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ONE HUNDRED NINTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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August 16, 2006

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The Honorable Samuel W. Bodman
Secretary
Department of Energy
Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585

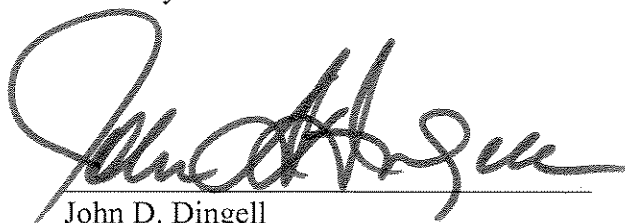
Dear Secretary Bodman:

As you know, on July 19, 2006, Mr. Ward Sproat, Director of the Office of Civilian Waste Management, testified before the Subcommittee on Energy and Air Quality with respect to the Yucca Mountain repository program.

Director Sproat's testimony was enlightening, providing a status report on the results of the Department of Energy's (DOE) internal review of the current repository program. His testimony also shed light on the potential impact of the interim storage proposal in section 313 of the FY2007 Senate Energy and Water Development Appropriations bill.

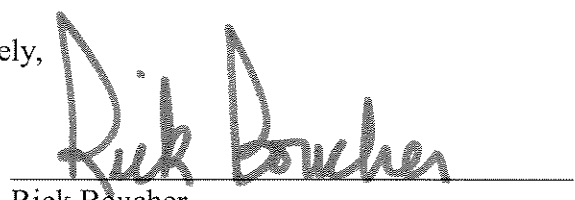
Over the years, Congress has considered various approaches to establishing "interim storage" waste facilities, and we remain open to exploring this idea. At this point, however, we are concerned that this approach might fragment the resources DOE needs to meet its target for opening the permanent repository in 2017. We are also concerned that such a proposal could spawn additional litigation with respect to the Department's existing contractual obligations.

In order to help members of the Committee understand the context in which Congress must consider these issues, please respond to the following questions by Wednesday, August 30, 2006. If further information is needed, please have your staff contact Sue Sheridan, Senior Minority Counsel with the Committee on Energy and Commerce, at (202) 226-3400.



John D. Dingell
Ranking Member

Sincerely,



Rick Boucher
Ranking Member
Subcommittee on Energy and Air Quality

The Honorable Samuel W. Bodman
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Attachment

cc: The Honorable Joe Barton, Chairman
Committee on Energy and Commerce

The Honorable Ralph M. Hall, Chairman
Subcommittee on Energy and Air Quality

ATTACHMENT

Letter to Secretary Samuel W. Bodman
Questions from Reps. John D. Dingell and Rick Boucher
August 16, 2006

1. In keeping with Director Sproat's commitment at the July 19, 2006 hearing, please provide an updated version of the Department of Energy's (DOE) "Summary of Funding Profile" (see attached answer to Question 4 in DOE's April 26, 2004, letter to Rep. Dingell). Please specify (a) whether or not funds from the corpus of the Nuclear Waste Fund would be needed to provide adequate funding to meet the Department's 2017 target for opening a permanent repository at Yucca Mountain, and (b) in which years such funding would be needed.
2. At the July 19 hearing, in addressing the interim storage proposal in section 313 of the FY2007 Senate Energy and Water Development appropriations bill, Director Sproat commented that he did not think "...centralized interim storage is going to buy very much..." if the Administration's Yucca Mountain bill were enacted. Do you agree with this statement?
3. In an August 2, 2006, letter to Chairman Pete Domenici, the Coalition of Northeastern Governors (CONEG) expressed concern about section 313 of the FY2007 Senate Energy and Water Development appropriations bill, suggesting that it "undermines the federal commitment by diverting these much needed funds away from the intended purpose of creating a safe and adequately designed permanent nuclear waste repository...".

If section 313 were enacted, would DOE have the resources – both human and financial – to simultaneously develop interim storage facilities and still meet its 2017 target for beginning to accept waste for disposal at the Yucca Mountain repository?

4. Over the years, questions have been raised about the extent of DOE's ongoing breach of its Standard Contract with various nuclear utilities, and the possibility of further exacerbation of these claims by subsequent Congressional action.

In a 2006 order, a U.S. Court of Federal Claims judge ordered the Government to show cause why DOE's breach of contract should not result in the Standard Contract between the utilities and DOE being declared void and whether restitution of monies previously paid into the Nuclear Waste Fund was an appropriate remedy. (*Sacramento Municipal Utility District v. U.S.*, U.S. Court of Federal Claims, April 21, 2005.)

In an August 10, 2005, letter to Rep. Dingell, DOE indicated that if Congress were to enact Committee report language (relating to H.R. 2419) directing DOE to develop centralized interim storage, this "could result in Winstar-type breach of contract claims" (reference to *U.S. v. Winstar* (518 U.S. 839, 1996)). The letter also indicated that if such legislation resulted in "further delay of acceptance by DOE of some amount of utility fuel, additional delay damages could accrue against the Government."

Similarly, in its August 2, 2006, letter, CONEG also commented that section 313 could undermine the Federal Government's "long standing policy and contractual commitment with the nation's utilities and with their ratepayers to assume responsibility for high level nuclear waste and to develop a nuclear waste repository."

Could enactment of section 313 give rise to:

- a. Higher damage claims in ongoing breach of contract lawsuits by utilities who might allege that Congress's new directive that DOE establish interim storage facilities resulted in additional delays in DOE's acceptance of spent fuel?
- b. *Winstar*-type lawsuits alleging a new and separate breach of contract as a result of Congress's requirement that DOE establish interim storage facilities (e.g. additional delay in the DOE's ability to accept spent fuel by some or all utilities, or the de facto subsidization by certain utilities of the construction of additional on-site storage capacity)?
- c. Claims along the lines of the 2005 U.S. Federal Court of Claims judge's show cause order that the Congress's action voided DOE's Standard Contract with the utilities and that the appropriate remedy is restitution of monies previously paid into the Nuclear Waste Fund?