL, as an organization, with this collective, institutional conduct. While DOE, as a governmental entity, cannot be charged, this document serves in part to make government officials and the general public aware of the Energy Department's serious environmental failure in most of the 1980s.

The plea agreement was accepted by a Federal district court on June 1, 1992.

In 1990, Rockwell was replaced as the Rocky Flats operations manager by EG&G, Inc. Recently, EG&G was charged by the State of Colorado with 56 hazardous waste law violations in its operation of the facility. Rockwell,

however, has been designated by the National Aeronautics and Space Administration (NASA) as the prime contractor for space shuttle orbiter fabrication, and a Rockwell subsidiary was awarded a contract for space station power systems, at total estimated costs of some \$5 billion.

Your Subcommittee has commenced an investigation to determine what DOE operational practices fostered, encouraged and maintained such "institutional cultures" in Rockwell and DOE, and the nature and extent of those practices, in order to formulate a legislative strategy to forestall any repetition of what occurred at Rocky Flats at other Federal facilities. You indicate that some questions have been raised with respect to the Committee's jurisdictional authority to conduct such an investigation. Our review of the House Rules governing your authority, and oversight and investigative, and legislative, actions taken pursuant to that grant of authority, indicates a substantial body of relevant precedents that appear to support your initiative in this area. In particular, it appears there has been a significant number of instances of Committee oversight and legislative activity with respect to R&D laboratories that were located on purely military or mixed military and non-military Federal facilities.

Under House Rule X, cl. (r), the Committee on Science, Space and Technology is given subject matter jurisdiction over "(3) [the] National Aeronautics and Space Administration," "(8) scientific research, development, and demonstration, and projects therefor, and all federally owned or operated nonmilitary energy laboratories," and "(11) all energy research, development, and demonstration, and projects therefor, and all federally owned or operated nonmilitary energy laboratories". Like other standing committees of the House, your Committee is directed by House Rule X, cl. 2 (b)(1) to:

...review and study, on a continuing basis, the application, administration, execution, and effectiveness of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee and the organization and operation of the Federal agencies and entities having responsibilities in or for the administration and execution thereof, in order to determine whether such laws and the programs thereunder are being implemented and carried out in accordance with the intent of the Congress and whether such programs should be continued, curtailed, or eliminated. In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee (whether or not any bill or resolution has been introduced with respect thereof)...

In addition, the Committee is vested with "special oversight function" of "reviewing and studying, on a continuing basis, all laws, programs, and Government activities dealing or involving nonmilitary research and development." Rule X, cl. 3(f).

## OVERSIGHT AND LEGISLATIVE ACTIVITIES RESPECTING MILITARY FACILITIES

Several instances of oversight and legislative initiatives since 1980 by the Science Committee, including a number conducted by this very Subcommittee, that involve energy research and development activities at military facilities may be referenced.

In 1981, the Subcommittee on Investigation and Oversight conducted oversight hearings on the "Human Total Body Irradiation Program" at the Oak Ridge, Tennessee, Medical Division. The Oak Ridge facility engages in major defense-related activities, including the operation of the Y-12 plant which manufactures nuclear weapons. The Subcommittee was investigating allegations that treatments at the facility "were of little therapeutic value and inferior to other techniques that were available, that fully informed consent was not given and, most importantly, that the attempt to gain data for the space program took precedence of the treatment of patients." The Chairman stated the goals of the investigation included "the kinds of controls that were exerted from the sponsoring agencies on this program, and the nature of the decision processes at the Oak Ridge Medical Division." The sponsoring agencies were NASA and DOE.

In July 1983, a joint hearing was held by the Subcommittees on Investigations and Oversight and Energy Research and Production on "The Impact of Mercury Releases At The Oak Ridge Complex." In his opening statement, Chairman Gore noted, among both the specific and broad-reaching purposes of the hearing, the need to understand the nature of the institutional response of DOE to the problem and how that agency's decisional processes could be improved. The Subcommittee's focus on overall DOE management problems directly parallels the investigation that is the current subject of concern.

