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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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CHAIRMAN

October 19, 2007

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

Dear Mr. Oxford:

Thank you for appearing before the Subcommittee on Oversight and Investigations on Tuesday, September 18, 2007, at the hearing entitled "Nuclear Terrorism Prevention: Status Report on the Federal Government's Assessment of New Radiation Detection Monitors." We appreciate the time and effort you gave as a witness before the Subcommittee.

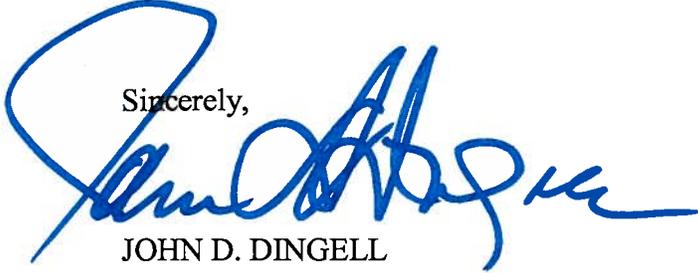
Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from Subcommittee Chairman Stupak. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

In order to facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business **Wednesday, October 31, 2007**. Your written responses should be delivered to **316 Ford House Office Building** and faxed to **202-225-5288** to the attention of Kyle Chapman, Legislative Clerk. An electronic version of your response should also be sent by e-mail to Mr. Kyle Chapman at kyle.chapman@mail.house.gov in a single Word formatted document.

Mr. Vayl Oxford
Page 2

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Kyle Chapman at (202) 226-2424.

Sincerely,



JOHN D. DINGELL
CHAIRMAN

Attachment

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

The Honorable Bart Stupak, Chairman
Subcommittee on Oversight and Investigations

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

The Honorable Bart Stupak

1. Were the Phase 1 tests developmental or blind performance tests or were they hybrids?
2. At the September 18, 2007, hearing, you testified that you disagreed with the Government Accountability Office (GAO) position that the Domestic Nuclear Detection Office (DNDO) “used biased test methods and were not an objective assessment of the ASP’s performance capabilities.” Please explain why you believe the Phase 1 tests were not biased given that vendors, during pre-testing activities, were allowed to adjust their algorithms and software to detect the materials for which they would be tested.
3. Your prepared testimony states on page 3 that “the DNDO conducted a full range of test phases designed to evaluate all aspects of ASP performance and operations.” When you say “all” aspects, does this mean DNDO has a full understanding of the detection limits of Advanced Spectroscopic Portal (ASP) monitors?
4. In November 2006, the Department of Energy (DOE) recommended that DNDO modify its test plan to use masking materials which DOE regularly observed passing through a European port. DOE was concerned that the masking materials used by DNDO in its Phase 1 test plan did not emit enough radiation to test the detection limits of the ASP machine.
 - a. Did DNDO incorporate this specific DOE request in its test plan after DOE raised this concern in November 2006?
 - b. If not, please explain why DNDO did not modify the test plan.
5. Could failing to ascertain the masking limits of the ASP lead to inadequate operational procedures? Could it create a risk of a false negative reading, if the ASP was deployed as a primary screening instrument at this time?
6. Please provide an expected completion date for the injection studies being conducted regarding the ASP’s masking limits.
 - a. What organization will be performing the injection studies?
 - b. Does DNDO plan to validate the results of the injection studies with actual field tests using threat materials?
 - c. What is the estimated cost of the injection studies? How does this compare with field testing to ascertain the ASP’s masking limits?

The Honorable Bart Stupak (continued)

