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ONE HUNDRED TENTH CONGRESS

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

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November 2, 2007

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The Honorable Paul A. Schneider
Under Secretary for Management
U.S. Department of Homeland Security
245 Murray Lane, SW
Washington, D.C. 20528-0300

The Honorable W. Ralph Basham
Commissioner
U.S. Customs and Border Protection
Department of Homeland Security
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

The Honorable Vayl Oxford
Director
Domestic Nuclear Detection Office
U.S. Department of Homeland Security
245 Murray Lane, S.W.
Washington, D.C. 20528-0300

Dear Deputy Secretary Schneider, Commissioner Basham, and Director Oxford:

The Committee on Energy and Commerce was recently advised by the Domestic Nuclear Detection Office (DNDO) that the Department of Homeland Security (DHS) is planning to postpone certification, production, and deployment of the Advanced Spectroscopic Portals (ASPs) due to "functionality" problems involving software that were encountered by U.S. Customs and Border Protection (CBP) during operational testing. ASPs are the next generation technology to detect the smuggling of radioactive materials through ports and borders.

We were advised that Secretary Chertoff held a meeting on October 19, 2007, and decided to postpone certification and production decisions until all issues are resolved. We were also advised that a meeting was convened with the Department of Energy and the national laboratories to discuss future testing.

We have been told that software and hardware changes will not be completed by the vendors until the spring of 2008, according to DNDO, and new performance tests will have to be conducted at the New York Container Terminal and the Nevada Test Site, and new operational

The Honorable Paul A. Schneider
The Honorable W. Ralph Basham
The Honorable Vayl Oxford
Page 2

tests will be needed at border crossings and ports.

The Committee on Energy and Commerce and its Oversight and Investigations Subcommittee have been overseeing the development and deployment of radiation portal monitors for the past five years, and on September 18, 2007, held a hearing on the findings of the Government Accountability Office (GAO) regarding weaknesses in DNDO's testing of ASPs. At that hearing, we urged DHS not to certify ASPs for deployment, nor purchase these new machines, due to our concerns that the testing that DNDO had performed was inadequate and flawed, and CBP is successfully screening inbound cargo with existing technology. Given that it will take an additional year to modify the ASPs and conduct added testing, DNDO will have the opportunity to rectify GAO-identified weaknesses. Conducting genuinely blind tests—rather than the biased tests methods used earlier this year—will also disclose whether a production decision is prudent, and will protect taxpayers from the purchase of questionable technology, which is crucial to our Nation's security.

In light of these developments, we request that your respective offices arrange to provide a briefing for the Committee on Energy and Commerce regarding:

1. The specific performance weaknesses found in the ASP software and hardware that were identified by Customs and Border Protection or DNDO that are driving the changes to software and hardware.
2. DNDO's plans for testing over the next year, including a discussion on whether DNDO will take the opportunity to conduct genuinely blind tests on ASP performance and whether DNDO will test ASPs' limits of detection in the presence of "hot" masking materials—two issues that were raised by GAO in its September 18, 2007, testimony.
3. Whether vendors failed to meet all of their contractual requirements, and if so, what specific contractual requirements were not met?
4. When evaluating secondary deployment, does DNDO or CBP plan to compare the performance of hand-held Radioactive Identification Devices against ASPs with various dwell times?
5. Whether the so-called "independent review team" chartered by the DHS Office of the Under Secretary for Management in August 2007 will continue to review the adequacy of ASP testing and whether the Homeland Security Institute will be required to produce a report by mid-November 2007.


The Honorable Paul A. Schneider
The Honorable W. Ralph Basham
The Honorable Vayl Oxford
Page 3

In addition, the Committee renews its request for a briefing on the Phase 3 and Blind Test Results. We wish to thank DNDO Deputy Director Chuck Galloway for apprising the Committee on the changes in the program, and we urge that each of your agencies arrange for a full and complete briefing in the near future. If you have any further questions on this request, please feel free to contact us, or have your staff contact Chris Knauer or Richard Miller with Committee staff, at (202) 226-2424 for further information and to arrange the briefing.

Sincerely,



John D. Dingell
Chairman



Bart Stupak
Chairman
Subcommittee on Oversight and Investigations

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

The Honorable Ed Whitfield, Ranking Member
Subcommittee on Oversight and Investigations