As we listen to the witnesses today, we will be focusing on five questions. First, we need to further ascertain the extent of the mercury contamination and the potential for any long-term impact on the health and environment of Oak Ridge. We need to do this in order to develop and implement any necessary remedial action in time to prevent any further impact of mercury. Fortunately, we have the time and expertise to undertake such activities, and it is my hope that steps to resolve this problem will be taken in an orderly, reasoned, and open fashion, involving the public, DOE, EPA, the State of Tennessee, TVA, and other interested parties.

Second, we need to understand, given the extent of knowledge about the mercury loss at Oak Ridge, at DOE, and UCMB, since at least the mid-1970's, why no action was taken on this problem until late 1982 and 1983 when the matter became public because of a Freedom of Information Act request.

We need to examine the structure at DOE to understand why, given the knowledge and talents of the people involved and their responsibility to the public, why there was apparently a collective failure to notify the public. Our purpose is to learn from any mistake and look for new institutional arrangements that will prevent such a failure in the future.

Third, we need to know what is being done about the other problems, like the S-3 ponds and the waste oil burial grounds. We need to know what DOE is doing to gather data to assess the problems and to formulate and implement plans to comply with environmental laws. We know we are looking at many problems today that had their origins in another time when the Nation was primarily focused on national security and when environmental pollution and its health effects were not well understood. We know we are dealing with old facilities, but the laws and the times have changed and so must those facilities. Moreover, the Federal Government must accept responsibility for these changes immediately.

In our investigation we have become aware of many problems, but we have found none that are currently affecting human health. However, it is important and critical that we act quickly and responsibly.

Fourth, we seek to examine the positions of DOE, EPA, and the State to learn whether their institutional responsibilities under the hazardous waste and clean water laws conflict, and whether the responsibility of each agency needs to be more clearly defined before the business of protecting the health and environment can be accomplished. We also need to look further and see whether Federal facilities are legally subject to less stringent compliance than private facilities or whether those charged with carrying out the law have administratively decided not to hold Federal facilities to strict compliance with the law.

Last, we seek to learn how we can all work together to quickly and effectively solve these problems and put this matter behind us.

Chairperson Lloyd, in her opening statement, carefully detailed the breadth of the Science Committee's jurisdiction at Oak Ridge and the fact that the focus of the hearing was the overall impact of the Y-12 nuclear weapons facility on the surrounding environment and DOE's management of that problem.

I believe it would be useful for me to outline what strongly reinforces my interest here in the mercury contamination issue as well as the Subcommittees' interest.

The Subcommittee on Energy Research and Production, which I chair, authorized nuclear fission R&D and magnetic fusion energy programs for the DOE, of which many of the activities are conducted

at the Oak Ridge National Laboratory, and the gas centrifuge development activity carried out at K-25 as well.

Our Subcommittee also authorizes funding for the uranium enrichment activities of the Oak Ridge Gaseous Diffusion Plant joint with other committees of the House.

Moreover, our Science and Technology Committee is responsible for fossil conservation and basic research programs at ORNL.

Thus from the perspective of committee responsibilities, I have a great interest in all aspects of the Oak Ridge pilot programs and related activities, including environmental effects and their mitigation.

Furthermore, our subcommittee has institutional jurisdiction over the Department of Energy's Oak Ridge Operations Office, since it serves as a field office for all the programs I have mentioned.

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My chief objectives in holding this hearing with Mr. Gore are to: One, understand the history of the extent of the mercury contamination problem and the reason that it was handled in the way that it was.

Two, what are the potential impacts from mercury contamination from Y-12's activities? In these contexts, I wish to know whether DOE, ORO is serving as a just steward in discharging in environmental responsibilities.

Three, I want to understand what information, including that to be derived from further analysis, experiments, and monitoring, is required to arrive at a solid, scientific basis for remedial action it is indeed warranted.

I am also specifically concerned about any potential environmental problems with respect to the ORNL and the gaseous diffusion plant facilities, which my subcommittee directly oversees.

Finally, I believe that DOE should capture the lesson learned from this mercury contamination problem such that DOE can assure that similar occurrences, environmental or otherwise, will not be handled in this manner. Our overall aim to have government at all levels work for the good of the people is my concept of good government.

