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DOE's Award Fees at Rocky Flats  
Do Not Adequately Reflect Environmental,  
Safety, and Health Problems

Statement of  
Keith O. Fultz, Director, Energy Issues  
Resources, Community, and Economic  
Development Division

Before the  
Environment, Energy, and Natural  
Resources Subcommittee  
Committee on Government Operations  
House of Representatives



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Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to provide our views on a key aspect of the Department of Energy's (DOE) management--how it rewards its contractors for their performance. In other words, the award fee process. In particular, we will focus on DOE's management of award fees to the contractor for operating the Rocky Flats Plant in Colorado, which has encountered many environmental, safety, and health problems. We will also discuss recent DOE efforts to improve the award fee process.

As you know, DOE has been criticized over the last few years about its performance in environmental, safety, and health matters. This is particularly true for its management of the nuclear defense complex. We have issued numerous reports and testified many times on the wide-ranging problems of the complex. Safety problems have shut down such key facilities as production reactors, plutonium operations, and a reprocessing plant. Environmental contamination of groundwater and soil exists at many facilities within the complex, and environmental laws have not always been adhered to. Finally, the complex has deteriorated to the point where our ability to make nuclear material for national defense is in question. To put these problems in perspective, we have told the Congress that it could cost in excess of \$150 billion to rebuild and clean up the complex.

To meet this formidable challenge, DOE must manage its facilities and contractors with a higher degree of emphasis on and commitment to environmental, safety, and health matters. Our work has shown that the award fee process, as implemented at the Rocky Flats Plant, has not had either the proper emphasis or commitment to environmental or safety performance. Further, we believe this situation can occur at other DOE facilities.

As you know, many of the facilities within the nuclear defense complex are managed by DOE, through its various Operations Offices, under cost-plus-award-fee contracts. Under these contracts, DOE reimburses the contractor for the cost of operating the facility and establishes both a base fee, which is paid automatically, and an award fee pool. The actual amount of award fees paid from the pool to the contractor depends on the contractor's performance. The better the performance, as determined by DOE, the higher the award fees.

As we stated in our recent report on the award fees paid to the Rockwell International Corporation for managing the Rocky Flats Plant, the award fees paid did not adequately take into account the environmental, safety, and health problems at the plant.<sup>1</sup> That is, although significant environmental, safety, and health problems have persisted at the plant, Rockwell received substantial monetary

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<sup>1</sup>Nuclear Health and Safety: DOE's Award Fees at Rocky Flats Do Not Adequately Reflect ES&H Problems (GAO/RCED-90-47, Oct. 23, 1989).

rewards for operating it. During fiscal years 1986, 1987, and 1988, Rockwell has received approximately \$26.8 million in award fees. This amount accounts for approximately 84 percent of the total award fee pool that was available to Rockwell under its contract with DOE. In determining these awards, DOE's Albuquerque Operations Office considered environmental, safety, and health deficiencies at the plant and rated Rockwell from "moderately good" to "excellent" for its environmental, safety, and health performance.

ENVIRONMENTAL, SAFETY, AND  
HEALTH DEFICIENCIES

Let me begin by discussing some important problems at Rocky Flats. Over the years, reviews by us and others have shown that there have been persistent environmental, safety, and health deficiencies at the plant. Between September 1986 and March 1988, technical safety appraisals by DOE headquarters identified 230 recommendations or concerns covering a wide range of problems.<sup>2</sup> Of particular concern were problems in the plant's radiological program. Also, these appraisals showed a lack of commitment by the plant's management to improve overall safety and health conditions.

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<sup>2</sup>These appraisals are aimed at identifying safety problems and issues at DOE facilities. They are carried out by a team of specialists led by senior staff from DOE headquarters.

Because of the seriousness of the safety and health concerns at the plant, DOE, in February 1988, instituted a series of measures to improve conditions. These included such actions as setting up a 24-hour surveillance of the plant by DOE staff. These measures remained in effect until May 1988. However, safety problems persisted. An internal Rockwell study, in September 1988, found an inadequate commitment at the plant to safety and health conditions. Later that September, one DOE employee and two plant employees were exposed to possible contamination in Building 771 at the plant. This incident precipitated a review by DOE, which found that inadequate radiological safety margins existed at the building. Building 771 was temporarily shut down because of this problem on October 7, 1988.<sup>3</sup>

There were also problems in the environmental area, particularly regarding groundwater contamination and numerous inactive waste sites. We reported on these problems in September 1986, yet the full scope and severity of the problems still remain unknown.<sup>4</sup> In addition, a wide variety of other environmental problems have occurred over the last few years. These include: (1) violations of the plant's permit under the Clean Water Act, (2) improper storage and handling of hazardous waste, (3) inadequate

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<sup>3</sup>Operations at this building were restarted in Jan. 1989.

