

April 15, 2010

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Subject: Allegation Claiming the Secretary of Energy Dr. Steven Chu Deliberately Submitted Information to the U.S. Department of Energy (DOE) and U.S. Nuclear Regulatory Commission (NRC) in Non-Compliance with the NRC Regulations at 10 CFR § 63.10, *Completeness and accuracy of information* and 10 CFR § 63.11, *Deliberate misconduct*. [**Nuclear Safety Concern**]

With anonymity I respectfully submit the subject allegation based upon the supporting information described within Attachment A.

Although my allegation submittal is anonymous, I respectfully request confidentiality and nondisclosure under 10 CFR § 2.390 of my identity in the event my identity can be determined and is determined. Attachment B provides the basis for my request for nondisclosure and relief from the affidavit requirements per 10 CFR § 2.390.

The Secretary of Energy Dr. Steven Chu deliberately seeks to expeditiously terminate the Yucca Mountain license application with prejudice based upon minimal or speculative technical and scientific rationale as well as a myopic and crabbed interpretation of the provisions within Section 113(c)(3) of the Nuclear Waste Policy Act (NWPA) of 1982, as amended. The discretionary and arbitrary action circumvents and abrogates the entire regulatory scheme for the licensing of the high-level waste (HLW) repository at Yucca Mountain, Nevada.

Unquestionably, the regulatory scheme requires the DOE and the NRC to promptly identify, evaluate and report any technical or scientific conclusions indicating the proposed HLW repository at Yucca Mountain is substantially defective and cannot be operated in a manner that protects the health and safety of the public. To date, the substantial technical and scientific records approved by the DOE and the NRC support the HLW repository at Yucca Mountain can be safely operated. As the licensing process continues, the technical and scientific record will continue to be developed and evaluated to reach conclusions regarding the safety of the HLW repository at Yucca Mountain. In the event the DOE and NRC identify and evaluate scientific and technical information and conclude the HLW repository cannot be operated in a manner that protects the health and safety of the public, the remedy provisions within Section 113(c)(3) of the NWPA provide the process to terminate the licensing of the HLW repository at Yucca Mountain. This interpretation is consistent with the overall context of the entire regulatory scheme for licensing the HLW repository at Yucca Mountain.

Hypothetically, if the reading of Section 113(c)(3) of the NWPA provides the Secretary of Energy Dr. Steven Chu the "wild card" royal authority to rapidly terminate the Yucca Mountain HLW repository license application at any convenient time during the HLW repository licensing process based upon minimal, speculative or discretionary rationale, the Nation and NRC cannot

have a reasonable expectation for waste confidence as described within SECY-09-0090, *Final Update of the Commission's Waste Confidence Decision*. This interpretation of Section 113(c)(3) of the NWPA is nonsense.

The subject allegation directly pertains to my position regarding the soundness of the March 3, 2010 *U.S. Department of Energy's Motion to Withdraw* submitted to the Atomic Safety and Licensing Board Panel No. 09-892-HLW-CAB-04, and subsequent deliberations by Administrative Judges Thomas S. Moore, Paul S. Ryerson and Richard E. Wardwell. Therefore, I respectfully request this letter and attachments be included on NRC Docket 63-001-HLW, ASLBP No. 09-892-HLW-CAB04 as a 10 CFR § 2.315 filing. 10 CFR § 2.315(a) states:

*A person who is not a party (including persons who are affiliated with or represented by a party) may, in the discretion of the presiding officer, be permitted to make a limited appearance by making an oral or written statement of his or her position on the issues at any session of the hearing or any prehearing conference within the limits and on the conditions fixed by the presiding officer. However, that person may not otherwise participate in the proceeding. Such statements of position shall not be considered evidence in the proceeding.*

As a final note, the NRC website describes enforcement actions against individuals where the NRC has prohibited individuals from NRC license related activities for not complying with the NRC Regulations at 10 CFR § 63.10, *Completeness and accuracy of information* and 10 CFR § 63.11, *Deliberate misconduct* that involve matters with notably less significance to the health and safety of the public than the subject allegation.

Respectively Submitted,

Anonymously

Attachments:

Attachment A: Allegation and Supporting Information (7 pages)

Attachment B: Request for Anonymity and Relief from Affidavit Requirements per 10 CFR § 2.390 (1 page)

cc (all with Attachments):

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## ATTACHMENT A: ALLEGATION AND SUPPORTING INFORMATION

### A.1.00 ALLEGATION

A.1.01 The Secretary of Energy Dr. Steven Chu deliberately submitted information to the applicant, the Department of Energy (DOE), that Dr. Steven Chu knows to be incomplete or inaccurate in some respect material to the Nuclear Regulatory Commission (NRC). Dr. Steven Chu's information submittal is described within the March 3, 2010 *U.S. Department of Energy's Motion to Withdraw* [the License Application].

