

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

*Date Printed: Feb 11, 2011 11:58*

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**PAPER NUMBER:** LTR-11-0065 **LOGGING DATE:** 02/11/2011  
**ACTION OFFICE:** OGC

**AUTHOR:** REP Ralph Hall  
**AFFILIATION:** CONG  
**ADDRESSEE:** Gregory Jaczko  
**SUBJECT:** Concerns the release of Vol III of the SER related to the disposal of high-level radioactive wastes...

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

**LETTER DATE:** 02/10/2011  
**ACKNOWLEDGED:** No  
**SPECIAL HANDLING:** Commission Correspondence

**NOTES:**  
**FILE LOCATION:** ADAMS

**DATE DUE:** 02/24/2011 **DATE SIGNED:**

U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-8301  
(202) 225-6371  
[www.science.house.gov](http://www.science.house.gov)

February 10, 2011

The Honorable Gregory B. Jaczko  
Chairman  
Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20852

Dear Chairman Jaczko:

President Obama entered office with a commitment to make his administration “the most open and transparent in history.”<sup>1</sup> In a Presidential Memorandum issued to Executive Branch agencies on his first day in office, the President said:

In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve.<sup>2</sup>

It is in the spirit of these commendable principles that we request the immediate release of Volume III of the “Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada” (SER).

As you know, Volume III of the SER addresses post-closure scientific and technical issues associated with the storage of high-level waste, which provide the necessary underlying scientific evaluation for a national repository located at Yucca Mountain. Public disclosure of the report and the NRC staff’s key findings is necessary to ensure fully informed consideration of science and technology policy issues surrounding this matter. As Members of the Committee on Science, Space, and Technology, we are responsible for the examination and oversight of these topics.<sup>3</sup>

In a June 3, 2010 hearing before the Atomic Safety and Licensing Board, NRC staff testified that Volume III would be “completely drafted” no later than August 2010, and would be published shortly thereafter.<sup>4</sup> Commissioner Ostendorff affirmed this timeline in later correspondence with

<sup>1</sup> Statement from the President on the First Time Disclosure Policy for White House Visitor Logs, September 4, 2009.

<sup>2</sup> “Memorandum for the Heads of Executive Departments and Agencies,”  
<http://www.whitehouse.gov/the-press-office/freedom-information-act>

<sup>3</sup> “Rule X 3(k): Organization of Committees” included in the *Rules of the House of Representatives* (112<sup>th</sup> Congress).

<sup>4</sup> NRC ASLB, Transcript of Administrative Proceedings at p. 328-329, Docket No. 63-001 ASLBP 09-892-HLW-CAB04 (June 3, 2010).

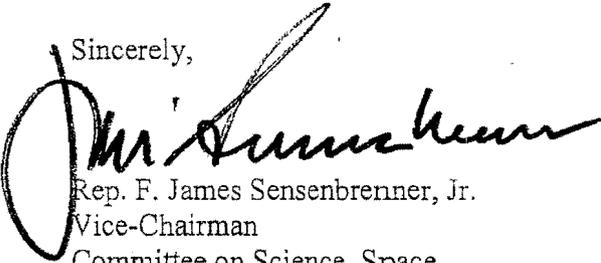
Congress, noting that SER Volume III was transmitted to the Director of the NRC Office of Nuclear Material Safety and Safeguards for concurrence and authorization to publish on July 15, 2010.<sup>5</sup>

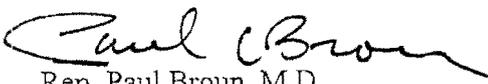
Disturbingly, however, in October 2010, you directed commission staff to halt all activities on the High Level Waste Program. This unilateral political decision appears to form the basis for the NRC's refusal to release SER Volume III. It shouldn't. Such actions are wholly inconsistent with the President's principles on openness and scientific integrity, and unnecessarily serve to obstruct and delay informed policy decisions regarding the future of the Yucca Mountain license application.

We recognize that Congress<sup>6</sup> and other NRC commissioners<sup>7</sup> have expressed serious concerns regarding the legality of and justifications for your order. These concerns are important and must be resolved, but their resolution should have no bearing on the Commission's ability to release SER Volume III in a timely manner.

Accordingly, we request the Commission immediately publicly release Volume III of the SER. Further, provide to the Committee all documents (as defined by the attachment) related to the SER release, as well as an update on the current status of the remaining volumes by February 24, 2011. Should you have any questions, please contact Mr. Andy Zach, with the Energy and Environment Subcommittee, or Mr. Tom Hammond, with the Investigations and Oversight Subcommittee, at (202) 225-6371.

  
Rep. Ralph M. Hall  
Chairman  
Committee on Science, Space,  
and Technology

Sincerely,  
  
Rep. F. James Sensenbrenner, Jr.  
Vice-Chairman  
Committee on Science, Space,  
and Technology

  
Rep. Paul Broun, M.D.  
Chairman  
Subcommittee on Investigations  
and Oversight  
Committee on Science, Space,  
and Technology

  
Rep. Andy Harris  
Chairman  
Subcommittee on Energy and Environment  
Committee on Science, Space,  
and Technology

<sup>5</sup> Letter from Commissioner Ostendorff to Representative Hastings, October 27, 2010.

