U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

March 13, 2011

President Barack H. Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Obama:

I write to request information about how the United States federal government would respond to a nuclear disaster such as the unfolding crisis at reactors in Japan following the massive earthquake there. I am concerned that based on recent reports, it appears that no agency sees itself as clearly in command of emergency response in a nuclear disaster.

The unfolding crisis in Japan shows us the magnitude of the response we must be prepared for in the event of a nuclear disaster, be it caused by a natural catastrophe or a man-made accident or terrorist attack. Already, more than 200,000 people have been evacuated in a 12-mile radius around Fukushima Daiichi. It is not clear when, or if, they will be able to return to their homes. The Daiichi-1 reactor has been permanently disabled when it was flooded with sea water in a desperate attempt to halt a meltdown. At least one other reactor has also suffered a partial meltdown, and two others have seriously disabled cooling systems. Radioactive cesium and iodine have been released into the atmosphere. Three Fukushima Daiichi workers are suffering from radiation poisoning. Twenty two people are showing symptoms of radiation exposure. One hundred and seventy others have tested positive for radiation exposure. Potassium iodide tablets are being distributed to reduce the risk of thyroid cancer.

At a time when emergency responders should be trying to rescue victims trapped underneath rubble, they are instead being compelled to flood nuclear reactors with water from the ocean to halt the imminent meltdown, screen toddlers for radiation exposure and evacuate hundreds of thousands of citizens.

As you know, there are 31 reactors in the US of the same designs as the Fukushima Daiichi and Daini units that have already melted down or are under threat of a melt-down. A nuclear disaster could also come from terrorists: Al Qaeda considered crashing a plane into a nuclear reactor during the 9/11 attacks and a man was arrested on February 24, 2011 for planning to target reactors. The seriousness of this threat is beyond question.

Yet a review of internal documents made public through a Freedom of Information Act (FOIA) request by *Inside EPA*[1] indicates that it appears that no agency sees itself as clearly in command of emergency response in a nuclear disaster. These materials indicate that:

- EPA, the Nuclear Regulatory Commission (NRC) and the Federal Emergency Management Agency (FEMA) are not in agreement about which Federal agency would lead efforts to respond to and clean up a large-scale radiation release caused by an accident at or attack on a nuclear reactor.

- The Agencies are reportedly also concerned that sufficient funds needed to conduct a long-term cleanup might not be available under the Price-Anderson Act, a statute that is designed to ensure that the massive costs associated with a large-scale nuclear catastrophe would not be absent due to the bankruptcy of the company that owned the reactor that failed.

- There is also disagreement about whether the medium and long-term clean-up standards for a large-scale nuclear disaster would be as stringent as EPA's current radiological standards. I have expressed my concerns about this aspect of radiological emergency response planning in the past.[2]

The federal response to other types of disasters are much more clearly specified in U.S. law and regulation. Following public outcry about the Exxon Valdez oil spill, Congress passed the Oil Pollution Act (OPA) of 1990, amending the Clean Water Act. The OPA mandated planning for a spill and made it clear who would be in charge of federal response -- EPA for spills inland, USCG for spills at sea or on the coasts. A detailed process for leading and coordinating the federal response and clean-up efforts was specified in both law and regulation. Similarly, to address shortcomings in the federal response to Hurricane Katrina, Congress passed the Post-Katrina Emergency Management Reform Act, which amended the Stafford Act and Homeland Security Act. FEMA is directed to lead the nation in comprehensive emergency preparedness, response, and in reducing the risk of a disaster. The Stafford Act clearly says that the President has the authority to declare an emergency or national disaster, in the case of natural catastrophes and at the request of state authorities. If the President declares a disaster, then this automatically grants FEMA the authority to coordinate the contributions of 28 federal agencies and non-governmental organizations such as the American Red Cross.

In stark contrast to the scenarios contemplated for oil spills and hurricanes, there is no specificity for emergency coordination and command in place for a response to a nuclear disaster. The Nuclear/Radiological Incident Annex to the National Response Framework says that "The Secretary [of Homeland Security] is responsible for coordinating Federal operations within the United States to prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies."[3] Yet the Annex also indicates that, depending on the type of

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[1] "Agencies Struggle To Craft Offsite Cleanup Plan For Nuclear Power Accidents", Inside EPA, November 10, 2010. http://environmentalnewsstand.com/Environmental-NewsStand-General/Public-Content/agencies-struggle-to-craft-offsite-cleanup-plan-for-nuclear-power-accidents/menu-id-608.html

[2] http://markey.house.gov/docs/102709_epa_radiation_letterfn.pdf

[3] http://www.fema.gov/pdf/emergency/nrf/nrf_nuclearradiologicalincidentannex.pdf

incident, the Coordinating Agency may instead be the Department of Energy, Department of Defense, EPA, NRC, or US Coast Guard (USCG). When my staff was briefed by staffs of the EPA and NRC, they were informed by both agencies that there is no clarity regarding which agency would be in charge of the various aspects of a response to a nuclear disaster, and that the identity of the lead Federal agency is dependent on many different factors. One Agency official essentially told my staff that if a nuclear incident occurred, they would all get on the phone really quickly and figure it out.

