ONE HUNDRED EIGHTH CONGRESS

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
FACSIMILE (202) 225–3974
MINORITY (202) 225–5051
TTY (202) 225–6852

www.house.gov/reform

January 15, 2004

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

Dear Mr. Secretary:

On December 22, 2003, Rep. Henry A. Waxman, the ranking member of the Government Reform Committee, and Rep. John D. Dingell, the ranking member of the Energy and Commerce Committee, wrote to you seeking information about lobbying and other contacts between the Department of Energy (DOE) and outside groups concerning Senate consideration of H.R. 6, the Energy Policy Act of 2003.[1] On January 6, 2004, Lee Liberman Otis, DOE General Counsel, responded to this letter, but did not provide the information requested by Mr. Waxman and Mr. Dingell.[2]

The information sought by Mr. Waxman and Mr. Dingell is important to our efforts, as members of the Committee on Government Reform, to fulfill our legislative and oversight responsibilities. Consequently, after consultation with Mr. Dingell, we are invoking our rights to this information under the "Seven Member Rule" (5 U.S.C. § 2954). This law requires you to "submit any information . . . relating to any matter within the jurisdiction of the committee" when requested by at least seven members of the Government Reform Committee.

Background

On December 13, 2003, the *National Journal* reported that the American Petroleum Institute, the National Mining Association, the Nuclear Energy Institute, and other trade groups

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[1]Letter from Rep. Henry A. Waxman et al. to Spencer Abraham, Secretary of Energy (Feb. 24, 2003).

[2]Letter from Lee Liberman Otis, General Counsel, DOE, to Rep. Henry A. Waxman (Jan. 6, 2004).

were readying a grassroots lobbying blitz in six states aimed at pushing Senators to reverse their position and support the energy bill. The article stated that lobbyists from these groups met with DOE Deputy Secretary Kyle McSlarrow to discuss ways to gain support for the bill. According to the article, DOE officials "stressed that they want to work with lobbyists to 'put pressure' on lawmakers."[3]

This press account suggests that DOE could be coordinating with industry on a grassroots lobbying strategy. As Reps. Waxman and Dingell indicated in their December 22 letter, such activities may constitute an inappropriate use of taxpayer dollars, quite possibly in violation of federal law, including the latest appropriations law under which DOE is currently funded.

There are at least two laws that appear to be implicated by DOE's activities. First, DOE's current appropriations law specifically bans using Department funds to influence congressional action on legislation. Specifically, the appropriations act states:

> None of the funds appropriated by this Act may be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913.[4]

In addition, 18 U.S.C. § 1913 prohibits federal officials from engaging in campaigns about pending legislative matters. The prohibition reads:

> No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation.

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[3] *Lobbyists Ready Blitz for Energy Bill*, National Journal (Dec. 13, 2003). *See also, Yuletide Greetings From Bush, Cheney Families*, Washington Post (Dec. 15, 2003) (online at http://www.washingtonpost.com/wp-dyn/articles/A265-2003Dec14.html).

[4] *Energy and Water Development Appropriations Act, 2004*, Pub. L. No. 108-137, Sec. 501 (Dec. 1, 2003).

Information Requested

Any efforts of the Administration to coordinate a grassroots lobbying campaign with industry would raise serious questions. For this reason, we are seeking information about contacts between officials in the Energy Department and industry and other groups regarding congressional consideration of the energy bill. Specifically, under the authority of the Seven Member Rule, we ask that you provide copies of all communications (whether written, electronic, or oral) relating to H.R. 6 since November 21, 2003, between (1) DOE or other Executive Branch officials and (2) industry lobbyists, representatives of trade associations or interest groups, or other persons outside of the Executive Branch.

The Seven Member Rule provides that "[a]n Executive agency, on request of the Committee on Government [Reform] of the House of Representatives, or of any seven members thereof . . . shall submit any information requested of it relating to any matter within the jurisdiction of the committee."[5] As a federal court recently held, "[r]eading the terms of Section 2954 in their ordinary and common meanings as this Court must . . . the Court finds that the 'Seven Member Rule' requires an executive agency to submit all information requested of it by the Committee relating to all matters within the Committee's jurisdiction upon the Committee's request."[6]

In this case, there can be no question about our right to the information under the Seven Member Rule. As required by the rule, the information we seek is within the jurisdiction of the Committee on Government Reform. As the principal investigative committee in the House, our Committee's broad oversight jurisdiction encompasses authority to investigate "any matter" within the legislative jurisdiction of other committees so that we can make "findings and recommendations" that we report to "other standing committee[s] having jurisdiction over the matter involved."[7] Furthermore, we have specific legislative jurisdiction over laws, such as the

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[5]5 U.S.C. § 2954. The statutory language refers to the "Committee on Government Operations." This Committee was renamed the Committee on Government Reform and Oversight in the 104th Congress and again renamed the Committee on Government Reform in the 106th Congress. References in law to the Committee on Government Operations are treated as referring to this Committee. *See References in Law to Committees and Officers of the House of Representatives*, Pub. L. No. 104-14, § 1(6), 109 Stat. 186 (1995).

