Congress of the United States
Washington, DC 20515

February 2, 2011

Mr. Michael Bromwich
Director
Bureau of Ocean Energy Management, Regulation and Enforcement
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Director Bromwich:

I am writing with regard to your January 28 response[1] to my January 7, 2011 letter[2] on the manner in which the Joint Investigation Team (JIT), chaired by the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) along with the U.S. Coast Guard (USCG), is conducting its testing of the Deepwater Horizon blowout preventer (BOP).

While I appreciate your letter, it unfortunately failed to answer the majority of my requests for documents and specific information, and consequently, it is difficult to fully and accurately evaluate its contents. I note additionally that, counter to assurances provided to my staff during a January 5 conference call by your Chief of Staff, Tom Lillie, your staff apparently leaked your January 28 response to members of the media at the same time it was submitted to my office. Since I was in Massachusetts at the time, I was not able to review your letter prior to its public release. I find both your January 28 response and the manner in which BOEMRE released it to the media to be unacceptable.

In your January 28 response, you informed me that BOEMRE's Investigations and Review Unit has commenced an investigation into the circumstances surrounding the decision made by the federal government's contractor for the forensic Deepwater Horizon BOP investigation (DNV) to utilize the services of Mr. Owen McWhorter, a Transocean employee who served as the Subsea Supervisor for the Deepwater Horizon in the weeks leading up to the accident. Your response maintains that DNV made this decision without properly fulfilling some of its contractual responsibilities prior to doing so, including the responsibility to obtain written permission from the contracting officer and to prepare and obtain approval for a conflict of interests mitigation plan. In my January 7 letter, I requested copies of both the DNV contract with the JIT and any copies of the conflict of interests mitigation plan for Mr. McWhorter or other similarly conflicted individuals. You failed to comply with my request, making an independent evaluation of BOEMRE's response difficult.

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[1] http://markey.house.gov/docs/1-28-11boemeresponse_to_rep_markey_ltr.pdf
[2] http://markey.house.gov/docs/01-07-11letter_re_blowout_preventer.pdf

Your response also maintains that while many of the federal investigators working onsite were aware of Mr. McWhorter's involvement as early as November 15 (when the forensic BOP investigations commenced), no off-site BOEMRE employees were aware of his presence at the site. I question the relevance of this assertion.

Federal investigators were well-aware of Mr. McWhorter and his importance to the government's investigation, since they had subpoenaed his testimony at a July 21 hearing[3] (he did not comply with the subpoena). Additionally, the BOP Site Access Protocols[4] states that the names of all those with access to Level 3 (the most sensitive area of the BOP site) need to be on a daily JIT-approved access list, and that "the DNV-designated site manager will monitor all personnel with Level 3 access at all times." Moreover, all those who wish to enter the site must go through security and sign in each day. Finally, concerns regarding his presence were raised to both the USCG and BOEMRE co-chairs of the JIT by other parties present at the site in the fall of 2010,[5] and reports indicate that these concerns were dismissed. In my January 7 letter, I requested numerous documents related to the manner in which Mr. McWhorter and other similarly conflicted individuals obtained repeated access to the BOP test site. BOEMRE again failed to comply with my request, making my evaluation of your response difficult.

If your statement that no off-site BOEMRE personnel were aware of the involvement of Mr. McWhorter was intended to imply that had they been aware, they would have immediately ensured that he was removed, that raises questions regarding the nature and adequacy of the supervisory structure at the agency. If that implication was not your intent, then what relevance does your statement have?

As you may know, your December 23, 2010 response[6] to my December 21 letter[7] on this subject matter was released by your staff to members of the media at the same time it was sent to me. On January 5, 2011, this concern was raised by the Natural Resources Committee's Democratic staff in a conference call that included your chief of staff, Mr. Tom Lillie. My staff was assured that this would not occur again. Yet, almost immediately after receiving your January 28 response, my staff received calls from members of the press who then confirmed that they had obtained the response, presumably from your staff since it was not released by the Committee staff. This is unacceptable and a breach of the normal protocols for agency communications with Congress.