A.1.02 Dr. Steven Chu's information submittal is not in compliance with the NRC regulations at 10 CFR § 63.10, *Completeness and accuracy of information*.

*10 CFR § 63.10(a) Information provided to the Commission by an applicant for a license or by a licensee, or information required by statute, or required by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee must be complete and accurate in all material respects.*

*(b) The applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having, for the regulated activity, a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification must be provided to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, within 2 working days of identifying the information. This requirement is not applicable to information that is already required to be provided to the Commission by other reporting or updating requirements.*

A.1.03 Dr. Steven Chu's information submittal is not in compliance with the NRC regulations at 10 CFR § 63.11, *Deliberate misconduct*.

*10 CFR § 63.11 (a) Any licensee, applicant for a license, employee of a licensee or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:*

*(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or*

*(2) Deliberately submit to NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to NRC.*

## ATTACHMENT A: ALLEGATION AND SUPPORTING INFORMATION

*(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.*

*(c) For purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:*

*(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or*

*(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.*

A.1.04 The mandate from Dr. Steven Chu directing the abrupt change in the DOE course of action to rapidly terminate the licensing effort for the Yucca Mountain high-level waste repository is questionable taking into consideration the following:

- Dr. Steven Chu did not direct the DOE to inform the public of any information within the docketed license application that does not protect the public health and safety, and in turn would prevent the NRC issuance of licenses.
- Dr. Steven Chu did not direct the DOE to solicit any public involvement or comments prior to directing the DOE to submit the March 3, 2010 *U.S. Department of Energy's Motion to Withdraw* [the License Application].
- Dr. Steven Chu did not direct the DOE to describe the extreme necessity to expeditiously withdraw the license application with prejudice.
- Dr. Steven Chu does not have substantive rationale or is unwilling to explain any substantive rationale for abruptly terminating the Yucca Mountain licensing effort, which conflicts with the DOE's substantial development efforts spanning more than 25 years in support of the Yucca Mountain licensing effort.

A.1.05 The mandate from Dr. Steven Chu directing the abrupt change in the DOE course of action to rapidly terminate the licensing effort for the Yucca Mountain high-level waste repository conflicts with the Special Deputy Attorneys General for the State of Nevada opposition to the November 13, 2009 Nuclear Energy Institute (NEI) request to suspend the adjudicatory proceeding required for DOE's license application. The Special Deputy Attorneys General for the State of Nevada recognize any motions that sought to suspend the adjudicatory proceeding (or withdraw the license application) abrogate the entire regulatory scheme for the licensing proceeding. In a November 16, 2009 letter from Martin G. Malsch, Special Deputy Attorneys General for the State of Nevada, to Gregory B. Jaczko, NRC Chairman, the Special Deputy Attorneys General for the State of Nevada stated:

- *NEI's request, which would deny other intervening parties to this first-of-a-kind proceeding their right under Section 114(d) of the Nuclear Waste Policy Act, Section*

## ATTACHMENT A: ALLEGATION AND SUPPORTING INFORMATION

*189 of the Atomic Energy Act, and 10 C.F.R. § 2.310(f) to a full, fair, and timely on-the-record hearing, is a thinly disguised motion since **it seeks to abrogate the entire regulatory scheme for the licensing proceeding.** [emphasis added]*

- [NEI's request] *ignores a prior DOE formal representation filed before the CAB, several public statements by DOE Secretary Chu, and recent Congressional funding appropriations language regarding the conduct of the Yucca Mountain licensing proceeding in FY 2010.*
- *Indeed, if acted upon, NEI's proposal would be an appalling denial of due process of law and would permit DOE and NRC Staff to proceed to resolve technical issues related to Yucca Mountain without any meaningful participation by any adverse party on any of their admitted safety and environmental contentions (which number in excess of 300).*
- *Due process and the Commission's rules require that the State of Nevada and the other parties to the Yucca Mountain proceeding be advised whenever a motion has been filed, so that they may prepare and file formal answers in accordance with 10 C.F.R. § 2.323(c).*

### A.2.00 INFORMATION SUPPORTING THE ALLEGATION THAT DR. STEVEN CHU DELIBERATELY SUBMITTED INFORMATION TO THE DOE/NRC THAT DR. STEVEN CHU KNOWS TO BE INCOMPLETE OR INACCURATE

A.2.01 On March 3, 2010 the Department of Energy (DOE) filed a legal motion with the NRC Atomic Safety and Licensing Board (ASLB) construction authorization board 04 (CAB-04) requesting the ASLB approve the DOE motion to withdraw the License Application (LA) with prejudice. The DOE motion/request is based in part on information deliberately submitted by Dr. Steven Chu to the DOE that Dr. Steven Chu knows to be incomplete or inaccurate. Dr. Steven Chu's statements are material to the NRC review of the DOE LA for a proposed HLW geologic repository at Yucca Mountain, as well as the DOE and NRC compliance with the Nuclear Waste Policy Act.