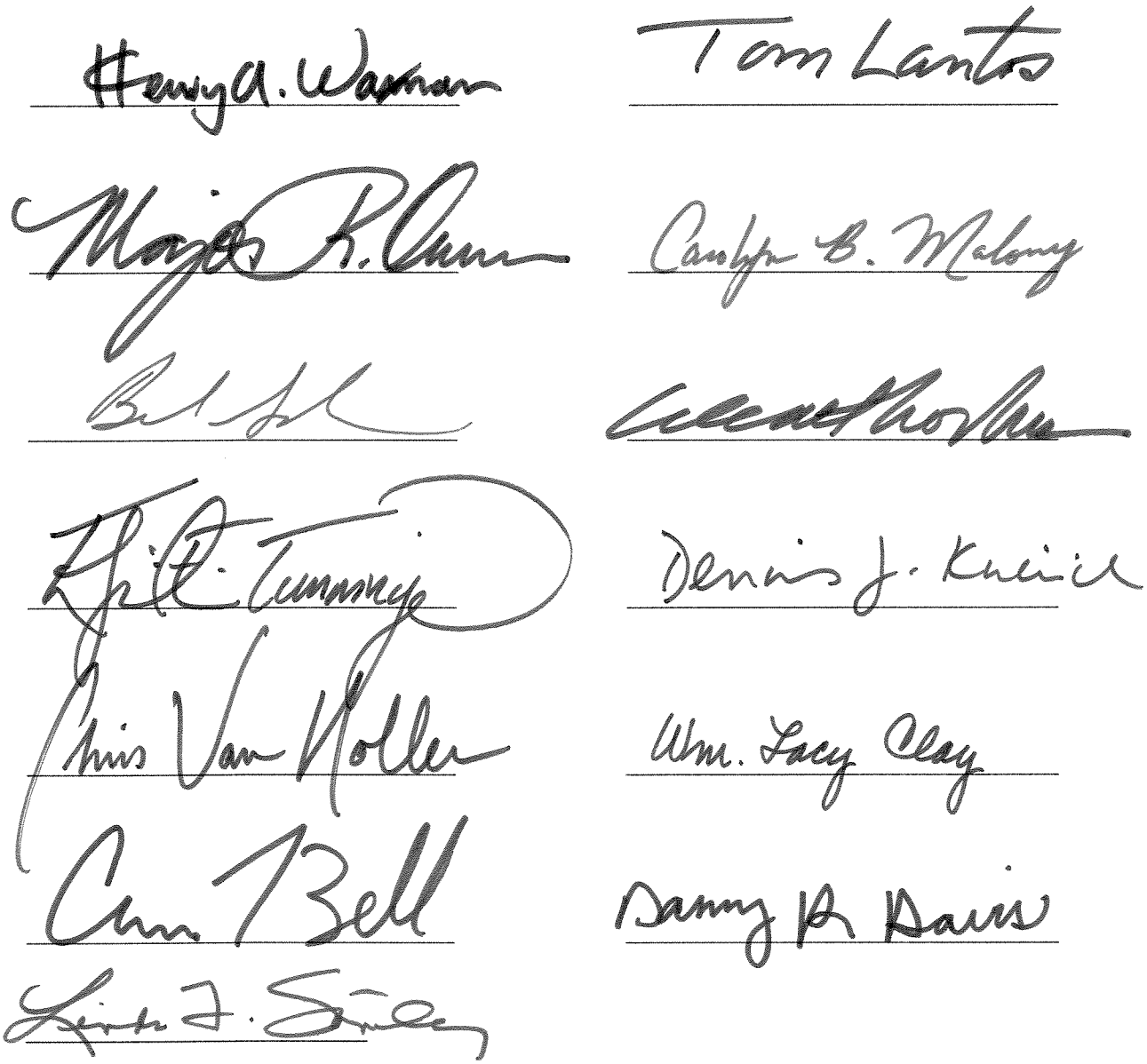
[6]*Waxman v. Evans,* 2002 U.S. Dist. LEXIS 25975 (C.D. Cal. 2002), *vacated as moot, Waxman v. Evans*, 52 Fed.Appx. 84 (9th Cir 2002).

[7]Rule X, cl. 4(c)(2) ("The findings and recommendations of the committee . . . shall be made available to any other standing committee having jurisdiction over the matter involved").

Federal Advisory Committee Act, that govern how the federal government receives advice from private entities.[8]

We ask that the information described above be provided on or before January 29, 2004.

Sincerely,



[8]Rule X, cl. 1(h)(10). (Matters relating to "public information and records" are within the jurisdiction of the Committee on Government Reform.)