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FROM: DUE: 07/13/07

EDO CONTROL: G20070479

DOC DT: 07/03/07

FINAL REPLY:

Representative Joe Barton

EDATS: SECY-2007-0220

TO:

Chairman Klein

FOR SIGNATURE OF : ** PRI **

CRC NO: 07-0449

Chairman Klein

DESC:

ROUTING:

Concerns Briefing Between NRC Staff and Committee Staff Regarding a Major Nuclear Safety Incident that Occurred Last Year at the NFS Plant in TN and the NRC Policy to Classify Documents Re: Incident as OOU

Reyes
Virgilio
Kane
Ash
Ordaz
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DATE: 07/05/07

ASSIGNED TO: CONTACT:

NMSS Weber

SPECIAL INSTRUCTIONS OR REMARKS:

Template: SECY-017

E-RUSS: SECY-01

OFFICE OF THE SECRETARY
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Date Printed: Jul 03, 2007 16:44

PAPER NUMBER: LTR-07-0449 **LOGGING DATE:** 07/03/2007
ACTION OFFICE: EDO

AUTHOR: REP Joe Barton
AFFILIATION: CONG
ADDRESSEE: Dale Klein
SUBJECT: Concerns briefings between NRC staff and Committee staff regarding a major nuclear safety incident that occurred last year at the NFS plant in Erwin, TN and the NRC policy to classify documents re this incident as OUO

ACTION: Signature of Chairman
DISTRIBUTION: RF, OCA to Ack

LETTER DATE: 07/03/2007
ACKNOWLEDGED: No
SPECIAL HANDLING: Comr. Correspondence

NOTES:
FILE LOCATION: ADAMS
DATE DUE: 07/18/2007 **DATE SIGNED:**

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The Honorable Dale Klein
 Chairman
 Nuclear Regulatory Commission
 One White Flint North
 11555 Rockville Pike
 Rockville, Maryland 20852-2738

Dear Chairman Klein:

This letter follows up on briefings between Nuclear Regulatory Commission (NRC) staff and Committee staff regarding a major nuclear safety incident that occurred last year at the Nuclear Fuel Services plant in Erwin, Tennessee, and the NRC policy to classify documents regarding this incident and the plant generally as Official Use Only.

In its "Report to Congress on Abnormal Occurrences: Fiscal Year 2006," (Report) issued in April 2007, NRC first notified Congress and the public regarding a March 6, 2006 spill of high-enriched uranium solution at the Nuclear Fuel Services plant. Approximately 35 liters of high-uranium solution leaked uncontrolled into a glove box and subsequently spilled on the floor. According to the Report, a criticality event was possible both in the glove box and at an uncontrolled accumulation point in a nearby elevator pit. The volume of high-uranium solution involved was "more than enough for criticality to be possible." If criticality had occurred, "it is likely that at least one worker would have received an exposure high enough to cause acute health effects or death." We understand NRC has since worked with the licensee to resolve these safety matters.

Committee staff requested a briefing by NRC staff to obtain details and an explanation about why NRC failed to notify the public or Congress in a timely manner regarding this serious incident. At that briefing, NRC described its NRC staff memorandum (SECY-04-0155) issued August 24, 2004, that established a new policy "directing staff to designate all future correspondence, to and from Nuclear Fuel Services and BWX Technologies, Inc, that is related to Naval Reactors programs, as Official Use Only." We understand that the August 2004 Official Use Only policy also required the removal of 1,740 archived documents from NRC's publicly available records system.

The Honorable Dale Klein

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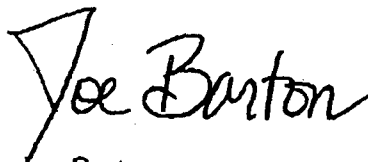
According to NRC staff, the August 2004 Official Use Only policy was implemented in response to a March 2004 request from the Department of Energy, Office of Naval Reactors, expressing concerns regarding some publicly-available documents found on NRC's website, because, when accumulated, such information could reduce the effectiveness of the security posture at the Nuclear Fuel Services plant. We agree that NRC should withhold from public view any sensitive security information of this nature. However, we are concerned that NRC's policy of withholding all documents associated with the Nuclear Fuel Services plant has resulted in withholding many documents of no security significance.

Additionally, because it was considered Official Use Only information subject to the August 2004 Official Use Only policy, NRC did not notify the public or provide the public access to NRC proceedings where the Commission approved the February 21, 2007, Consent Order amending the Nuclear Fuel Service plant operating license to implement safety enhancements. Section 189 of the Atomic Energy Act requires the NRC grant a hearing at the request of any person affected by an NRC proceeding where an amendment to an operating or construction license is approved. Thus, persons who may be affected by the license amendment and who may desire a hearing are unaware of this Confirmatory Order.

We ask the NRC to make every effort to withhold from public view only those documents that contain security sensitive information, and restore to the public view all other documents. Based on a follow-up discussion with Committee staff on June 20, 2007, NRC staff has drafted changes to the August 2004 Official Use Only policy to accommodate more openness. Furthermore, we understand that the NRC has decided to re-issue the February 21, 2007, Confirmatory Order and allow the public the opportunity to request a hearing. We urge you to follow through with this decision as soon as possible. Please provide Mr. Dwight Cates of the Minority Committee staff with a briefing on the status of both of these actions when they are completed.

Also, in the future if there are any significant safety or security incidents at the Nuclear Fuel Services plant that are designated Official Use Only matters, we ask that you notify Committee staff promptly when these occur.

Sincerely,



Joe Barton
Ranking Member
Subcommittee on Energy
and Commerce



Ed Whitfield
Ranking Member
Subcommittee on Oversight
and Investigations

cc: The Honorable John D. Dingell, Chairman
The Honorable Bart Stupak, Chairman, Subcommittee on Oversight and
Investigations