<sup>6</sup> Letter from Reps. Ralph Hall, Jim Sensenbrenner, Joe Barton, and Doc Hastings to NRC Chairman Jaczko, October 13, 2010 (copy attached).

<sup>7</sup> Memorandum from Commissioner Ostendorff to Chairman Jaczko, Commissioners Svinicki, Apostolakis, and Magwood, "Disagreement With Staff Budget Guidance Under Fiscal Year 2011 Continuing Resolution." October 8, 2010.

Attachments

cc: The Honorable Steven Chu  
Secretary of Energy

Congress of the United States  
Washington, DC 20515

October 13, 2010

Chairman Gregory Jaczko  
Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20852

Dear Chairman Jaczko:

We are writing to express our concern regarding reports that you are unilaterally halting the Nuclear Regulatory Commission's (NRC) review of the Department of Energy's (DOE) license application for the nuclear waste repository at Yucca Mountain.

Recent media reports assert that you directed NRC staff to begin terminating review of DOE's license application, consistent with the language of the Fiscal Year 2011 (FY11) budget request, despite the fact that Congress has yet to approve the FY11 budget.<sup>1</sup> This action has been justified in a guidance memo which argues, "the [continuing resolution] legislation does not include specific restrictions on spending funds. Therefore, the staff should continue its activities on the Yucca Mountain license application in accordance with the Commission's decisions on the FY 2011 budget..."<sup>2</sup> However, basing funding and operational decisions on submitted budget requests, not appropriations bills signed into law, is suspect. Even the NRC spokesman, David McIntyre, noted that he was "not sure whether there was a precedent for [your] decision."<sup>3</sup>

Your directive is even more alarming given the current status of the license application. As you know, the Atomic Safety and Licensing Board (ASLB) rejected DOE's motion to withdraw the license application on June 29, 2010. According to the ASLB, DOE lacks the authority to overrule clear Congressional intent for NRC to review the license application of Yucca Mountain as a nuclear waste repository. As you know, Congress passed the Nuclear Waste Policy Act of 1982 (NWPAct) to centralize the long-term management of nuclear waste, including construction of a safe and permanent nuclear waste repository. In 1987, Congress amended the NWPAct by designating Yucca Mountain as the only option for a longer-term storage site by a vote of 237-181 in the House of Representatives and 61-28 in the Senate. Congress reaffirmed Yucca Mountain's designation as the only option for a long-term storage site in 2002 by a vote of 306-117 in the House of Representatives and 60-39 in the Senate. Again in 2007, the House of Representatives overwhelmingly rejected, by a vote of 80-351, an attempt to eliminate funding for the Yucca Mountain nuclear waste disposal program. Additionally, on July 6, 2010, 91 Members of Congress sent DOE a letter expressing concern with their decision to immediately close Yucca Mountain.

The commissioners have not yet issued a ruling on appeal; therefore, unless the commission overturns the ASLB decision, the NRC must consider the license application. Your unilateral

<sup>1</sup> <http://www.fwi.com/news/nrc-chairman-directs-stoppage-of-yucca-review-104458578.htm>

<sup>2</sup> U.S. Nuclear Regulatory Commission, "Guidance Under a Fiscal Year 2011 Continuing Resolution." October 4, 2010.

<sup>3</sup> <http://www.enr.com/news/2010/10/07/4/>

Chairman Jaczko  
October 13, 2010  
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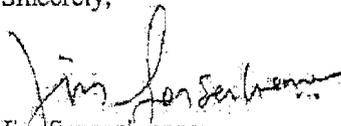
decision silences the opinions of the other commissioners on the pending appeal. Further, legal challenges in federal court are imminent, pending final action from the NRC. Your directive gives the appearance of coordinated action between you and DOE, which suggests an additional level of impropriety.

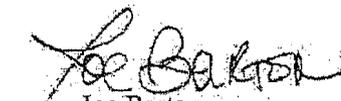
In light of the reports, we request answers to the following questions:

1. On what legal authority are you grounding your decision to terminate review of the license application based on a budget request, rather than existing law?
2. What specific actions have been taken or will be taken to terminate review of the license application, including all actions related to NRC staff review of the application?
3. How does halting NRC review of the license application influence the pending appeal of ASLB's ruling?
4. How will your decision impact future legal challenges to DOE's motion to withdraw?
5. How are you ensuring that NRC is prepared to resume consideration of the license application if the commission and courts uphold ASLB's decision?
6. What communication specifically relating to this decision have you had with the offices of Secretary of Energy Chu, Senate Majority Leader Reid, or the White House?

Please respond by October 27, 2010. We appreciate your cooperation.

Sincerely,

  
Jim Sensenbrenner  
Ranking Member  
Select Committee on Energy Independence and  
Global Warming

  
Joe Barton  
Ranking Member  
Energy and Commerce Committee

  
Ralph Hall  
Ranking Member  
Science and Technology Committee

  
Doc Hastings  
Ranking Member  
Natural Resources Committee

## ATTACHMENT

1. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
2. The terms "relating," "relate," or "regarding" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.