A.2.02 The March 3, 2010 DOE motion states the

*Secretary of Energy [Dr. Steven Chu] has decided that a geologic repository at Yucca Mountain is not a workable option for long-term disposition of these materials.*

In his capacity as the Secretary of Energy, Dr. Steven Chu is aware of the DOE LA and supporting references, and Dr. Steven Chu is aware the NRC docketed the DOE LA under NRC Docket Number 63-001. The DOE LA and supporting references, docketed by the NRC, provide substantial information indicating a geologic repository at Yucca Mountain is a potential option (i.e., 'workable option') for the long-term disposition of high-level radioactive waste materials. Therefore, Dr. Steven Chu's deliberate decision "that a geologic repository at Yucca Mountain is not a workable option for long-term disposition of these [high-level radioactive

## **ATTACHMENT A: ALLEGATION AND SUPPORTING INFORMATION**

waste] materials" without substantive scientific or technical rationale is incomplete or inaccurate because the DOE LA and supporting references, docketed by the NRC, provide substantial information indicating a geologic repository at Yucca Mountain is a 'workable option' for long-term disposition of high-level radioactive waste materials.

### **A.3.00 RISK SIGNIFICANCE TO THE HEALTH AND SAFETY OF THE PUBLIC**

A.3.01 The NRC Waste Confidence decision relies upon the certainty provided by the course of action commanded by Congress and described within the longstanding Nuclear Waste Policy Act (NWPA). The proposed withdrawal of the DOE LA for a geologic repository at Yucca Mountain, based in large part on the incomplete and inaccurate information deliberately submitted by Dr. Steven Chu to the DOE, will result in uncertainty in the NRC's Waste Confidence decision because the United States will not actively be engaged in licensing an alternative location and design for the long-term disposition of high-level radioactive waste materials. This uncertainty has a reasonable expectation for increasing the duration and volume of high-level radioactive waste that is required to be stored in interim storage installations. Because some interim storage installations are known to possess deteriorated/failed barriers (e.g., Hanford tank failures and resulting high-level radioactive releases into the environment), and other interim storage installations have the potential to deteriorate and fail as they age, increasing the duration and volume of stored high-level radioactive waste in interim storage installations has a reasonable expectation to adversely increase the risk to the health and safety of the public due to exposures from high-level radioactive wastes interim storage.

### **A.4.00 ADDITIONAL INFORMATION SUPPORTING THE ALLEGATION THAT DR. STEVEN CHU DELIBERATELY SUBMITTED INFORMATION TO THE DOE/NRC THAT DR. STEVEN CHU KNOWS TO BE INCOMPLETE OR INACCURATE**

A.4.01 In late 2009, Dr. Steven Chu was advised by legal counsel the proposed DOE action to withdraw the DOE license application did not comply with the NWPA and was unlawful.

A.4.02 The Secretary of Energy Dr Steven Chu's course of action during 2009 to the present have been evasive and secretive in nature, and not reasonable nor consistent with actions that are expected from a government official making a monumental decision to abort the DOE license application for a HLW repository at Yucca Mountain, Nevada, with unquestionably profound implications to the public.

A.4.03 Throughout 2009, Members of Congress and stakeholders submitted numerous written requests with specific questions to the Secretary of Energy Dr. Steven Chu relating to the DOE plans regarding the DOE license application. In response to each information request, Dr. Steven Chu repeatedly and deliberately provided only general and evasive response letters that did not contain specific answers to the specific questions. At no time prior to the February 1 DOE *Motion to Stay the Proceeding* did the Secretary of Energy Dr. Steven Chu publically

## ATTACHMENT A: ALLEGATION AND SUPPORTING INFORMATION

disclose any substantive plans to withdraw the DOE license application, even though the Secretary of Energy Dr. Steven Chu directed DOE legal counsel to pursue a method to withdraw the DOE license application in 2009.