In my January 7 letter to you, I submitted numerous questions and requests for documentation. You failed to respond fully to most of them. I reiterate these requests below, and also make some additional informational requests. I ask that you provide me with these materials no later than close of business Monday February 7, 2011.

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[3] http://www.deepwaterinvestigation.com/go/doc/3043/673655/&printerfriendly=1
[4] See http://markey.house.gov/docs/jitsiteaccessprotocolsfinal.pdf
[5] See January 5, 2011 memo from CSB's Dan Tilemma to Daniel Horowitz, http://markey.house.gov/docs/csbmemo_-_tillema_to_horowitz_final.pdf for a description of how the concerns were raised with Captain Suzanne Englebert of the USCG and to David Dykes, the BOEMRE co-chair.
[6] http://markey.house.gov/docs/12-23-10_bromwich_to_markey.pdf
[7] http://markey.house.gov/docs/12-21-10ejmtodoicsb.pdf

1. Please provide me with a copy of the contract between the Department of Interior (or the JIT, as appropriate) and DNV establishing the terms of DNV's work in the BOP examination.
    a. What is the name of the contracting officer for this work?
    b. Is that individual located at the BOP test site? If so, shouldn't he/she have been aware of Mr. McWhorter's involvement in the investigation, since so many other individuals were?
    c. Please detail the responsibilities this contracting officer has to communicate with both on- and off-site BOEMRE officials regarding the DNV work.

2. Please provide me with a list of all non-DNV personnel (including the employer of each such individual) that have been formally or informally engaged by the JIT or the DNV to assist with the BOP examination. For each such individual who is employed by a defendant in the Deepwater Horizon case brought by DOJ, please additionally provide me with 1) records documenting the conflicts of interest review performed and 2) documentary evidence establishing that the formal or informal engagement has now been terminated on the grounds that it constitutes the same sort of conflict of interests posed by the engagement of Mr. McWhorter. If no such evidence exists, please explain why not.

3. Please fully describe all steps you have taken (or plan to take) to investigate (and take necessary steps to remedy) the conduct of all JIT and BOEMRE staff who were responsible for the decisions to allow Cameron and Transocean employees improper hands-on access to the BOP and those who made inaccurate statements to members of the media regarding these matters. In your response, please indicate the what performance review each such individual received for their work during this period, and how their allowing Cameron and Transocean employees such improper access was addressed in each person's performance review. If no such steps have been or plan to be taken, why not?

4. The Agreement requires that all Level 3 participants must sign in at the security entrance each day. Additionally, the Site Access Protocols[8] state that all those that require access to Level 3 need to be on a daily access list, and that "the DNV-designated site manager will monitor all personnel with Level 3 access at all times." For each day that work was performed on the BOP, please provide copies of the sign-in sheet and Level 3 daily access list, ensuring that each individual's name and employer is also provided.

5. Your response[9] states that DNV recognizes that "hands' on participation in testing" by parties to the Agreement such as Transocean and Cameron is not allowed, but photographic evidence indicates that DNV (and the JIT, which is overseeing these efforts) has evidently ignored this rule on more than one occasion. What are you doing to investigate the extent to which employees of defendants named in DOJ's Deepwater Horizon case (including but not limited to Transocean or Cameron) have engaged in hands-on manipulation of the BOP or other components? Please provide a list of all such instances, which includes the names and employers of such individuals, the type of

[8] See http://markey.house.gov/docs/jitsiteaccessprotocolsfinal.pdf
[9] See http://markey.house.gov/docs/12-23-10_bromwich_to_markey.pdf

hands-on manipulation they engaged in, the date on which such activities occurred, any documentation of any changes to the BOP or its control systems made as a result of these manipulations, and the reason such activities were allowed by DNV and the JIT.