I believe a generic problem that we must recognize is that the DOE is operating 1950 facilities, while striving to comply with environmental requirements of the 1980's. To achieve such

compliance will require constructive cooperation on the part of the EPA and the State with DOE, and I am committed to working in both of my committees of the Congress to secure funds for environmental improvement at DOE facilities.

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This mercury problem and related environmental questions are an unfortunate part of the heritage of Oak Ridge, but I believe that we here in east Tennessee are blessed with the tools to solve these problems. The research expertise of the Oak Ridge National Laboratory in environmental, health, and safety is unique and we must see to it that it is utilized to the utmost.

In 1980, the Science Committee was the jurisdictional committee for the Stevenson-Wydler Technology Innovation Act of 1980, Pub. L. 96-480, which established programs to encourage the transfer of technology from Federal Government laboratories to the private sector and state and local governments. In 1989, the Science Committee was represented on the reference committee for H.R. 2461, the National Defense Authorization Act for Fiscal Years 1990-1991, Pub. L. 101-189, for the provisions of section 801, which established new requirements for the Critical Technologies Plan, and sections 3131-3138, dealing with technology transfer provisions, which broadened the Stevenson-Wydler Act by extending to all government-owned, contractor-operated (Go-Co) laboratories performing research for the Federal Government, such as the National Energy Laboratories operated for the Department of Energy, the authority to enter into cooperative research and development agreements to transfer technology developed in Go-Co laboratories to the private sector. The conference report accompanying the bill clarified the purpose and scope of the expanded definition of a Federal laboratory. The conferees explained that "Stevenson-Wydler [was meant] to provide that a group of GO-Co facilities under a common contract are a laboratory (for purposes of section 12 of Stevenson-Wydler) when a substantial purpose of the contract is the performance of research and development for the Federal Government." Among the examples presented of clustered facilities that would be covered by the Act was "the Y-12 Production Facility" at Oak Ridge. H. Conf. Rept. No. 331, 101 of Cong. 1st Sess 758 (1989). Thus no distinction is made between military and non-military laboratories. Moreover, a recent DOE publication describing its R&D Laboratory Technology Transfer Program noted with respect to its defense programs that "the National Competitiveness Technology Transfer Act creates an opportunity to more fully utilize the resources resident in the nuclear weapons complex to simultaneously foster technology transfer of unclassified research and development and comply with primary mission of DP [Defense Programs], which is national security. In addition, section 91 of the Atomic Energy Act was amended to emphasize the importance of transferring 'federally owned or originated technology to State and local governments, private industry, and universities or other nonprofit organizations' by making these activities a mission of DP."

The Science Committee was active in the passage of the Nuclear Waste Policy Act of 1982, Pub. L. 97-425, and has since continued its oversight over environmental and energy research and development, and over mixed energy laboratories. See, *e.g.*, "Nuclear Waste Policy Act: Current States and Future Options", H. Subcommittee on Energy Research and Production, Committee on Science and Technology, 99th Congress, 2d Sess. (July 22, 1986).

In July 1991, the Subcommittee conducted oversight hearings respecting DOE's deletion of standard protective provisions in management and operating contracts at the Lawrence Livermore National Laboratory, a facility exclusively devoted to defense work. "Administration and Implementation of the Management and Operating Contracts for the Lawrence Livermore Laboratory and the Lawrence Berkeley Laboratory", 102d Cong., 1st Sess. (1991).

Most recently, the Subcommittee held hearings on the subject of "uncosted obligations", *i.e.*, money obligated to DOE contractors for which the government has not yet received any goods and services. At the end of fiscal 1991 these uncosted obligations at DOE were found by the Subcommittee to have grown to \$7.9 billion, some \$4.9 billion of which are attached to operating fund accounts. The Subcommittee review encompassed contract management and auditing practices of all DOE facilities, military and non-military. Chairman Wolpe described the scope and significance of the inquiry as follows:

The bottom line is that there is a huge pot of money sitting in the Department of Energy accounts and no one has any idea of whether the money has any legitimate use. Obviously, this means that the Department has no way of knowing what the budget requests should be because it does not know how much of the current funds are really required. Make no mistake. When billions of dollars are handled in such a fashion, this money can serve, effectively, as a slush fund. Clearly, there is a strong potential for abuse.