- Letter from seventeen (17) United States Senators to Dr. Steven Chu, dated April 29, 2009. The letter contained seven (7) specific questions and requested detailed information outlined in four (4) bulleted items. Dr. Steven Chu response was provided in a letter to Senator James Inhofe, dated June 1, 2009. The response letter was evasive and misleading, and failed to provide specific information to the Senators' information request. However, Dr. Steven Chu stated the "blue-ribbon" panel of experts "will provide the opportunity for a full public dialogue on how best to address this challenging issue and will provide recommendations that may form the basis for working with Congress to revise the statutory framework for managing and disposing of spent nuclear fuel and high-level radioactive waste. . . The Administration looks forward to ongoing dialogue with members of Congress, interested stakeholders, and others as we review options for alternatives to Yucca Mountain in the months ahead."
- The June 3, 2009 statement of Dr. Steven Chu before the House Committee on Appropriations regarding the DOE FY2010 budget for Yucca Mountain would continue the NRC license application process. "The budget request includes the minimal funding needed to explore alternatives for nuclear waste disposal through OCRWM and to continue participation in the Nuclear Regulatory Commission (NRC) license application process, consistent with the provisions of the Nuclear Waste Policy Act."
- Letter from twenty-five (25) Members of Congress to Dr. Steven Chu, dated June 17, 2009. The letter stated the "proposed Blue Ribbon Commission to study options to Yucca Mountain is unlikely to find a 'silver bullet solution,' since we already have over 50 studies by prestigious institutions, like the National Academy of Sciences, and Yucca still remains a suitable repository site. Any attempt to find a new repository site would likely take an additional 20 years and upwards of \$15 billion to develop."
- On July 16, 2009 Chris Kouts, Acting Director of the Office of Civilian Radioactive Waste Management (OCRWM), testified before the Committee on the Budget U.S. House of Representatives that "as of May 2009, 71 lawsuits have been filed by utilities to recover damages resulting from the delay" in beginning the acceptance of spent nuclear fuel as required by the contracts with commercial nuclear utilities and commercial research reactor operators that own and generate spent nuclear fuel. In 1998, "the Department estimated the liabilities under current law resulting from delaying the beginning of waste acceptance from 1998 to 2020 at \$12.3 billion."
- The aforementioned \$12.3 billion estimate does not consider the increase in lawsuit damage payments of an additional \$40 billion that will result from terminating the Yucca Mountain licensing effort. The \$12.3 billion does not include the repayment of an additional \$31 billion in nuclear waste fund fees and interest collected from nuclear



## ATTACHMENT A: ALLEGATION AND SUPPORTING INFORMATION

utilities as of April 2010. The \$12.3 billion does not include the additional \$100 billion to select, research, license, operate and close an alternative repository.

- In September 2009, the NRC Commissioners voted 2-1 and disapproved SECY-09-0090, *Final Update of the Commission's Waste Confidence Decision*. Commissioner Klein noted Section 113(c)(3) of the Nuclear Waste Policy Act of 1982, as amended, "provides that, if at any time the Secretary [of Energy] determines the Yucca Mountain site to be unsuitable for development as a repository [ 'not a workable option for the long-term disposition of these materials']," the Secretary shall, among other things, "report to Congress not later than 6 months after such determination the Secretary's recommendations for further action to assure the safe, permanent disposal of spent nuclear fuel and high-level radioactive waste, including the need for new legislative authority."
- On October 7, 2009 the Sustainable Fuel Cycle Task Force and eighteen additional stakeholder organizations sent a letter to Dr. Steven Chu. The letter stated defunding the Yucca Mountain licensing effort would "leave the Nation with no path forward or 'Plan B' for the Nation's nuclear waste management while conflicting with the Nuclear Waste Policy Act, as amended, as well as Public Law 107-200, which approved Yucca Mountain as the site for the national repository -- a measure that was adopted in 2002 by decisive, bipartisan majorities of the U.S. House and Senate. The recent deferral by the NRC with respect to the pending Waste Confidence Rule is but one manifestation of the serious repercussions inherent in this policy vacuum and a harbinger of things to come." The letter also stated the defunding would "exacerbate the current breach-of-contract with respect to the Government's longstanding failure to meet its legal obligation to begin collecting spent nuclear fuel -- resulting in damages estimated by some at in excess of \$50 billion. Disproportionately impact defense waste states and erode public confidence in the Department by undermining the DOE's own agreements with states and local governments to remove defense-related high-level waste, as well as the U.S. Navy's nuclear fuel management operations. The U.S. Navy has purportedly designed its entire fuel disposal system entirely for Yucca Mountain and any violation of the 'Batt Agreement' will create yet another complexity with respect to the Navy's program for de-fueling and refueling of the nuclear fleet. Contradict the President's Memorandum on Scientific Integrity as issued on March 9, 2009, stating that 'political officials should not suppress or alter scientific or technological findings and conclusions.'"