<sup>4</sup>Nuclear Energy: Environmental Issues at DOE's Nuclear Defense Facilities (GAO/RCED-86-192, Sept. 1986).

groundwater monitoring; and (4) inadequate record keeping on hazardous waste.

Further, during the last 2 years, a costly environmental problem arose concerning pondcrete--a mixture of cement and waste. In May 1988, plant officials found that pondcrete in about 2,000 of the 17,000 boxes that were to be shipped off-site did not cure properly because the cement and waste were improperly mixed. As a result, DOE has to reprocess and repackage about 2,000 of the boxes and retest the remaining boxes. DOE estimates that this problem will cost hundreds of thousands of dollars to correct.

#### AWARD FEES PAID TO ROCKWELL

Despite the existence of these problems between fiscal years 1986 and 1988, DOE paid Rockwell \$26.8 million in award fees. These fees were paid on the basis of semiannual performance evaluations and the extent to which Rockwell accomplished specific goal achievement objectives.

In these semiannual evaluations, Rockwell consistently scored over 90, on a scale of zero to 100, in its overall performance. In arriving at this overall score, DOE evaluated Rockwell's performance in various functional areas, such as general management, and various environmental, safety, and health-related functional areas. Rockwell scored well in these environmental,

safety, and health areas. In the evaluation periods for which waste management, which includes environmental matters, was a distinct functional area, Rockwell was rated "very good" or "excellent" and scored 87 to 94. Rockwell was rated slightly lower--"moderately good" to "very good"--in the safety and health area and scored 80 to 87. These scores contributed to the overall scores Rockwell received and thereby contributed to the nearly \$25 million Rockwell received in award fees as a result of the semiannual evaluations.

In addition to these award fee payments, Rockwell earned over \$2 million in award fees by accomplishing specific goal achievement objectives. These objectives are established by DOE's Albuquerque Operations Office to encourage attention to particular areas and can relate to any aspect of the operations at the Rocky Flats Plant. During fiscal years 1986, 1987, and 1988, these objectives related to increased production or efficiency at the plant.

#### PROBLEMS WITH THE AWARD

##### FEE PROCESS

We believe there are a number of problems in how DOE considered environmental, safety, and health matters in the award fee process under its contract with Rockwell. First, significant environmental, safety, and health problems were downplayed in the evaluation process. Second, the process placed more emphasis on

production than on environmental, safety, and health performance. And third, the evaluations were not reviewed or approved by DOE headquarters organizations that have important roles in the conduct of activities at the plant.

Environmental, Safety, and  
Health Problems Downplayed

First, the environmental, safety, and problems have been downplayed. As I noted, Rockwell generally received high semiannual ratings for its environmental, safety, and health performance. These ratings, given by DOE's Albuquerque Operations Office, were determined by comparing achievements against deficiencies in accordance with a pre-established rating plan. (See attachment I.) Under the plan, problems can be classified as deficiencies, significant deficiencies, or serious major deficiencies. Although the classification of each of these deficiencies is important in determining the final rating, there are no written criteria to distinguish between the different types of deficiencies.

As described in our report, the classification of some environmental, safety, and health deficiencies was questionable. For example, in the evaluation period before the shutdown of Building 771, many environmental, safety, and health problems--such as improvements needed in the plant's health physics program, and

repeated violations of the plant's permit under Clean Water Act-- were only referred to as deficiencies in the evaluation process instead of significant deficiencies. Had they been classified as significant deficiencies, the rating given to Rockwell, according to the rating plan, would have been much lower. Some of these problems, in our view, appear significant. For example, the health physics program has been a long-standing problem at the plant and was one of the key reasons Building 771 was shut down.