This situation is a manifestation of the unique way in which the Department operates its facilities. The Department of Energy is the largest civilian contracting agency in the Federal Government. It is uniquely dependent on management and operating, or M&O, contractors to construct, manage, and operate almost all of its facilities, including its weapons plants and laboratories. In fiscal year 1991, M&O's received \$15 billion, almost 70 percent of the Department's entire budget.

DOE agreements with its M&O's are multi-year, multi-billion-dollar contracts. Because the contractors are responsible for virtually all aspects of the management, operation, and maintenance of Departmental facilities, their contracts are very broad in scope. It is difficult, if not impossible, to specify all of the services the Government is acquiring for its money. In fact, some funds are obligated without a specifically defined purpose.

To account for these obligations, the Department has set up a system to track the costs incurred by its contractors. These uncosted obligations reflect goods or services the Government has received or its money. The problem arises when trying to assess the obligations that have not been costed--that is, money obligated to the contractors for which the Government has not yet received any goods or services.

What do these "uncosted obligations" represent? Are they funds that are committed or planned for a specific purpose? Are they funds that are no longer needed for the purpose for which they were originally obligated? Or are they funds whose use has never been specified?

Most likely, the DOE's uncosted obligations encompass all of these things. It is the responsibility of the Department to track these funds, assess their status, and determine if the money is still needed or could possibly be used to offset budget requests in future years. That is responsible budget formulation. However, the Department does not systematically track and assess these funds. It does not require the contractors to report this information, nor has it established guidance to ensure consistency in reporting and classification of funds. Even where information does exist, it is more often used to identify source of funds that can be tapped for some other purpose rather than determine whether they may be used to offset future budget requests.

This has several negative effects. The fact that these funds have been obligated removes them from the scrutiny normally accorded unobligated funds during budget reviews even though there may be no specific plans for utilization of the money. It is much easier for the Department to shift and reprogram uncommitted funds than it is to obtain new appropriations. By shifting the surplus funds, it is possible for the Department to alter the funding priorities established by Congress. Thus, the existence of surplus funds creates the potential for spending on unnecessary or lower priority projects, leading to the potential for waste and abuse of taxpayer funds.

Hearings, "Department of Energy Uncosted Obligations", 102d Cong. 2d Sess. (1992).

There is other precedent for referring bills that address military nuclear problems at DOE facilities when the bill addresses an issue that is ordinarily the Science Committee's jurisdiction. For example, in 1977, H.R. 6566 was introduced in the House to authorize appropriations for the Energy Research and Development Administration for national security applications of nuclear energy. 123 Cong. Rec. 13980 (May 9, 1977). Due to the subject matter of the bill, it was sequentially referred to the Science Committee for consideration of such portions of the bill which related to nonmilitary nuclear energy research and development. Most recently, H.R. 5231, the National Competitiveness Act of

1992, which would amend the Stevenson-Wydler Act again, was exclusively referred to the Science Committee. The measure covers a broad range of DOE and DOD R&D activities.

## CONCLUSION

In sum, then, a substantial case can be made that House Rules and past Committee oversight and legislative activities support the preliminary investigation into the DOJ resolution of the Rocky Flats proceeding. The foregoing review of oversight and legislative actions of the Committee covering a period of twelve years underlines a consistent recognition of Committee jurisdiction where the focus has been on oversight of management and operational concerns. In those circumstances it has not mattered that an inquiry or proposed legislation encompassed both military and non-military R&D. The idea of significant failure of institutional control and supervision by a major government contractor and its sponsoring agency divorced from individual responsibility may well have a legal basis of distinction in the application of the criminal laws, but it would not appear to have had the effect of foreclosing inquiry by a jurisdictional committee of possible past and future maladministration. The precedents reviewed above indicate no rigid line of prohibition for the Science Committee to inquire into nonmilitary R&D when they occur at military facilities. Nor are we aware of precedent foreclosing the Committee from inquiring with respect to the qualifications of a major contractor operating at agency under its unquestioned jurisdiction -- Rockwell at NASA -- and seeking information as to those qualifications at another agency where its general jurisdiction is similarly established.



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