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**Statement of**  
**Jon D. Johnston**  
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**United States Environmental Protection Agency Region 4**  
**Before the**  
**Committee on Energy and Natural Resources**  
**United States Senate**  
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Good morning, Senator Bunning. On behalf of the Environmental Protection Agency, I am pleased to be with you to offer testimony about the environmental cleanup activities at the Paducah Gaseous Diffusion Plant. My name is Jon Johnston and I serve as the Federal Facilities Branch Chief, representing the Agency's Region 4 office in Atlanta, Georgia. Joining me today is Winston Smith, Director of our Waste Management Division.

My Branch is responsible for oversight of Federal agency hazardous substance cleanups, primarily at facilities on the National Priorities List established under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as Superfund. The Department of Energy (DOE) has three facilities in this Region currently on the Superfund National Priorities List – the Savannah River Site in South Carolina, the Oak Ridge Reservation in Tennessee, and the Paducah Gaseous Diffusion Plant here in Kentucky. All three facilities have ongoing operations, as do many of the military NPL facilities conducting cleanup in the southeast. Our approach to oversight activities is the same for all three DOE facilities, and we have signed letters of intent, accelerated enforceable agreements, and comprehensive cleanup schedules already in implementation at both the South Carolina and Tennessee DOE sites. Agreements reached for ORR and SRS establish comprehensive cleanup strategies, including definitive dates for completion coordinated with ongoing DOE missions, without interruption. Comprehensive cleanup of these large DOE sites are planned for completion in 2016 at ORR and 2025 at SRS. At Paducah, we have made a start on a good acceleration plan. We have DOE's three-year commitment in place for Paducah covering the accelerated projects specified in the letter of intent between DOE and the Commonwealth.

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

on the same accelerated pace as the other facilities.

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

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

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

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

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

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

DOE submitted its draft fiscal years 2004-2006 SMP to EPA and the Commonwealth on November 14, 2003. Because the draft DOE Site Management Plan (SMP) is still under Agency review I cannot report to you our official response, but I can provide some preliminary reactions. I want to first emphasize the positive aspect that DOE's proposal contains the projects that EPA

believes need to be accelerated. Furthermore, it appears that we could agree with the DOE's proposed milestone commitments for fiscal years 2004-2006. EPA continues to advocate that DOE, EPA and the Commonwealth move on to implementation.

We have identified some preliminary concerns with the draft SMP. DOE's proposal makes implementation of accelerated projects contingent on an indefinite suspension in the completion of cleanup work until the Paducah facility is closed. EPA needs a better understanding of DOE's rationale for this approach. In the meantime, in order to accelerate cleanup, on Wednesday of this week EPA submitted a letter of intent to DOE calling for the three parties to immediately implement the projects proposed as milestones by DOE in the draft 2003 site management plan. Although EPA does not agree that such an LOI is needed for DOE to implement these projects, we are willing to sign an LOI because DOE has stated that one is needed. The parties can subsequently work toward agreement on out-year milestones.

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

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