We also noted that some deficiencies were not mentioned at all in the evaluation process. That is, many reports critical of safety or environmental matters at the plant, including some of the technical safety appraisals and previous GAO reports, were never mentioned as deficiencies at all in the evaluation process. In other instances, when deficiencies were mentioned, the rating plan was not followed. For example, during one rating period, Rockwell received an "excellent" rating, although two significant deficiencies were cited. According to the rating plan, an "excellent" rating implies no deficiencies.

Overall, we believe that the seriousness of the safety and health problems, which required DOE to initiate a series of short-term measures at the plant and eventually led to a shutdown of Building 771, were never conveyed in the evaluations.

The Process Has Emphasized  
Production

Second, production has been emphasized over environmental, safety, and health matters in the award process, including both the semiannual evaluations and the accomplishment of goal achievement objectives. During fiscal years 1986, 1987, and 1988, the weight given specifically to environmental, safety, and health matters, in four of the six evaluation periods, has been less than the weight given to production activities. During fiscal year 1986, safety and health was not even considered as a distinct functional area.

In addition to the semiannual award evaluations, Rockwell received money for accomplishing specific goal achievement objectives. From fiscal year 1986 through fiscal year 1988, these objectives encouraged increased production and efficiency at the plant. At Building 771, we believe these objectives conflicted with safety concerns. In this regard, Rockwell was encouraged to increase production at this building even though safety problems existed. Approximately 2 months before the shutdown of Building 771 for safety problems, DOE awarded Rockwell \$310,000 for increased production of plutonium from certain types of residues at Building 771.

## Evaluations Not Reviewed By

### DOE Headquarters

Finally, DOE's contract with Rockwell and guidelines on award fee contracts did not require that the final determinations be approved or reviewed by DOE headquarters. We identified instances where headquarters staff did not agree with the ratings given to Rockwell by DOE's Albuquerque Operations Office. However, headquarters staff views apparently had little or no impact on the final award. For example, an August 1987 memo within DOE's headquarters' Office of the Assistant Secretary for Environment, Safety, and Health described the plant's health and safety performance as marginal to unsatisfactory. The eventual rating given to Rockwell for this period was very good. Such inconsistent views should be resolved before the final rating is given. Because the award fee process is a very important management tool that can be used to encourage a certain level of performance, the final decision should not solely reflect the views of one DOE Operations Office.

### RECENT DOE ACTIONS

While we were completing our review, DOE recognized many problems in its award fee process. Important changes are currently being implemented by DOE to improve its award fee process. These include (1) having all awards reviewed and

concluded in by DOE headquarters and (2) requiring that environmental, safety, and health matters be weighed by at least 51 percent in the evaluation process. According to DOE officials, further changes are likely, and many will be implemented for the rating period beginning October 1, 1989. Because these changes have just begun to be implemented, we have not yet had the opportunity to evaluate them. We believe that many of the changes are positive. However, it may be years before we can determine how successful these changes are.

#### SUMMARY

In summary, DOE's award fee process is an important management tool to encourage the performance of its contractors. This tool is particularly important in such areas as environmental protection and safety, where problems have persisted at DOE facilities. Accordingly, DOE should implement the process in a manner that ensures that adequate attention is given to environmental, safety, and health performance, and that the process accurately reflects the significance or severity of the problems. We do not believe the ratings given to Rockwell at Rocky Flats have reflected the seriousness of the problems there.

Most importantly, DOE needs to reduce the level of discretion that has existed in the process when making the final award determination. In our view, there needs to be a clear

understanding between DOE and its contractors on what they will be losing in award fees for certain types of environmental, safety, and health problems.

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Thank you. That concludes my testimony. We would be happy to answer any questions.

DOE ALBUQUERQUE OPERATIONS OFFICE'S  
PRE-ESTABLISHED RATING PLAN

<u>Adjectival grade</u>	<u>Numerical grade</u>	<u>Definitions</u>
Outstanding	96-100	Substantially exceeds expected performance level. Several noteworthy achievements <sup>a</sup> or some especially noteworthy achievements. No notable deficiencies. <sup>b</sup>
Excellent	91-95	Exceeds expected performance level. Some noteworthy achievements. No notable deficiencies.
Very good	86-90	Expected performance level. Some noteworthy achievements. Some notable deficiencies.  or  No noteworthy achievements. No notable deficiencies.
Good	81-85	Minimum expected performance level. No noteworthy achievements. Some notable deficiencies.  or  Some noteworthy achievements. Several notable deficiencies.
Moderately good	76-80	Exceeds acceptable performance level. No noteworthy achievements. Several notable deficiencies.  or  Some noteworthy achievements. Some notable significant deficiencies.