6. According to Dr. Moure-Eraso's December 23 letter[10] to you, on December 21, DNV allowed the last minute substitution of a POD function test protocol written by Cameron for one that had been previously circulated to parties to the Agreement. How can the independent credibility of the protocols used to examine the evidence of the Deepwater Horizon accident be assured when the JIT allows them to be developed by a subject of the investigation without allowing independent parties to see them in advance and provide technical input as needed? Please provide me with copies of all documentation related to this function test protocol and any review of such protocol by DNV or JIT personnel.

7. Please clarify the protocols related to photography of the BOP testing process.
   a. Is photography from Level 1 allowed? If not, on what basis and in what document is that prohibition contained? Please provide me with copies of any such documentation.
   b. Is it true that the JIT first announced that photography of the video feed was prohibited on December 6? If not, when and in what document was this direction first provided? Please provide me with copies of any such documentation.

8. Please provide me with copies of all correspondence (including drafts, emails, phone logs, memos or other materials) in the possession of BOEMRE regarding your December 23, 2010 and January 28, 2010 responses to my letters.

9. The Committee's Democratic staff continues to learn[11] of instances where CSB personnel are being prevented from obtaining access to materials that other parties to the BOP investigations are obtaining.
   a. For example, on January 25, 2011, all parties except CSB reportedly obtained a copy of EDS sequence and timing for use in the BOP pod function testing. Why has CSB not yet obtained these materials?
   b. Despite requests, copies of the working test protocols for the BOP Stack and LMRP hydraulic testing have not been provided to CSB personnel. Why has CSB not yet obtained these materials?

10. The Committee's Democratic staff has learned of serious deficiencies into the website that the JIT has constructed to allow parties to the BOP investigation to obtain access to materials. Although your January 28 response states, as part of your assurances that the work conducted by Mr. McWhorter (or other similarly conflicted individuals) is being monitored, that "all work done on the BOP stack was recorded by a videographics company hired by DNV. There are multiple cameras that are positioned around the BOP stack to capture all activities. When work is done on top of the BOP equipment, a cameraman is also positioned on a man-lift to record the work. In addition, FBI ERT

[10] See http://markey.house.gov/docs/12-23-10csbletter_response_to_bromwich.pdf
[11] Private communications with CSB staff

agents have observed and photographed the work being done on the BOP stack," my staff has been informed[12] that:

- No FBI ERT photos were placed on the site until earlier this week.
- Photos and video of the BOP recovery from the ocean and initial drill pipe locations are not on the site, despite assurances on the November 10 2010 kickoff meeting that these would be provided. As your January 28 response noted, the federal government utilized Mr. McWhorter's services in performing this task.
- DNV photos are not kept up-to-date. On January 25, the last photos posted were from December 15, and while some of the missing materials have been posted in the past few days, it is difficult for observers to the testing to form and provide real-time insights in the absence of access to real-time photos.
- A second set of baseline photos CSB staff requested to be taken from high elevation during the first week of testing have either not been posted on the site or were not taken.
- Only three documents have been posted to the site.
- No video has been posted to the site.
- Despite requests, drawings of the electrohydraulic multiplex BOP control systems, which are used to provide power and communications for sub-sea BOP functions, have not been made available.

This raises the following questions:

a. When will all these materials be posted to the site?
b. If any of these materials will not be made available in a timely manner to any of those who have permission to access the site, please provide a detailed and specific explanation.
c. How can your assurance that the BOP investigation was not tainted by Mr. McWhorter's (and other similarly conflicted individuals') involvement because all activities have been so extensively photographed and videotaped be believed, when the photographs and videos are mostly reportedly missing or inadequate?

Thank you for your full cooperation with this request. Please provide your written response to this letter no later than Monday February 7, 2011. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff of the Natural Resource Committee Democratic staff at 202-225-6065 or at 202-225-2836.

Sincerely,

Edward J. Markey

Edward J. Markey
Ranking Democratic Member
House Natural Resources Committee

[12] Private communications with CSB staff