A.4.04 As of April 2010, the February 1 DOE *Motion to Stay the Proceeding* and the March 3, 2010 DOE *Motion to Withdraw the License Application with Prejudice* have resulted in at least five Petitions to Intervene into the Yucca Mountain high-level waste repository hearings, and the filing of lawsuits in the United States Court of Appeals in the District of Columbia Circuit. The common themes in these filings are the deliberate actions taken by the Secretary of Energy Dr Steven Chu and the Department of Energy to withdraw the license application are unlawful (NWPA, NEPA, APA) and unconstitutional.

## ATTACHMENT A: ALLEGATION AND SUPPORTING INFORMATION

A.4.05 At a conference in Bethesda, Maryland on March 9, 2010 Dale Klein, at the time NRC Commissioner and former NRC Chairman seriously questioned the Secretary of Energy Dr Steven Chu's competence and course of action. Dale Klein said:

*Frankly, I would have preferred the White House to plainly say that it was implementing a policy change. The President has the right and responsibility to set policy, and clearly, an issue of national importance and complexity such as this needs to be periodically revisited. However, in my opinion, the administration's stated rationale for changing course does not seem to rest on factual findings and thus does not bolster the credibility of our government to handle this matter competently.*

*Those who would distort the science of Yucca Mountain for political purposes should be reminded that it was a year ago today that the president issued his memorandum on scientific integrity, in which he stated that "The public must be able to trust the science and scientific process informing public policy decisions."*

*I honestly cannot say if Yucca Mountain could ever meet the stringent tests that would allow it to be licensed. But I do know that, under the law, that licensing determination — and the technical evaluation of the science — is the NRC's responsibility.*

A.4.06 The Sustainable Fuel Cycle Task Force (SFCTF) published the white paper *Yucca Mountain Water Infiltration, Fractures, and the Role of Drip Shields*, dated March 24, 2010 (see [www.sustainablefuelcycle.com](http://www.sustainablefuelcycle.com)). The White Paper describes the lack of substantive scientific and technical bases within the Secretary of Energy Dr Steven Chu public statements to Congress describing why the Yucca Mountain, Nevada site is not a "workable option" for a HLW geologic repository.

### **A.5.00 REQUEST FOR PROMPT NRC INVESTIGATIONS OF THE ALLEGATIONS DESCRIBED HEREIN, AND ASSUMING THE ALLEGATION(S) ARE SUBSTANTIATED THE NRC AND DEPARTMENT OF JUSTICE (DOJ) SHOULD TAKE PROMPT ACTIONS PROHIBITING DR. STEVEN CHU FROM INVOLVEMENT IN NRC LICENSE AND LICENSE APPLICATION RELATED ACTIVITIES**

A.5.01 I respectfully request the NRC conduct a prompt investigation to substantiate the allegations described herein.

A.5.02 Time is of the essence because the Secretary of Energy Dr. Steven Chu is actively involved in the NRC Yucca Mountain HLW license application process in a role with substantial adverse impact to the health and safety of the public (see A.3.00).

A.5.03 Dr. Steven Chu should be prohibited from involvement in all NRC license and NRC license application related activities if the NRC investigations substantiate the allegations described herein.

**ATTACHMENT B: REQUEST FOR ANONYMITY AND RELIEF FROM AFFIDAVIT  
REQUIREMENTS PER 10 CFR § 2.390**

**B.1.00 REQUEST FOR ANONYMITY AND REQUEST FOR RELIEF FROM THE AFFIDAVIT  
REQUIREMENTS UNDER 10 CFR § 2.390**

B.1.01 I am submitting these allegations anonymously. Therefore, I respectfully request relief from the 10 CFR § 2.390 requirements that require an affidavit.

**B.2.00 REQUEST FOR CONFIDENTIALITY AND NONDISCLOSURE UNDER 10 CFR §  
2.390**

B.2.01 The information contained within this Anonymous Allegation may be made available to the public, except for any personally identifiable information that may be determined as described in paragraph B.2.02.

B.2.02 Although my submittal of allegations is anonymous, I respectfully request confidentiality and nondisclosure under 10 CFR § 2.390 of my identity in the event my identity can be determined and is determined. Assuming that my identity can be determined and is determined, I request that my name and other personally identifiable information be withheld from public disclosure and treated as confidential in accordance with 10 CFR § 2.390.

B.2.03 The bases for the confidentiality and nondisclosure request are: (a) to prevent harm to my current and future employment at NRC-licensed facilities; and (b) for personal privacy. Specifically, I request that my name and other personally identifiable information not appear in any record published, released or made available to the public by the NRC in the event my identity is determined.