Federal agencies have not yet developed a coordinated plan for a nuclear disaster. Nuclear power plants are required by FEMA and NRC to have Radiological Emergency Response Plans, but "it is not clear that these plans extend to long-duration accidents that extend over large land areas or involve large populations," according to a July 27, 2010 Draft Report to the Congress of the Presidential Commission on Catastrophic Nuclear Accidents. The Commission noted no "planning for such a possibility" as an evacuation on the scale of the 135,000 people permanently evacuated following the Chernobyl meltdown.[4] In Japan, more than 200,000 people have already been evacuated from around the threatened reactors. The Report to Congress does not appear to be publicly available, except for the Draft version obtained by *Inside EPA*. Email messages uncovered through the FOIA request match this confusion. In response to the *Inside EPA* reporter's questions, an EPA staffer wondered "Why doesn't he ask NRC? They regulate the cleanup of NRC regulated facilities. We don't get involved at all."

I am also concerned that plans to more fully specify nuclear disaster responsibilities, and steps that members of the public should take in a nuclear disaster, have not been adequately prioritized. Last year, your Administration sent an interagency Planning Guidance for Response to a Nuclear Detonation to local emergency responders.[5] But a large-scale exercise for a nuclear detonation, planned for May 2010, was cancelled in response to local opposition in Nevada. A 2011 FEMA exercise to simulate a 7.7-magnitude earthquake in the Midwest is reportedly being scaled back.[6]

The tragic events in Japan highlight the need for more intensive and specific nuclear disaster response plans. The Oil Pollution Act and its implementing regulations were drafted in the wake of the Exxon-Valdez disaster. It should not require a nuclear disaster in this country to construct the Federal response to a catastrophic nuclear event. Consequently, I ask for your prompt attention in responding to the following questions:

1) Which federal agency is responsible for making a formal declaration that a nuclear emergency or disaster exists? Please also specify the circumstances under which such a declaration would occur.

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[4] "Agencies Struggle To Craft Offsite Cleanup Plan For Nuclear Power Accidents", Inside EPA, November 10, 2010. http://environmentalnewsstand.com/Environmental-NewsStand-General/Public-Content/agencies-struggle-to-craft-offsite-cleanup-plan-for-nuclear-power-accidents/menu-id-608.html

[5] http://hps.org/hsc/documents/Planning_Guidance_for_Response_to_a_Nuclear_Detonation-2nd_Edition_FINAL.pdf. Cited in: "U.S. Rethinks Strategy for the Unthinkable". New York Times, December 15, 2010. http://www.nytimes.com/2010/12/16/science/16terror.html

[6] "National disaster exercises, called too costly and scripted, may be scaled back". Washington Post, April 2, 2010. http://www.washingtonpost.com/wp-dyn/content/article/2010/04/01/AR2010040103746.html

2) Which federal agency is responsible for coordinating the federal government's efforts during a nuclear disaster, and what roles and responsibilities are contemplated for each other federal agency involved in response efforts? If different agencies would be responsible for different types of disasters or different types of nuclear facilities (i.e. nuclear power plant vs nuclear weapons facility), please fully specify the conditions under which each agency would assume its role and responsibility, and who would make these determinations during the event.
3) Which federal agency is responsible for determining when a large-scale evacuation of an area surrounding a nuclear power plant (including the evacuation of an area larger than a 10-mile radius surrounding a nuclear power plant) must occur, and on what basis is such a determination to be made?
4) Which federal agency is responsible for conducting and overseeing a large-scale evacuation (including the evacuation of an area larger than a 10-mile radius surrounding a nuclear power plant) following a nuclear disaster? Does that agency currently have the authority to coordinate and direct other federal, state and non-governmental resources, in the same manner as FEMA can following a Stafford Act declaration?
5) Which federal agency is responsible for determining when people that were evacuated from their homes following a nuclear disaster can return, and on what basis is such a determination to be made?
6) Which federal agency is responsible for cleaning up radiation to restore affected areas for people and the environment? Will these long-term standards differ from EPA's current standards for safe radiation levels, and if so, why?
7) Has there been analysis for how earthquake damage to nuclear power plants, combined with other forms of earthquake damage that also require considerable governmental response efforts, would affect emergency response and evacuation efforts and resource needs? If so, please fully describe these plans, and if not, why not? Have the effects of radiation release been accounted for in planning for evacuations that may also be necessary due to other earthquake impacts on buildings? If so, please fully describe these plans, and if not, why not?

Thank you very much for your attention to this important matter. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff of the Natural Resources Committee staff or Dr. Ilya Fischhoff of my staff at 202-226-2836.

Sincerely,

Edward J. Markey

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