<u>Adjectival grade</u>	<u>Numerical grade</u>	<u>Definitions</u>
Satisfactory	71-75	Acceptable performance level. No noteworthy achievements. Some notable significant deficiencies.
Marginal	66-70	Minimum acceptable performance level. Several notable significant deficiencies.
Unsatisfactory	65 and below	Unacceptable performance level. Notable serious major deficiencies.

<sup>a</sup>A noteworthy achievement is some accomplishment beyond the routine performance associated with a function or activity.

<sup>b</sup>A notable deficiency is something more than an incidental deficiency. While its significance may vary, it is considered worthy of mention. The absence of notable deficiencies does not imply that there are no deficiencies at all. In our discussion of deficiencies throughout this testimony, the term "notable" is dropped to make the text more readable.

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Secretary for Policy Development and Research. The appointment was initially for a 6-month period to expire on July 25, 1988. After two extensions, Dr. Koch's employment as a consultant was terminated on January 20, 1989.

HUD DID NOT ADEQUATELY CONTROL OR  
MONITOR DR. KOCH'S CONSULTING ACTIVITIES

In our view, HUD did not adequately control or monitor Dr. Koch's consultant activities. For example, HUD officials did not request Dr. Koch to disclose the names of her clients. HUD officials said they did not believe it was necessary for them to know who her clients were because she was only to advise HUD on general matters and avoid specific recommendations on products, technology, and companies. In our opinion, however, Dr. Koch's advice to HUD could affect her clients' ability to improve business relations with the Soviets and, as such, could result in a conflict of interest.

Also, in hiring Dr. Koch as a consultant, HUD did not require her to file a financial disclosure report as required by HUD's Standards of Conduct regulations. HUD regulations require that a confidential statement of employment and financial interest be filed at the time of employment. This requires that the names of all organizations, including corporations, be disclosed where the special government employee serves as employee, officer, owner, expert, advisor or consultant, with or without compensation. HUD's

Office of General Counsel agreed that Dr. Koch should have been required to submit a financial disclosure report and concluded that it was an oversight by HUD for not requiring it.

Dr. Koch's Moscow Trip

HUD also did not, in our opinion, exercise adequate control over Dr. Koch's specific work assignments because it did not provide any instructions or direction to her when she carried out duties for HUD while at the same time she conducted private business on her own behalf. In March 1988, for example, Dr. Koch went to the Soviet Union to conduct private business meetings. She said the then Secretary of HUD requested that she also discuss Soviet interests and priorities in commercial activities relative to future bilateral trade meetings that were to be held in September 1988 with the Soviets.

Mr. MacRae stated, however, that he was not aware that Dr. Koch was to conduct any business on behalf of HUD while on this trip to Moscow. He said he assumed this assignment was initiated by the Secretary. He said he became aware of her activities after she returned to the United States and he received a copy of her report to the Secretary.

The former Secretary of HUD advised us that he and Dr. Koch may have informally discussed the possibility of her asking the Soviets

what they might want to do when they come to the United States during their next visit. He told us that he would have provided written instructions and directions to Dr. Koch if he had considered this request extremely significant.

HUD's Office of General Counsel said it was not consulted prior to Dr. Koch's trip to Moscow. Mr. Burton Bloomberg, Associate General Counsel for Equal Opportunity and Administrative Law, said that certain limits or parameters should have been established by the Office of Policy Development and Research governing her activities while on this trip. He added that this office should have prepared written instructions and guidelines outlining the purpose of the trip and the duties that Dr. Koch was to perform.

Dr. Koch said the meetings she conducted as a HUD consultant were independent and separate from her private business meetings with the Soviets. However, we noted that Dr. Koch's correspondence to the Soviets in January 1988--in advance of her March 1988 trip--discussed both public and private activities, such as setting up meetings on behalf of her clients, and also discussed how HUD might encourage American companies to participate in Soviet exhibitions.