- d. Does DNDO plan to have an external review of the injection studies? Who will conduct this review?
 - e. Will DNDO share the results of the injection studies with GAO?
7. You testified, “we actually have proposals for two test series during the course of FY [fiscal year] 2008.”
- a. Please describe these two test proposals and what DNDO intends to accomplish with these additional tests.
 - b. Where will these tests be conducted?
 - c. What is the schedule for these two additional tests?
 - d. Will DNDO provide copies of these additional test plans to GAO before the tests are initiated?
8. In order to release funding to purchase ASPs, Secretary Chertoff must certify that the ASPs represent a “significant increase in operational effectiveness.” In layman’s terms, what is “operational effectiveness,” and how will you know when the increase in operational effectiveness is “significant”?
9. Please explain how DNDO justifies recommending a certification that ASPs represent a “significant increase in operational effectiveness” without having injection studies—and any necessary follow up studies—completed first.
- a. Is it misleading to certify that ASPs provide a “significant increase in operational effectiveness” when DNDO does not know the detection limits? If not, why not?
 - b. When does DNDO expect to recommend certification to the Secretary?
10. What was the estimated cost of the tests conducted at the Nevada Test Site in 2007? Please break out the estimated costs of the Phase 1, Phase 3, and blind tests.
11. How many ASPs does DNDO have in inventory at this time that could be deployed? What are DNDO’s plans for these monitors?
12. You testified that certification is “merely an accountability statement by the Secretary that the system represents an increase in operational performance.” DNDO’s Test Plan for Phase 1 says, however, that certification will be used in the context of a KDP-3 full-scale production decision.

The Honorable Bart Stupak (continued)

- a. How do you square your testimony that certification is merely an “accountability statement” with the provisions in the Phase 1 Test Plan which state that certification is a pre-requisite for a full-scale production decision?
 - b. What does “certification” permit DNDO to do? Does it allow you to produce ASPs up to the limits of your appropriations?
 - c. Why is DNDO rushing to certify before it has finalized testing? Is DNDO concerned that FY2007 appropriations will be lost without a certification?
 - d. Is the funding provided in the FY2007 Homeland Security Appropriations Act for ASPs “no year” money? Alternatively, is it only available for one year, and if left unexpended, will these funds cease to be available for obligation and go back to the Treasury?
 - e. If certification were approved by the Secretary, how many ASPs does DNDO plan to install in FY2008 and in what specific locations? How many will be installed in primary screening?
13. In July 2006, DNDO issued three contracts for development and full-scale deployment of ASPs and a fourth contract to manufacture sodium iodide crystals, which the Government will supply to the manufacturers. Why did DNDO not also enter into a contract for germanium crystals, which the Government would supply to manufacturers? Does DNDO intend to use only sodium iodide ASPs, or will it also use the germanium ASPs? If so, will these be deployed differently?
14. As a matter of good science, would it not make sense for DNDO to have a conditional certification—one to address the technical issues related to deployment in secondary screening, and a second one for the technical issues tied to deployment in primary screening?
15. Do you agree with the three GAO recommendations outlined below? If not, please identify specific disagreements and explain why.
- a. “DHS [Department of Homeland Security] delay Secretarial certification and full-scale production decisions of the ASPs until all relevant tests and studies have been completed and limitations to these tests and studies have been identified and addressed. Furthermore, results of these tests and studies should be validated and made fully transparent to DOE, CBP [Customs and Border Protection], and other relevant parties.”
 - b. “Once the tests and studies have been completed, evaluated, and validated, DHS should determine in cooperation with CBP, DOE, and other stakeholders

The Honorable Bart Stupak (continued)

including independent reviewers, if additional testing is needed.”

- c. “If additional testing is needed, the Secretary should appoint an independent group within DHS, not aligned with the ASP acquisition process, to conduct objective, comprehensive, and transparent testing that realistically demonstrates the capabilities and limitations of the ASP system. This independent group would be separate from the recently appointed independent review panel.”
16. Your prepared testimony stated on page two that “there are known detection limitations to the current systems.” You testified that you could not discuss this in an open session. Please explain what you meant by your statement above regarding known detection limitations (If necessary, please provide your answer and supporting information separately from the answers to the other questions, appropriately mark the document, and the Committee will take care to ensure it is properly safeguarded). In answering this question, please describe whether and if there are radiological threats that could potentially be smuggled through ports, rail transport, or across borders using the current systems which would not occur with ASPs.
17. Does DNDO plan to use the Phase 3 testing in support of certification?
18. It is nearly six months since the phase 3 tests were finalized. Why has it taken so much longer to provide a report with these test results compared with the Phase 1 test results?
19. Please explain DNDO’s plans for a Global Nuclear Detection Architecture. Will threats that use passenger air travel be captured as part of this global architecture, such as smuggling through an airport Polonium-210, a radioactive material that killed a former Russian spy and dissident?
20. In the past 12 months, has the Homeland Security Institute, a Federally-funded research and development center, had any of its employees detailed or embedded in DNDO? Please provide their names and responsibilities.