Also, Dr. Koch, in an April 1988 memorandum to the Secretary summarizing the results of her trip, shared with HUD certain information that she said she obtained in private business meetings with the Soviets. We noted that on one subject covered in

Dr. Koch's April 1988 memorandum--construction of hotels--following her return to the United States, Dr. Koch recruited one of her clients, Tishman-Speyer Properties, Inc., a real estate development firm to help address this need.

Further, a former HUD contract employee who said he went on several trips to the Soviet Union with Dr. Koch also told us that, in most cases, the Soviet representatives that Dr. Koch dealt with on activities affecting HUD's interests were the same people that she dealt with on private business.

DR. KOCH HELD BUSINESS MEETINGS WITH  
SOVIETS DURING OFFICIAL ITINERARY TIME

Dr. Koch arranged meetings in the Washington, D.C., area between her clients and the Soviets during official itinerary time. During June 2-12, 1988, a Soviet delegation visited the United States for a bilateral working group meeting on utility systems. Dr. Koch said she called Mr. MacRae about the Soviets' planned visit for the purpose of arranging meetings between members of the Soviet delegation and her clients. Dr. Koch said he identified free time on Saturday, June 4, 1988, and Thursday, June 9, 1988.

Mr. MacRae agreed that he identified free time on Saturday, June 4, 1988, stating that meetings could be held only if they did not conflict with the official itinerary and if the Soviets themselves

had requested the meetings. Mr. MacRae did not agree, however, with Dr. Koch's statement that he had identified free time on June 9, 1988. Nevertheless, on June 4, 1988, as well as June 9, 1988, Dr. Koch said she arranged and conducted meetings between her clients and members of the Soviet delegation.

HUD officials told us that they had no objections to Dr. Koch meeting with the Soviets during free time when it would not conflict with the HUD-approved official itinerary. Dr. Koch's meeting with two members of the six-member Soviet delegation on Thursday, June 9, 1988, however, was held at a time when the itinerary called for the Soviets to attend an official working group session at HUD. According to Mr. MacRae, the June 9 meeting was held without his prior knowledge. HUD should oversee the bilateral technical exchange meetings, financed by the United States, to help ensure that the officially approved itinerary is followed.

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In summary, Mr. Chairman, we have concluded that Dr. Koch's activities since leaving HUD--where she served as the Assistant Secretary for Policy Development and Research--may constitute possible violations of the Ethics in Government Act and, as such, should be referred to the Department of Justice for further investigation.

It appears that Dr. Koch used her prior affiliation with HUD in an attempt to gain special benefit from HUD not generally available to others. Having the benefit of such access afforded Dr. Koch an inherent advantage over competitors who also may be interested in developing and pursuing trade relations with the Soviets.

Finally, it is our view that HUD--primarily the Office of Policy Development and Research--did not adequately monitor and supervise Dr. Koch's activities to ensure that her work as a consultant did not result in a conflict of interest.

This concludes my statement. Mr. Chairman, I would be pleased to respond to any questions you or any Members of the Subcommittee may have.

POSSIBLE VIOLATIONS OF ETHICS IN GOVERNMENT ACT

<u>Description</u>	<u>Sections<sup>a</sup></u>		
	<u>207(a)</u>	<u>207(b)(i)</u>	<u>207(c)</u>
Attempts to change itinerary for Ocala trip--December 1987	X	X	X
Contact to host a reception-- December 1987	X	X	X
Contact to host a reception and arrange other meetings-- September 1988			X

<sup>a</sup>Section 207(a) provides a permanent restriction, applicable to all former federal employees, prohibiting them from making, "with the intent to influence," any oral or written communication to any agency on behalf of another person concerning a particular matter involving a specific party or parties in which the United States has a direct and substantial interest and in which the former government employee participated personally and substantially.

<sup>a</sup>Section 207(b)(i) provides a 2-year restriction on the same type of conduct with regard to a particular matter so long as the same matter was "actually pending under his official responsibility as an officer or employee" within 1 year prior to the termination of that responsibility. This is basically the same bar as provided by subsection (a), except that it applies for only 2 years and covers all particular matters that were pending under the former employee's "official responsibility" in his or her last year of government service. Actual personal participation in the matter is not required by subsection (b) as it is under (a).

<sup>a</sup>Section 207(c) prohibits a former senior government employee, for 1 year after terminating employment, from communicating with his or her former agency, with the intent to influence the agency on a particular matter in which the agency has a direct and substantial interest.